

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 16-257

BOW LAKE ESTATES WATER WORKS, INC.

Investigation re: Failure to File Annual Reports

**Order On Show Cause Hearing for Failure to File Reports and
Failure to Comply with a Commission Order**

ORDER NO. 25,931

August 1, 2016

APPEARANCES: Stanley H. Oliver, pro se, for Bow Lake Estates Water Works, Inc., and John S. Clifford, Esq., for the Staff of the Public Utilities Commission

This Order is issued in connection with the Commission's investigation of Bow Lake Estates Water Works, Inc.'s failure to file its annual reports pursuant to RSA 374:15 and N.H. Code Admin. Rule Puc 609.04, and following a show cause hearing held on May 26, 2016, regarding the annual reports and the failure of Bow Lake's president, Stanley Oliver, to comply with an earlier Commission order.

The Commission imposes a conditional fine on Mr. Oliver in the amount of \$10,000 which will be suspended if Bow Lake Estates Water Works, Inc., presents to the Commission for our approval no later than October 1, 2016, a signed purchase and sale agreement selling its public utility franchise to a suitable buyer with the financial, managerial and technical skills necessary to maintain the franchise.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-257.html>.

I. PROCEDURAL HISTORY

Bow Lake Estates Water Works, Inc. (“Bow Lake” or “the Company”), is a regulated public utility that provides water service to approximately 40 customers in a development known as Bow Lake Estates on Big Kooauke Island in the Town of Strafford. Under RSA 374:15, every public utility must file with the Commission such reports containing facts and statistics as may be required by the Commission. Pursuant to N.H. Code Admin. Rule 609.04, every regulated water utility must file an annual report. Those companies that keep their books on a calendar year basis must file their reports each year on or before March 31. Filing a report is not a mere technicality. “It is an essential component of the rules the Commission has promulgated in the discharge of its statutory duty ‘to keep informed as to all public utilities in the state.’” *Bow Lake Estates Water Works, Inc.*, Order No. 25,058 (Dec. 29, 2009) (citations omitted).

On February 25, 2016, Commission Staff filed a letter advising the Commission that Bow Lake had yet to file its 2014 annual report due on March 31, 2015. Staff stated that it had reminded the Company on several occasions of its obligation to file the annual report. Staff summarized Bow Lake’s history of failing to timely file its annual reports. The Commission investigated the Company on two separate occasions and fined Bow Lake for some of the very same failures at issue here. *See* Docket Nos. DW 04-010 and DW 09-177. Order No. 24,303 (April 2, 2004) (imposing \$500 fine); Order No. 25,091 (April 13, 2010) (imposing \$250 fine). Staff requested that the Commission open a docket with respect to Bow Lake’s failure to file its annual report for 2014.

On March 10, 2016, the Commission opened a docket and ordered Bow Lake to file its 2014 annual report by March 31, 2016, and set a hearing date for it to show cause why the Company or its agents should not be sanctioned for failure to file the annual report and why it should retain its franchise. *See* Order No. 25,871 (March 10, 2016). Rather than promptly filing

its delinquent 2014 report, Stanley Oliver, Bow Lake's president, wrote to the Commission on March 23, 2016, advising that it was not possible for Bow Lake to complete its report by March 31, 2016. Mr. Oliver also stated that he would file both the 2014 and 2015 reports by May 31, 2016.¹

Bow Lake and Mr. Oliver also failed to comply with the terms of the Commission's March 10 order by not mailing the order to Bow Lake's customers and not submitting the required affidavit of mailing to the Commission by the April 18, 2016, deadline. The Commission entered another order fining the Company for failing to comply with Order No. 25,871 and scheduled a show cause hearing for May 26, 2016. *See* Order No. 25,885 (April 22, 2016). On May 9, 2016, the Company filed a notice of mailing of the Commission's April 22 order and a hearing was held on May 26, 2016. The hearing was attended by Mr. Oliver, Staff and members of the public.

II. Positions of the Parties

A. Commission Staff

Mark Naylor, Director of the Commission's Gas and Water Division, testified that the Commission has opened dockets in the past to investigate Bow Lake's failure to file its annual reports and that "[t]he record of each of these proceedings is replete with evidence of the Company's non-compliance and intransigence." Hearing Transcript, May 26, 2016, at 12 (hereinafter Tr.). Mr. Naylor noted that the Company's 2009 report was not filed until December 21, 2011. The 2010 report was filed on February 1, 2012. The 2011 report was filed on April 18, 2012. The 2012 report was filed on July 31, 2014. The 2013 report was filed on December 23, 2014. The Commission's audit staff issued questions to the Company on its 2013 report, but the Company never responded. Tr. at 12-13.

¹ Bow Lake's 2015 annual report was due to be filed on or before March 31, 2016.

Mr. Naylor characterized the financial information as the most important thing the Commission requires of smaller water companies. Tr. at 10. It allows Staff to get a picture of how the company is doing. Tr. at 15-16. Staff urged the Commission to take note of the Company's and Mr. Oliver's recalcitrance and ensure that the reports are promptly filed in the future and to ensure that the public safety and public trust are maintained. Tr. at 68-69.

B. Bow Lake

Mr. Oliver testified on the company's behalf. He confirmed that he had failed to send a copy of the order to Bow Lake's customers, Tr. at 21, and that he had failed to file the Company's 2014 annual report by the March 31 deadline set by the Commission, Tr. at 22. Mr. Oliver stated that the Company had some "erratic billing complaints" because of its bookkeeping practices, Tr. at 28, testifying that "bookkeeping is definitely the weakest part of the company," Tr. at 30-31. Mr. Oliver stated that he had to hire an accountant to prepare and file the annual reports at a cost of approximately \$1,700 – \$1,800. This cost is about 10% of the Company's gross revenue and that often times he would just "let it go," Tr. at 32, calling the collection of the information necessary for the report "silly." Tr. at 33.

When asked by the Commission what should be done about the Company's failure to file, Mr. Oliver suggested that the company needed to be "kind of yelled at, I guess," Tr. at 34, and that his "greatest hope is somebody else will take it" - presumably meaning purchase the Company, Tr. at 35. Mr. Oliver offered to leave the keys to the Company with the Commission if he could walk away from his obligations. Tr. at 41. While he understood that he could request a rate increase to collect more than the \$32 per month charge he levies to Bow Lake's customers, Mr. Oliver stated that he did not really want to change the rate. He stated that he would have to incur substantial costs to come before the Commission to raise the rates, and that he could not fully recover those costs for quite some time. Tr. at 49. Mr. Oliver understood that his franchise

could be taken away as a result of the failure to file annual reports and failure to comply with the orders of the Commission. As noted above, he offered the Commission “the keys” to his franchise if they were willing to accept his offer to walk away from running the Company.

III. COMMISSION ANALYSIS

“It is an essential component of the rules the Commission has promulgated in the discharge of its statutory duty ‘to keep informed as to all public utilities in the state.’” *Riverside Water Works, Inc.*, Order No. 23,875, 86 NH PUC 912, 914 (2001) (quoting *Central Water Co.*, Order No. 23,334, 84 NH PUC 577, 578 (1999) and RSA 374:4). As explained above, as a water utility operating on a calendar year basis, Bow Lake is required to file an annual report on or before March 31. “Although the Commission is aware of the particular challenges that confront small water utilities in New Hampshire, it is imperative that we not allow the hurdles faced by these companies to hamstring effective oversight of their operations.” *Central Water Co.*, 84 NH PUC at 578.

RSA 374:17 provides that any public utility that does not file reports required by the Commission at the time specified shall forfeit the sum of \$100 per day unless excused or granted an extension of time. RSA 365:42 authorizes the Commission to impose civil penalties against an officer or agent of a utility who willfully fails to comply with orders of the Commission. Such penalties are not to exceed \$100,000 and can be distributed to the benefit of the utility’s ratepayers in the forms of credits on their bills. In addition, RSA 365:41 permits the Commission to levy a civil penalty not to exceed \$250,000 or 2.5% of the annual gross revenue of the utility, whichever is lower, for failure to comply with any order or requirement of the Commission.

In extreme cases, where a utility is “failing to provide adequate and reasonable service to its customers and that such failure is a serious and imminent threat to the health and welfare of the customers of the utility the Commission may appoint a receiver or direct its staff to take such temporary action as is necessary to assure continued service.” RSA 374:47-a; *see Rolling Ridge Water System*, Order No. 23,794 (Oct. 4, 2001) (appointing receiver of company for failure to provide adequate and reasonable service).

At the hearing, Mr. Oliver openly admitted to having willfully failed to mail a copy of our March 10, 2016, order to Bow Lake’s customers, Tr. at 20-21, and failed to file the 2014 annual report by March 31, 2016, Tr. at 22. In our April 22 order we imposed a \$250 fine for failure to comply with Order No. 25,871. To date, payment has not been received.

Mr. Oliver did deliver and file with the Commission the Company’s 2014 and 2015 annual reports. The 2014 report was filed 422 days late and the 2015 report was filed 56 days late. Under RSA 374:17 we could levy a fine of \$42,200 and \$5,600, respectively for each of those two reports. A fine totaling \$47,800 would clearly impair the Company as it does not have the revenues or cash to pay a statutorily administered fine. Mr. Oliver testified that the Company’s revenues were in the range of \$16,000 Tr. at 26 and he did not even know the balance of the Company’s cash on hand. Tr. at 27. When asked if the Commission should fine the Company for its failure to timely file the reports Mr. Oliver testified “that’s up to you [the Commission], and I’m not going to really comment on that. I don’t think – I think fines do no good.” *Id.* When asked about his competency to safely run a water company and maintain the records required under the Commission’s rules Mr. Oliver noted that he was more of a “water guy” and not a “paper guy.” Tr. at 49.

Mr. Oliver acknowledges that his bookkeeping is “weak.” Tr. at 30-31. He views the annual reporting requirements as “silly.” Tr. at 33. It’s something that he can file when he is able. “We’ll do it; We do it when we can.” Tr. at 32. He admitted that his greatest hope is for someone else to take the Company. Tr. at 35. At least one customer of the Company testified at the hearing that one of their frustrations is that the system, which serves over forty customers, does not have a generator to deliver water during power outages.

Mr. Oliver appears not to take seriously either his rights or his obligations as the person responsible for running a regulated utility. Bow Lake has a state-sanctioned monopoly to provide service in its territory and a right to a reasonable return on its prudent investments. It has the obligation to provide adequate and reasonable service, and to not overcharge its customers. The Commission is charged with overseeing that relationship and ensuring both the utility and its customers are treated fairly. The reporting requirements contained in State laws and Commission rules are essential to that oversight. They are not mere suggestions.

Based on the record, we find that the Company and Mr. Oliver are failing to provide adequate and reasonable service to Bow Lake’s customers. While the water quality is not an issue at this time, we believe the Company needs sound and prudent management. Mr. Oliver either cannot, or will not, provide the adequate financial, managerial, and technical skills necessary to maintain safe and adequate service to Bow Lake’s customers. Nonetheless, we are not going to place the Company in receivership at this time. On the facts before us, we could fine the Company pursuant to RSA 365:41. We do not believe that the Company has the adequate capital and reserves necessary to pay such a fine. We will, however, levy a fine of \$10,000 against Mr. Oliver personally pursuant to RSA 365:42 for his willful failure to obey and comply with the orders of this Commission. Such fine shall be suspended pending the Company finding a suitable buyer for its franchise who has the financial, managerial and technical skills

necessary to maintain the franchise; and the filing with the Commission an executed purchase and sale agreement no later than October 1, 2016 for our approval. We find this to be the most prudent course of action at this time and that a transfer of this franchise is in the public interest.

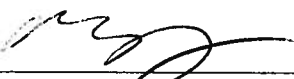
Based upon the foregoing, it is hereby

ORDERED, that pursuant to RSA 365:42, Stanley H. Oliver shall pay a civil penalty of \$10,000 for failure to timely file Bow Lakes Estates Water Works, Inc.'s, 2014 and 2015 annual reports and for failing to comply with Commission Order No. 25,871; and it is

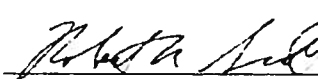
FURTHER ORDERED, that the fine of \$10,000 shall be suspended on the condition that Bow Lake submits on or before October 1, 2016, a duly executed purchase and sale agreement pursuant to RSA 374:22 & 30 for the sale of its franchise to an entity that has the financial, managerial, and technical skills requisite to operate a water utility in the service area of Bow Lake's franchise; and it is

FURTHER ORDERED, that the \$250 fine imposed in Order No. 25,871 be tendered to the Commission by Bow Lake within 15 days of the date of this order.

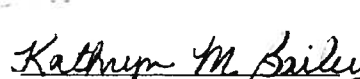
By order of the Public Utilities Commission of New Hampshire this first day of August, 2016.



 Martin P. Honigberg
 Chairman



 Robert R. Scott
 Commissioner



 Kathryn M. Bailey
 Commissioner

Attested by:



 Debra A. Howland
 Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 16-257-1 Printed: August 01, 2016

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.