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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

February 25, 2010 - 10:08 a.m.
Concord, New Hampshire

RE: DW 09-177
BOW LAKE WATER WORKS, INC.:
Failure to File Annual Reports.
(Show Cause hearing)

PRESENT: Chairman Thomas B. Getz, presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Bow Lake Water Works, Inc.:
Stanley H. Oliver, President

Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.
Mark Naylor, Director - Gas & Water Division
Douglas Brogan, Gas & Water Division

Court Reporter: Steven E. Patnaude, LCR No. 52

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I N D E X

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PAGE NO.

4 STATEMENTS BY:

5

Ms. Thunberg

4, 17

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Mr. Oliver

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9 QUESTIONS BY:

PAGE NO.

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Cmsr. Below

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Cmsr. Ignatius

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Ms. Ignatius

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Chrmn. Getz

11, 13

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E X H I B I T S

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EXHIBIT NO.

D E S C R I P T I O N

PAGE NO.

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Letter from Dep. of Environmental
 Services to North Country Water
 Supply, Inc. regarding Bow Lake
 Estates Water System (02-03-10)

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1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good morning.

3 We'll open the hearing in docket DW 09-177. On
4 September 10, 2009, Commission Staff filed a letter
5 advising the Commission that Bow Lake Estates had yet to
6 file either its 2007 or 2008 Annual Reports. Staff
7 stated, among other things, that Bow Lake Estates has a
8 history of failing to timely file reports and respond to
9 Commission orders. We issued an order on December 29,
10 2009 directing Bow Lake Estates to file the delinquent
11 reports and, among other things, to show cause at a
12 hearing that's scheduled for today as to why it should not
13 be placed into receivership or why civil penalties should
14 not be assessed.

15 For purposes of the hearing, I would
16 like to get appearances on the record. So, sir, if you
17 could state your name and position for the court
18 stenographer.

19 MR. OLIVER: I'm Stan Oliver. And, I
20 guess we're the owner of Bow Lake Estates Water Works.

21 CHAIRMAN GETZ: Okay. Good morning.
22 Ms. Thunberg.

23 MS. THUNBERG: Good morning,
24 Commissioners. Marcia Thunberg, on behalf of Staff. And,

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1 with me today is Mark Naylor and Doug Brogan. Staff is
2 not anticipating calling witnesses, and presuming that the
3 today's format is more of an offer of proof. We do have
4 one exhibit that, by agreement, we'd like to mark when we
5 get to present our case. Thank you.

6 CHAIRMAN GETZ: Okay. Well, let's
7 start, this proceeding is based on Staff's memo in the
8 first instance, so Staff should go first, state its case,
9 and, if there's any documents, introduce them. And, then,
10 Mr. Oliver, you'll have an opportunity to respond.

11 Ms. Thunberg.

12 MS. THUNBERG: Thank you, Mr. Chairman.
13 Mr. Chairman, I just handed out, and I will identify for
14 the record, a document that Mr. Oliver and Staff agreed as
15 an exhibit. It is the Department of Environmental
16 Services Administrative Order, with a date of
17 February 3rd, 2010 on it. It has the PUC date stamp of
18 "February 8, 2010". Staff is not anticipating going in
19 depth on this document, but merely wants to reference that
20 it exists, and get into the record the status of
21 compliance on the Company.

22 (The document, as described, was
23 herewith marked as Exhibit 1 for
24 identification.)

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1 MS. THUNBERG: So, with that, Staff does
2 have a prepared statement to read. As the Commission
3 noted, Staff requested, in a letter dated September 10th,
4 2009, that the Commission open a docket to investigate Bow
5 Lake Estates' lack of filing annual reports. The Staff
6 reminded the Commission that failure to file annual
7 reports was a problem in the past. And, in this
8 particular instance, there was a 2007 and 2008 Annual
9 Report that was late.

10 Since the Commission's Show Cause Order,
11 Bow Lake Estates has filed its 2007 and 2008 Annual
12 Reports. Staff will be filing a letter with the
13 Commission to document the date that they were filed.
14 They were submitted on February 16th. This was slightly
15 after the January 29th deadline that appeared in the Show
16 Cause Order.

17 At present, Staff is reviewing and
18 auditing these reports. An initial question that has
19 arisen with our quick review is that the Company does have
20 gross revenues that exceed \$10,000. And, in RSA 363-A:5,
21 companies that have gross revenues 10,000 or higher are
22 assessed a portion of the Commission's expenses. Because
23 Bow Lake Estates did not file its 2007 and 2008 Annual
24 Reports, the Commission has not sent Bow Lake Estates any

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1 assessments for those years. So, Staff will be following
2 up on that issue and we'll also be reporting to the
3 Commission on that.

4 Staff would like to stress to the
5 Company that the Legislature has required the Commission
6 to regulate public utilities. And, the Commission cannot
7 perform this oversight obligation, and importantly, review
8 the financial health and viability of regulated utilities
9 if we do not have annual reports to review. And, Staff
10 considers the filing of an annual report a minimal
11 obligation that Bow Lake Estates has disregarded, and this
12 disregard needs to stop.

13 With respect to the Administrative Order
14 that Staff has admitted as Exhibit -- or, has marked for
15 identification as "Exhibit 1", Staff is aware that
16 emergency plans were to be filed by the Company. In
17 speaking with the Company prior to this hearing, it is
18 Staff's understanding that Mr. Oliver will explain that he
19 has partially complied with this Administrative Order.
20 But, still, Staff will be following up on this to
21 corroborate that all of the elements of the Administrative
22 Order have been complied with, especially since this
23 relates to what the Commission usually reviews as the
24 administrative, managerial, and financial expertise of a

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1 company in holding a franchise. And, this administrative
2 component seems to be lacking.

3 Since the Company has appeared at this
4 hearing and has filed the annual reports requested, Staff,
5 in its letter of September 10th, 2009, had requested the
6 Commission consider putting the Company in receivership.
7 Staff is no longer pursuing that recommendation, because
8 of the compliance and presence of the Company today. With
9 that retraction of its receivership recommendation, Staff
10 is conditioning that upon Bow Lake Estates continuing in
11 the future to file annual reports on a timely basis.

12 As to the fine issue for the 2007 and
13 2008 Annual Reports, the last time the Commission fined
14 the Company for the 2002 and 2003, I believe, Annual
15 Reports, it imposed a \$500 fine. The \$500 fine evidently
16 has not had its deterrent effect with respect to these
17 2007 and 2008 Annual Reports. Staff believes that the
18 Commission should impose another fine, but have the fine
19 not less than \$500.

20 And, in the future, if Staff foresees
21 that the fining becomes an ineffective tool to exact
22 compliance with filing timely annual reports, then Staff
23 would recommend the Commission revoke Bow Lake Estates'
24 franchise to operate and direct the Company to sell its

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1 assets.

2 And, that concludes Staff's opening
3 statement. Thank you.

4 CHAIRMAN GETZ: Ms. Thunberg, you said
5 you were going to file a letter, and I know the 2007 and
6 2008 Annual Reports are on file now. But could you, just
7 for the purposes of this docket, attach both of those
8 Annual Reports, so we'll have that in the record in this
9 actual docket?

10 MS. THUNBERG: Yes. Certainly. Thank
11 you.

12 CHAIRMAN GETZ: Any questions for
13 Ms. Thunberg?

14 CMSR. BELOW: Just a question. In the
15 previous memo, I think you noted or it's noted in our
16 order that Annual Reports for 2000 through 2003 were filed
17 late. Is the implication that 2004 and '05 and '06 were
18 filed on time or filed? Do you know the status of those?

19 Oh, there's a footnote. They were also
20 filed late, 2004, 2005, and 2006, but forfeiture was not
21 sought, and apparently no fines were imposed for those.
22 Is that correct?

23 MS. THUNBERG: I see the footnote now.
24 Thank you. Yes, from the order.

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1 CMSR. BELOW: Yes.

2 MS. THUNBERG: So, I guess that answers
3 your question. Thank you.

4 CMSR. BELOW: That's all.

5 CHAIRMAN GETZ: Ms. Ignatius.

6 CMSR. IGNATIUS: Thank you. I'm curious
7 if there are any issues regarding water quality, service,
8 provision of service, water pressure, response to
9 customers' issues with this Company or is it really a
10 matter of the filing of the documentation?

11 MS. THUNBERG: I'd like to have Staff
12 Engineer Doug Brogan speak to that.

13 MR. BROGAN: To my knowledge, there are
14 no issues regarding water quality or customer service, as
15 far as we know.

16 CMSR. IGNATIUS: Thank you.

17 MS. THUNBERG: And, I'd just like to
18 supplement. Mr. Brogan, you did -- you have been in touch
19 with DES inquiring of that specific issue, correct?

20 MR. BROGAN: Yes.

21 CMSR. IGNATIUS: Thank you.

22 CHAIRMAN GETZ: Okay. Mr. Oliver, you
23 have an opportunity to respond.

24 MR. OLIVER: Yes. I have no, as far --

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1 I guess the first thing would be this DES. We are a
2 licensed operator, and we do probably 15 other systems,
3 starting at day cares and maybe, I don't know how many,
4 maybe six or eight of these. And, really, it's kind of
5 uncanny to me that this one got by, because we don't have
6 this problem with our other safety system -- emergency
7 reports. So, that is just -- who knows? We do very
8 poorly at paper, and we do well, and if there was -- if
9 there was a complaint against our system, I would want to
10 know who did it, so I could go over and break his neck.
11 Because we go over to that system and, when power is out,
12 we supply water with our own generator, and where it's a
13 little bit more of a family system than it is a business.
14 So, if there was a problem, I would be very surprised.

15 If there's a problem with paper, that
16 doesn't particularly surprise me. But this has been taken
17 care of, and you can call Johnna McKenna, who's the gal
18 who takes care of this at DES, and that's all taken care
19 of.

20 As far as the accounting issues, you
21 know, my accountant, and we had discussed this before the
22 meeting, and the whole deal is a piece of paper that's got
23 to be due before Uncle Sam's magical April 15th is a
24 problem for any accountant. And, I'm sure that I'm not

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1 the first guy to say that on any of these things. And
2 that, if we certainly could spread these out, it would be
3 easier for them.

4 And, we have, to get those two reports
5 in, we have -- we just got a new accountant. Our new
6 accountant -- our old accountant, we just ask and ask and
7 ask, and I know Mark Naylor has talked to him, and he has
8 talked to Mark Naylor, and there's promises, promises,
9 promises, and it doesn't get done. So, we have changed
10 accountants. As far as the history, the history goes with
11 the same accountant, probably from the very beginning.
12 And, our personal taxes, our company taxes, our IRS for
13 Bow Lake, all of that stuff is done. I just don't know
14 why he can't do this.

15 CHAIRMAN GETZ: So, are you suggesting
16 that, on an annual basis, rather than having the reports
17 due on March 31st, you would like to see it sometime later
18 in April or May, once taxes are filed? Is that what
19 you're saying?

20 MR. OLIVER: Well, what I'm saying is
21 that any accountant has -- is marginally employed all
22 year, until probably January, when the year closes, and
23 then everybody, you know, we have our magic Tax Day, the
24 world does. And, this comes a month before that, when

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1 they're very business. So, I'm trying to make an excuse
2 for the guy. But, you brought up, it's every year. It's
3 every -- and then why we can't -- I mean, I fax him the
4 letters that you fax -- that you send me, that "there's a
5 hearing, they're talking receivership, can we get this
6 done?" "Oh, yes."

7 And, Mark, haven't you had conversations
8 with Mr. Cato, Ed Cato? Can I ask you that? Can I ask
9 Mark that?

10 CHAIRMAN GETZ: You can respond.

11 MR. NAYLOR: Mr. Cato is your previous
12 accountant?

13 MR. OLIVER: Yes.

14 MR. NAYLOR: Yes, I had talked to him
15 several times over the years about reports. But, I think,
16 if I can --

17 CHAIRMAN GETZ: Please.

18 MR. NAYLOR: -- expand on that a little
19 bit. I have attempted, over many years, to get the
20 Company to file reports on a timely basis. It's not just
21 a problem with the spring. It's a problem in the summer,
22 it's a problem in the fall, it's a problem in the winter.
23 I don't -- I would question whether or not it was the
24 accountant's problem not getting the reports in on time.

1 So --

2 MR. OLIVER: Okay.

3 CHAIRMAN GETZ: You have a new
4 accountant now?

5 MR. OLIVER: Yes.

6 CHAIRMAN GETZ: And, who is that?

7 MR. OLIVER: Gee, that's awful. I'm
8 terrible with names. I don't know.

9 MS. THUNBERG: Is it the person who
10 submitted the 2007 and 2008 Annual Reports?

11 MR. OLIVER: Yes. Yes, it was.

12 MS. THUNBERG: And, then the name will
13 be on the Annual Reports.

14 MR. OLIVER: And, I don't know. I have
15 a brain cramp.

16 CHAIRMAN GETZ: And, how long has he
17 been engaged?

18 MR. OLIVER: Probably three weeks, just
19 enough to get the reports done, so we could get the
20 reports done.

21 CHAIRMAN GETZ: All right. Did you
22 other, anything else that you wanted to say today?

23 MR. OLIVER: No. That's, I mean,
24 there's no -- no excuse. All we can say is that, you

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1 know, our way of fixing it is we've been doing it, and,
2 you know, I mean, we've been -- had many, many calls,
3 patient calls from Mr. Naylor, and I appreciate that, but
4 it doesn't get done. And, so, we're -- all we can do is
5 clean the deck, and we'll just hope for better results
6 with a different accountant. That's all I can say.

7 CHAIRMAN GETZ: But do you have any
8 recommendations on what actions we should or shouldn't
9 take?

10 MR. OLIVER: From me?

11 CHAIRMAN GETZ: Yes.

12 MR. OLIVER: Yes. Oh. No. No.

13 CHAIRMAN GETZ: Anything else from
14 Commissioner Ignatius? Commissioner Below?

15 CMSR. IGNATIUS: Well, Mr. Oliver, I'm a
16 little baffled, because you seem surprised that these
17 things are happened. You described DES, "I don't know how
18 this one slipped through." But the description of the
19 Administrative Order recounts about three or four
20 different notices to you that you signed or someone signed
21 for you. So, it doesn't seem so mysterious. It seems
22 like they kept telling you and telling you and telling
23 you. And, so, I'm a little lost on why it seems "how in
24 the world did that slip through?" I guess that's my

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1 question to you. And, you knew, it was there coming to
2 you in that particular case that there was a deficiency,
3 similar to Mr. Naylor calling and letters from the
4 Commission on reports. So, where is the breakdown in your
5 management of the Company that says "we've got a problem,
6 we've got to take care of a detail here that hasn't been
7 taken care of"?

8 MR. OLIVER: Well, I guess the answer to
9 that is we -- is our management, is me, which is terrible.
10 I mean, I don't -- I read the mail once a week, on a good
11 week, and we do -- we do the best we can for the amount of
12 time we have for every job. And, there's no question that
13 my managerial expertise is -- or acumen is terrible. So,
14 these things get set down until we have time to sit down
15 and do them. I mean, it's -- there are more people at DES
16 requiring more things than there are me to answer them.
17 And, we -- they all get done, but in their time. I mean,
18 it's -- that's the answer.

19 CMSR. IGNATIUS: So, when you say "we
20 sit down", --

21 MR. OLIVER: "We" is me.

22 CMSR. IGNATIUS: -- who's the "we"?

23 It's just --

24 MR. OLIVER: "We" is me, yes, me and the

1 frog in my pocket. But, in defense of that, is that most
2 of this stuff gets done. I mean, this is the only one of
3 the safety reports, emergency reports that we didn't get
4 done. I mean, it's just -- there's some little thing in
5 my head that says, you know, "we've got trouble with these
6 guys, let's add more fuel to the fire." I mean, it's just
7 -- I don't know. And, I've long since -- I didn't get
8 this gray hair by not learning to live with myself and
9 putting up with it.

10 CMSR. IGNATIUS: Well, obviously, there
11 needs to be some way to get you to take as seriously the
12 paperwork issues as you do the service issues.

13 MR. OLIVER: Well, I try. I think my
14 answer to that is I'm almost 61. And, so, in -- when my
15 daughter's out of college, this will be sold. We're
16 selling our other one, our other little water system, and
17 we will get out of the churn.

18 CMSR. IGNATIUS: Is that a New Hampshire
19 water system you're talking about selling or is that
20 somewhere else?

21 MR. OLIVER: Yes.

22 CMSR. IGNATIUS: What's the name of
23 that?

24 MR. OLIVER: That is North Country

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1 Water, up in Freedom.

2 CMSR. IGNATIUS: Thank you.

3 CHAIRMAN GETZ: Okay. Anything else?

4 Ms. Thunberg.

5 MS. THUNBERG: In conclusion, or to
6 conclude, Staff is just very frustrated at hand-holding
7 this company in helping it meet its requirements. Staff
8 is not opposed to continue to work with the Company, but
9 we can't keep expending our hours reminding him of
10 obligations. And, thus, we feel a fine is appropriate
11 with the late annual reports. As Mark Naylor has done in
12 the past, he will be in touch with the accountant, if
13 there are any questions that the accountant has on utility
14 accounting.

15 I'd just like to remind the Commission
16 that Mr. Naylor had been calling at different times of the
17 years throughout the year with respect to the late annual
18 reports, trying to get them out of the Company. And,
19 thus, the argument that "the March and April deadline is
20 somehow a problem" doesn't seem to apply, because then why
21 wouldn't the report appear in the summer or why not in the
22 fall? Why does it keep going?

23 If there is a legitimate issue with the
24 deadline, there are ways of requesting for extensions.

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1 And, companies need to keep the Commission apprized that
2 "the annual report is coming, please give me an
3 extension", etcetera. But that's not what we're getting
4 from Mr. -- from Bow Lake Estates. So, again, Staff
5 requests the Commission impose a fine of not less than
6 \$500 and order the Company to comply with filing timely
7 annual reports in the future. Thank you.

8 CHAIRMAN GETZ: Thank you. All right.
9 Then, we're going to close this hearing and take the
10 matter under advisement.

11 (Whereupon the hearing ended at 10:30
12 a.m.)

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