

DW 01-199

**RIVERSIDE WATER WORKS, INC.
STATE LINE PLAZA WATER COMPANY**

Investigations into Failures to File Annual Reports

Order Following Hearing

O R D E R N O. 23,875

December 21, 2001

APPEARANCES: Downs, Rachlin & Martin PLLC by Suzanne M. Monte, Esq. for Riverside Water Works, Inc. and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

By Order No. 23,800 (October 11, 2001), the New Hampshire Public Utilities Commission (Commission) opened this proceeding to determine what action to take with regard to the failure of two water utilities within the Commission's jurisdiction, Riverside Water Works, Inc. (Riverside) and State Line Plaza Water Company (State Line), to submit annual reports as required by Puc 607.07(b) and Puc 609. RSA 374:17 provides that any public utility that does not file reports required by the Commission at the time specified by the Commission shall forfeit the sum of \$100 per day unless excused or granted an extension of time. Additionally, RSA 375:42 authorizes the Commission to impose sanctions against officers or agents of public utilities in appropriate circumstances.

Order No. 23,800 noted that Riverside and State Line

had failed to file the annual reports for 2000 that were due at the Commission on April 2, 2001. In addition, Order No. 23,800 recited that State Line had failed to submit its 1999 annual report. Accordingly, Order No. 23,800 directed both utilities to appear on October 29, 2001 to show cause why fines should not be imposed against the companies, their officers and/or their agents.

The October 29, 2001 hearing took place as scheduled. State Line did not appear. Riverside appeared through counsel and indicated that it was resolved to submit its 2000 annual report as soon as was possible.

Riverside further noted that it is a small Vermont utility with only a few customers in New Hampshire. See Order No. 23,519 (June 29, 2000) (granting franchise and noting that Riverside has 107 customers, 36 of which are in New Hampshire). The Company pointed out that its fiscal year ends on June 30 and that, pursuant to Puc 605.05, the deadline for submission of Riverside's 2000 annual report was September 30, not April 2 as suggested in Order No. 23,800. Riverside indicated a desire to be in compliance with the Commission's rules and, to that end, requested that the general counsel of its parent company, Ethan Allen Interiors of Danbury, Connecticut, receive copies of any communications sent by the Commission to Riverside.

II. JOINT STAFF AND COMPANY POST-HEARING RECOMMENDATIONS

On December 5, 2001, the Commission Staff submitted a letter reciting an agreement it had reached with Riverside concerning the outcome of this docket. Staff noted that Riverside's failure to submit a timely 2000 annual report was due at least in part to a lack of clarity as to the appropriate deadline. Staff pointed out that, in connection with the franchising of Riverside last year in Order No. 23,519, the Company agreed with Staff that it would "comply with Commission requests for financial data by supplying materials and documents provided to the Vermont [Public Service Board] and otherwise comply with any applicable commission rules and filing requirements." Staff Letter of December 5, 2001, quoting Stipulation and Settlement Agreement in Docket No. DW 00-011 at ¶ 17. According to Staff, the Vermont filing is due on October 15 of each year and it had not been clear, given the agreement, whether Riverside was required to file in New Hampshire on the same date or on September 30 as specified by Puc 509.05(b). Staff further noted that it had reached an understanding with Riverside in Docket No. DW 00-011 that Riverside could comply with its annual report obligation in New Hampshire by submitting a copy of its Vermont report as long as New Hampshire revenues were broken out for assessment purposes.

Accordingly, Staff indicated that it had reached agreement with Riverside to recommend no sanctions against the

Company provided that Riverside (1) submits copies of its 1999-2000 and 2000-2001 annual reports prepared for the Vermont Public Service Board, with New Hampshire revenues broken out, on or before December 31, 2001, and (2) similarly provides future annual reports on October 15 of each year, which is the deadline for their submission in Vermont. Staff noted that, because Riverside is primarily a Vermont utility, it is reasonable to permit the Vermont reporting deadline to govern, particularly given its proximity to the September 30 deadline that would ordinarily prevail here by rule.

On December 11, 2001, Staff submitted a similar letter with regard to State Line. Staff indicated that it contacted State Line after the October 29 hearing and learned that the Order directing State Line to appear on that date had been sent to the wrong address.

Based on its discussions with the Company, Staff recommended the imposition of \$500 fines for each of the two delinquent reports, with such fines to be suspended provided that State Line (1) files its 1999 annual report on or before December 31, 2001, (2) submits its 2000 annual report on or before January 31, 2002, and (3) files its 2001 annual report on or before the due date of March 31, 2001 pursuant to the applicable rule. According to Staff, should the Company fail to make any of these filings on schedule, State Line has agreed to pay a fine of \$500

for each deadline missed.

III. COMMISSION ANALYSIS

"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 577, 578 (1999).

The filing of an annual report each year is not a mere technicality or an arbitrary hoop through which each regulated utility must jump. 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."

Id. (quoting RSA 374:4 and citing RSA 374:15 duty of each utility to "file with the commission reports at such times . . . as may be required by the commission").

a. State Line Plaza Water Company

The imposition of suspended fines, to be levied absent company compliance with an agreed-upon schedule for becoming current on annual report obligations, is consistent with our resolution of the *Central Water* case, which involved similar proceedings as to six delinquent water utilities. *See id.* at 579. Accordingly, we approve Staff's proposed resolution of the case as to State Line, cautioning that the suspended fines of \$500 for each missed deadline will be imposed without further hearing should circumstances warrant.

We further pause to remind State Line of its

obligation, pursuant to Puc 609.06, to provide the Commission with updated information, via Commission Form F-22, whenever, inter alia, the name or address of the person to receive the annual report form from the Commission changes. It appears that State Line's failure to receive the Commission's initial Order in this docket was the result of a failure by the Company to comply with this requirement. Further non-compliance by State Line with this requirement, and other reporting obligations, will have the effect of triggering appropriate sanctions.

b. Riverside Water Works, Inc.

With regard to Riverside, we agree with Staff that confusion as to the appropriate deadlines at the time of the Company's initial franchising in 2000 accounts, in part, for the non-compliance with the annual reporting obligation. We further agree that, in light of this confusion, fines are inappropriate.

However, and although this was not reflected in our initial Order in this docket, there could be no confusion on the part of Riverside that more than a year had elapsed since the Company's initial franchising without any filing of an annual report. In these circumstances, it should have been incumbent on the Company to contact the Commission and inquire as to how it could bring itself into compliance with all applicable reporting requirements. Similar inattention to regulatory requirements in the future by this utility will not be excused.

We will expect Riverside to comply scrupulously to the commitment it has made to become current on its annual reports by the end of the calendar year and to submit subsequent annual reports on October 15 of each year. Since our rules would ordinarily require the filing of Riverside's annual reports on September 30 of each year, a rules waiver is necessary to effectuate the agreement as to deadlines. We may grant such a waiver when it serves the public interest and will not disrupt the orderly proceeding of the Commission. See Puc 201.05. We find that such circumstances exist here.

Two years ago, when we sanctioned six small water companies for failing to comply with the requirement of filing annual reports on a timely basis, we stressed that effective oversight of water utilities becomes a "near impossibility" when utilities ignore this requirement. *Central Water Co.*, 84 NH PUC at 578-79. Accordingly, we stressed that we would no longer sanction such conduct and wished "to put all regulated utilities in this state on notice that we take the requirement of filing an annual report seriously." *Id.* at 579. Our Order today in this docket is intended to further that objective.

Based upon the foregoing, it is hereby

ORDERED, pursuant to RSA 374:17, that State Line Plaza Water Company shall forfeit the sum of \$1,000; and it is

FURTHER ORDERED, that \$500 of this fine is suspended

pending the filing of the Company's 1999 annual report on or before December 31, 2001, failing which this \$500 shall be payable without further hearing; and it is

FURTHER ORDERED, that the remaining \$500 of this fine is suspended pending the filing of the Company's 2000 annual report on or before January 31, 2002, failing which this \$500 shall be payable without further hearing.

By order of the Public Utilities Commission of New
Hampshire this twenty-first day of December, 2001.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary