

DW 04-010

BOW LAKE ESTATES WATER WORKS, INC.

Investigation Into Failure to File Annual Report

Order Following Hearing Imposing Fines

O R D E R N O. 24,303

April 2, 2004

APPEARANCES: Marcia A.B. Thunberg, Esquire for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

By Order No. 24,273 (January 30, 2004), the New Hampshire Public Utilities Commission (Commission) opened this proceeding to determine what action to take with regard to the failure of a utility within the Commission's jurisdiction, Bow Lake Estates Water Works, Inc. (Bow Lake Estates), to submit annual reports as required by N. H. Admin. Rules, 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 365:42 authorizes the Commission to impose sanctions against officers or agents of public utilities in appropriate circumstances.

On January 14, 2004, Commission Staff filed a letter advising the Commission that Bow Lake Estates had yet to file its 2002 Annual Report, which was due March 31, 2003. In its

letter, Staff recounted past compliance efforts regarding Bow Lake Estates. In its January 14, 2004 letter to the Commission, Staff stated that Bow Lake Estates had filed its 2000 and 2001 annual reports late. Further, Bow Lake Estates paid its assessment only after the Commission sent it a letter regarding the deficiency. On October 28, 2003, the Commission instructed the owner of Bow Lake Estates, Mr. Stanley Oliver, that he had not filed his 2002 Annual Report which was due by March 31, 2003. He was instructed to contact the Commission to advise when the report would be forthcoming. Mr. Oliver did not do so. Nor did he respond to a December 5, 2003 letter from the Commission's Executive Director.

On January 30, 2004, the Commission issued Order No. 24,273 directing Bow Lake Estates to file its 2002 Annual Report no later than February 20, 2004. If it failed to do so, Bow Lake Estates was ordered to appear at a hearing on March 23, 2004 to show cause why fines should not be imposed against it, its officers and/or its agents.

The March 23, 2004 hearing took place as scheduled. Bow Lake Estates did not appear. The 2002 Annual Report has yet to be filed. The 2003 Annual Report was due March 31, 2004. It too has not been filed.

II. POSITION OF STAFF

Mark Naylor, Director of the Commission's Gas and Water Division, testified that Bow Lake Estates' failure to file its 2002 Annual Report, and its failure to respond to Commission communications left the Commission no option but to levy a fine. Mr. Naylor stated that the total fine that could be assessed was \$35,800, based on an amount of \$100 per day of violation for failure to file a report, pursuant to RSA 374:17, calculated from the date the report was due until the day of the hearing. Given Bow Lakes Estate's revenue as reported in its 2001 Annual Report of just under \$14,000, Mr. Naylor did not believe the maximum fine was realistic, but urged the Commission to impose a fine of some amount. He testified that, in his view, the Commission's requirements for a small water utility were not onerous, and expressed frustration that Bow Lake Estates refused to comply with the most minimum level of Commission requirements, filing of an Annual Report.

III. COMMISSION ANALYSIS

As noted by the Commission in 1999, "[a]lthough 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). In that Order, the Commission described the filing of an annual report as "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)

Four years ago, when we sanctioned six small water companies for failing to comply with the requirement to file 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. Today's Order reiterates that message. In light of the evidence on the record in this matter, we find that Bow Lake Estate's failure to file its annual reports warrants a forfeiture of the sum of \$500.

Based upon the forgoing, it is hereby

ORDERED, pursuant to RSA 374:17, that Bow Lake Estates shall pay \$500 to the Commission by May 3, 2004; and it is;

FURTHER ORDERED, that Bow Lake Estates contact our Executive Director regarding the filing of its 2002 and 2003 Annual Reports, in order to avoid further sanctions.

By order of the Public Utilities Commission of New
Hampshire this second day of April, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary