

DW 99-133

**CENTRAL WATER COMPANY
CONSOLIDATED WATER COMPANY
INDIAN MOUND WATER CORP.
WILDWOOD WATER COMPANY
GUNSTOCK GLEN WATER COMPANY
DANIELS LAKE WATER WORKS, INC.**

Investigation into Failures to File Annual Reports

Order Imposing Fines for Failure to File Annual Reports

O R D E R N O. 23,334

October 29, 1999

APPEARANCES: Eugene F. Sullivan, III, Esq., and Raymond H. Seeley for Indian Mound Water Corp., Central Water Company and Consolidated Water Company; Stephen P. St. Cyr and Burnham E. Quint, Jr. for Wildwood Water Company; and Donald M. Kreis, Esq. and Henry Bergeron for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

The New Hampshire Public Utilities Commission (Commission) opened this docket on September 21, 1999 to conduct an investigation into the subject companies' failure to comply with the requirement of filing an annual report for calendar year 1998 in a timely manner pursuant to RSA 374:15.

As noted in the Commission's show cause order, No. 23,304 (September 21, 1999), the annual reports in question were originally due at the Commission's offices by March 31, 1999, but Staff had granted Gunstock Glen Water Company extensions to June 15, 1999, Indian Mound Water Company an extension to April 30, 1999, Consolidated Water Company an extension to May 17, 1999 and

Wildwood Water Company an extension to May 30, 1999. As of the date of the show cause order, none of the companies had submitted their annual reports and, as to Daniels Lake Water Company, the 1996 and 1997 annual reports had recently been received and rejected by Staff as facially inadequate. Accordingly, the Commission directed the companies to appear at a hearing on September 21, 1999 to show cause why they should not be fined pursuant to RSA 374:17 (authorizing fines of \$100 for each day report remains unsubmitted).

Just prior to the Commission's hearing on September 21, 1999, Wildwood Water Company and Indian Mound Water Corp. filed their 1998 annual reports with Staff. The Commission conducted its hearing as scheduled; neither Gunstock Glen Water Company nor Daniels Lake Water Works, Inc. appeared as directed.

II. POSITIONS OF THE PARTIES AND STAFF

A. Wildwood Water Company

On behalf of Wildwood Water Company, Mr. St. Cyr noted that his client had filed its annual report just prior to the hearing and took the position that, because the Company lost money in 1998 and expects to lose money in 1999, it is unable to pay any fines.

B. Indian Mound Water Company, Central Water Company and Consolidated Water Company

On behalf of his three clients, Mr. Sullivan expressed regret that the companies have been unable to file their annual reports on a timely basis. According to Mr. Sullivan, each of the companies employs Mr. St. Cyr as the accountant who prepares its annual report and, because Mr. St. Cyr is the only accountant in New Hampshire qualified to perform this kind of work for regulated water utilities, it is difficult for him to complete all of the reports by the appropriate deadline. Mr. Sullivan suggested that the Commission adopt a system of staggered deadlines for submission of annual reports. Mr. Sullivan requested the Commission's indulgence because his clients are small water companies who are seeking to comply with the Commission's rules despite limited resources and accounting rules that require the exercise of judgment. With regard to Central Water Company in particular, Mr. Sullivan noted that the record of the Commission's recent rate hearings demonstrates that the Company is making a good faith effort to put its books in order.

Mr. Seeley indicated that Consolidated Water Company would be in a position to file its annual report by October 30, 1999 and Central Water Company could file by November 15.

C. Staff

Staff asked the Commission to impose fines of \$1,000 against each company - plus, as to each of the subject companies

that had not filed a facially adequate 1998 annual report by the date of the hearing, an additional \$100 per day until such a report is filed. Staff noted that review of a utility's annual report is a key aspect of the Commission's ongoing oversight of the utility as required by statute, and that several recent proceedings before the Commission demonstrate that effective oversight of small water companies remains an ongoing problem as the Commission seeks to discharge its duty of assuring safe, adequate, just and reasonable service to these utilities' ratepayers. Staff further noted that, if the Commission determines that a person practicing before the Commission is unable to comply with the Commission's practices and procedures, the Commission has the authority under N.H. Code Admin. Rules, PUC 201.03(d) to withdraw that person's authority to appear on behalf of clients.

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. 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." RSA 374:4; see also RSA 374:15 ("Every public utility shall file with the commission reports at such times, verified by oath and in such manner, and setting forth such statistics and facts, as may be required by the commission."). As noted by Staff, regulatory vigilance is certainly no less appropriate in the case of small water companies that often do not have the same level of expertise or resources as their larger counterparts. We note that Staff has been liberal and cooperative in granting extensions to those of the subject water companies that have requested them, but it has come to the point where the Commission can no longer ignore or sanction what amounts to serious disregard of an important requirement. When an annual report is not filed until more than six months after the deadline established by rule, effective oversight of the utility in question becomes a near impossibility. We will no longer sanction such conduct and, by this order, intend to put all regulated utilities in this state on notice that we take the requirement of filing an annual report seriously.

Accordingly, pursuant to RSA 374:17, each of the subject companies shall forfeit the sum of \$1,000 in light of their failures prior to the date of the hearing to file a 1998 annual report, subject to suspension as enumerated below.

The fine against Wildwood Water Company is suspended

but will be reinstated without further hearing if the Company fails to file its 1999 annual report on or before March 31, 2000.

The fine against Indian Mound Water Company is suspended but will be reinstated without further hearing if the Company fails to file its 1999 annual report on or before March 31, 2000.

The fine against Consolidated Water Company is suspended but will be reinstated without further hearing if either (1) the Company fails to file its 1998 annual report on or before November 15, 1999, or (2) the Company fails to file its 1999 annual report on or before March 31, 2000. Further, if the Company fails to file its 1998 annual report on or before November 15, 1999, it shall forfeit without further hearing the sum of \$100 per day until the report is filed.

The fine against Central Water Company is suspended but will be reinstated without further hearing if either (1) the Company fails to file its 1998 annual report on or before November 15, 1999, or (2) the Company fails to file its 1999 annual report on or before March 31, 2000. Further, if the Company fails to file its 1998 annual report on or before November 15, 1999, it shall forfeit without further hearing the sum of \$100 per day until the report is filed.

The fine against Gunstock Glen Water Company is suspended but will be reinstated without further hearing if either (1) the Company fails to file its 1998 annual report on or

before November 15, 1999, or (2) the Company fails to file its 1999 annual report on or before March 31, 2000. Further, if the Company fails to file its 1998 annual report on or before November 31, 1999, it shall forfeit without further hearing the sum of \$100 per day until the report is filed.

The fine against Daniels Lake Water Works, Inc. is suspended but will be reinstated without further hearing if either (1) the Company fails to file its 1998 annual report on or before November 15, 1999, or (2) the Company fails to file its 1999 annual report on or before March 31, 2000. Further, if the Company fails to file its 1998 annual report on or before November 15, 1999, it shall forfeit without further hearing the sum of \$100 per day until the report is filed.

In the event that any of the suspended fines become payable, the Commission will in no circumstances permit these sums to be recovered from ratepayers.

Based upon the foregoing, it is hereby

ORDERED, pursuant to RSA 374:17, that Central Water Company, Consolidated Water Company, Indian Mound Water Corp., Wildwood Water Company, Gunstock Glen Water Company and Daniels Lake Water Works, Inc. shall each forfeit the sum of \$1,000; and it is

FURTHER ORDERED, that these fines are suspended pending the timely filing of certain annual reports as enumerated in the

text of this order, failing which the fines shall be payable without further hearing; and it is

FURTHER ORDERED, that Central Water Company, Consolidated Water Company, Gunstock Glen Water Company and Daniels Lake Water Works, Inc. shall, without further hearing, forfeit the sum of \$100 per day in the event they fail to file a 1998 annual report by the deadlines enumerated in the body of this order.

By order of the Public Utilities Commission of New
Hampshire this twenty-ninth day of October, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary