

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 16-257

BOW LAKE ESTATES WATER WORKS, INC.

Investigation re: Failure to File Annual Reports

Order to Show Cause and for Failure to Comply With Commission Orders

ORDER NO. 25,999

March 10, 2017

This order is issued in connection with the Commission's ongoing investigation of Bow Lake Estates Water Works, Inc. (Bow Lake or the Company). We order the Company and its president, Stanley Oliver, to appear before the Commission for failing to comply with our earlier Commission orders: Order No. 25,931 (August 1, 2016), Order No. 25,885 (April 22, 2016), and Order No. 25,871 (March 10, 2016), in this matter, and to show cause why the Company and Mr. Oliver should not be fined further. The Commission will also consider whether the Company should continue to hold its franchise under RSA 374:22, whether the Company should be placed in receivership pursuant to RSA 374:47-a, and whether the matter should be referred to the attorney general for further proceedings pursuant to RSA 374:41.

I. BACKGROUND AND PROCEDURAL HISTORY

Bow Lake is a regulated public utility that provides water service in the Town of Strafford to approximately 40 customers in a development known as Bow Lake Estates on Big Kooauke Island in Strafford. Bow Lake and its president have a well-documented history before this Commission of failing to timely file annual reports on the state of the Company's business operations and failing to remit fees and fines owed the Commission. 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. Rules Puc 609.04, regulated utilities that keep their books on a calendar year basis must file a report with the Commission each year, on or before March 31. Filing these annual reports 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.’” *In Re Riverside Water Works, Inc.*, Order No. 23,875 (December 21, 2001); *see Bow Lakes Estates Water Works, Inc.*, Order No. 25,058 (December 29, 2009) (citations omitted).

Bow Lake’s history is replete with instances of its failure to follow the Commission’s rules and its orders. In Order No. 24,303 (April 2, 2004), the Commission ordered Bow Lakes to pay \$500 pursuant to RSA 374:17 for its failure to file its 2002 and 2003 reports in a timely fashion. RSA 374:17 authorizes the Commission to impose a fine of \$100 per day for failure to file reports within the time specified. In that proceeding, Mr. Oliver had been ordered to appear at a hearing to show cause why fines should not be imposed. He simply failed to appear at the hearing. *Id.* at 2. The Commission then referred its order to the Attorney General of the State of New Hampshire for collection of the fines it was owed. *Bow Lake Estates Water Works, Inc.*, Docket No. DW 04-010 (2004), *Dkt. No.* 9. The Company finally paid the \$500 fine several months after its imposition. *Id. Dkt. No.* 11.

In 2009, the Company was once again ordered to appear before the Commission for failure to file its 2007 and 2008 annual reports. *Bow Lakes Water Works, Inc.*, Order No. 25,058 (December 29, 2009). In that order, the Commission also ordered the Company to appear and show cause why it should not be placed in receivership. *Id.* at 3. The Commission found that Bow Lake’s failure to file its reports warranted a forfeiture of \$1,500. The Commission

suspended \$1,250 of the total fine on the condition that Bow Lakes file its 2009 annual report by June 1, 2010, and its 2010 report by March 31, 2011; and imposed a fine of \$250. *Bow Lake Estates Water Works, Inc.*, Order No. 25,091 (April 13, 2010). The Company ultimately paid the fine but failed to file the 2009 and 2010 annual reports in the time frame ordered, thus revoking the suspension of the \$1,250 fine. The Commission referred the matter to the Attorney General for collection of the fine in addition to the unpaid annual utility assessments of \$100 for 2011 and \$75 for 2012.¹ *Bow Lake Estates Water Works, Inc.*, DW 09-177 (2009), *Dkt. No.* 8. There is no indication in that docket whether the fines and utility assessments were ever paid.

The current docket was opened on February 25, 2016, and Bow Lake was ordered to appear before the Commission for failing to file its 2014 annual report pursuant to RSA 374:15 and N.H. Code Admin. Rules Puc 609.04. The Commission indicated that it would consider whether it should levy a civil penalty on Bow Lake and/or its officers under RSA 365:41 and :42. *Bow Lake Estates Water Works, Inc.*, Order No. 25,871 (March 3, 2016). During the course of the proceeding, the 2015 report also became due. Mr. Oliver requested an extension of time to file both the 2014 and 2015 annual reports until May 31, 2016. *Dkt. No.* 3. Mr. Oliver filed both reports on May 26, 2016, the date of the hearing scheduled in this matter. *Dkt. No.* 9 (Tr. dated May 26, 2016).

Following the hearing, the Commission found that “the Company and Mr. Oliver are failing to provide adequate and reasonable service to Bow Lake’s customers,” and imposed a conditional fine on Mr. Oliver in the amount of \$10,000 for willful failure to obey and comply with orders of the Commission. The fine was to be suspended if Bow Lake presented an executed purchase and sale agreement pursuant to RSA 374:22 and :30 for the sale of the

¹ Under RSA 363-A:2, the Commission assesses all utilities doing business in this state an apportioned share of the Commission expenses incurred in the performance of its duties. See RSA 363-A:1.

Company by October 1, 2016. *Bow Lakes Estates Water Works, Inc.*, Order No. 25,931 (August 1, 2016). The Commission found that “the Company needs sound and prudent management” because “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.” *Id.* at 7. The order further required that Mr. Oliver tender the \$250 fine imposed in our Order No. 25,871 within 15 days of the date of the order. *Id.* at 8. Since the date of the entry of our order, Staff was informed that a letter of intent for a sale of the Company had been executed, but despite the passage of time, neither the payment of the \$250 fine nor the purchase and sale agreement has been presented to the Commission. *Dkt. No.* 11.

On January 13, 2017, Staff recommended that an additional demand be made for the fine and that the Commission take any other action as it deems appropriate. *Id.* Information in this and prior dockets involving Bow Lakes may be found by accessing the “Virtual File Room” on the Commission’s website at <http://www.puc.nh.gov/>

II. COMMISSION ANALYSIS

As we have recounted previously, the Commission has the 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)), with respect to their compliance with all provisions of law, orders of the commission, and charter requirements. This Commission is the final arbiter between the interests of the customer and the interests of the regulated utility. RSA 363:17-a. It may make independent inquiry into any act or thing done or having been omitted under RSA 365:5, make investigation and disclosure under RSA 365:19, and “ultimately within constitutional constraints

[] reach whatever result the record of such proceedings discloses and supports.” *Appeal of Public Serv. Co.*, 122 N.H. 1062, 1077 (1982).

Under RSA 365:12, we have the authority to initiate proceedings in the Superior Court against both Mr. Oliver and the Company for their failure to produce the contract called for by our August 1, 2016, order. *See* RSA 491:19 & 20. We also have the authority to levy a civil penalty against the utility of an amount not to exceed \$250,000 or 2.5 percent of the annual gross revenue of the utility pursuant to RSA 365:41, as well as the authority to levy a civil penalty against every officer or agent (in this case Mr. Oliver) who willfully fails to obey, or who violates, any order of the Commission pursuant to RSA 365:42. Furthermore, we may ask the attorney general to take action to recover the forfeiture of the unpaid fines levied by the Commission in our earlier order in this matter. RSA 365:43 and RSA 365:44; *see also Concord Natural Gas Corp.*, 67 NH PUC 572, 572 (1982) (if utility fails to pay the forfeiture, then action for recovery follows as provided by statute). Finally, having previously found that the Company and Mr. Oliver are failing to provide adequate service, we may revoke the Company’s franchise and place it in receivership. RSA 374:41 and RSA 374:47-a.

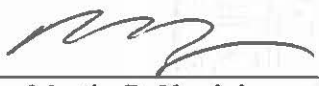
Prior to taking the remedial actions described above, we are going to require that the Company and Mr. Oliver appear before the Commission to explain their continued defiance of Commission orders and update us on the status of the utility so that we can determine which course of action to undertake at this time. We are of the opinion, based on our previous findings, that the Company’s franchise must be revoked and that it be placed in receivership so that a suitable buyer can be found. In addition, we are inclined to further fine Mr. Oliver personally and to refer this action to the attorney general for proceedings not inconsistent with our findings.

Based upon the foregoing, it is hereby

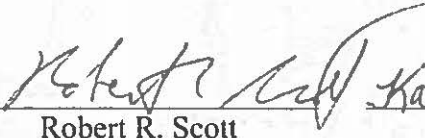
ORDERED, that Bow Lake and Stanley Oliver shall appear before the Commission on April 11, 2017 at 1:30 p.m., to show cause why they have failed to pay the \$250 fine outlined in our prior order dated August 10, 2016, and failed to deliver the purchase and sale contract by October 1, 2016, or alternatively to pay the \$10,000 fine; and it is

FURTHER ORDERED, that Bow Lake and Stanley Oliver show cause why further fines should not be levied against Mr. Oliver and Bow Lake and why Bow Lake's franchise should not be revoked and the Company placed in receivership pursuant to RSA 374:41 and 374:47-a.

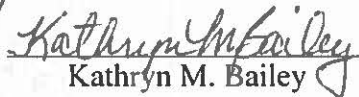
By order of the Public Utilities Commission of New Hampshire this tenth day of March, 2017.



Martin P. Honigberg
Chairman

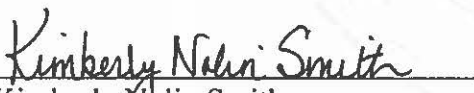


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary