

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING ) Order No.: S-11-0785-12-SC01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) STATEMENT OF CHARGES AND NOTICE OF INTENT  
 ) TO ENTER ORDER TO CEASE AND DESIST, TO  
Hydro Alternative Energy, Inc.; Scott Ovian; ) IMPOSE FINES AND TO CHARGE COSTS  
Jonathan Burke; Mark Vincent Antonucci, )  
 )  
Respondents. )

**THE STATE OF WASHINGTON TO:** Hydro Alternative Energy, Inc.;  
Scott Ovian;  
Jonathan Burke;  
Mark Vincent Antonucci.

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents, Hydro Alternative Energy, Inc.; Scott Ovian; Jonathan Burke; and Mark Vincent Antonucci, have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 against each to cease and desist from such violations and to charge costs, and under RCW 21.20.395 to impose a fine. The Securities Administrator finds as follow:

TENTATIVE FINDINGS OF FACT

Respondents

1. Hydro Alternative Energy, Inc. (“HAE”) is a Florida corporation that purports to be a “developing renewable energy company focused on utilizing hydrokinetic power.” HAE purportedly “seeks to generate mechanical and electrical power” with water turbines that the company will produce and deploy on the ocean floor. HAE has announced its intent to work with energy companies and other organizations to develop hydrokinetic water power projects worldwide, including entities in Nigeria, Panama, Cameroon, and Puerto Rico.
2. Scott Ovian (“Ovian”) is the director of sales and marketing of HAE.
3. Jonathan Burke (“Burke”) is the vice president of sales and marketing of HAE.
4. Mark Vincent Antonucci (“Antonucci”) is a co-chief executive officer of HAE. Antonucci is responsible for all of HAE’s financial activities. Antonucci filed a Chapter 7 bankruptcy petition on two separate occasions, June 17,

1996 and August 3, 2005. The 1996 petition resulted in a discharge of Antonucci's debts on October 2, 1996. The 2005 petition resulted in a discharge of Antonucci's debts on November 10, 2005.

Related Party

5. Jon Stuart Landau ("Landau") is the founder and former president of HAE. Landau resigned as HAE president on April 21, 2010. Landau filed a Chapter 7 bankruptcy petition on July 1, 2003, which was subsequently dismissed.

Nature of the Offering

6. Between March 2009 and February 2012, HAE and its agents made unsolicited telephone calls to offer investments in HAE stock to residents of multiple states. HAE and its agents sold investments in HAE stock to at least eighty-one investors who collectively invested over \$8,500,000. HAE and its agents solicited at least nine Washington residents to invest in HAE stock, three of whom invested a combined total of over \$111,000.

7. Between March 2009 and October 2011, Ovian and Burke offered investments in HAE stock to at least nine Washington residents. Ovian made unsolicited telephone calls to at least one Washington resident to offer an investment in HAE stock. Burke made unsolicited telephone calls to at least three Washington residents to offer an investment in HAE stock, at least two of whom were not accredited investors. Burke told at least two Washington residents that they would make approximately an 18 or 20 percent return on their investment in HAE stock. HAE offered three different kinds of stock: series A convertible preferred shares ("Series A"), series B convertible preferred shares ("Series B"), and common stock. HAE offered and sold Series A shares to at least one Washington resident. HAE offered and sold Series B shares to at least two Washington residents. HAE offered common stock to at least nine Washington residents, at least three of whom obtained common stock either by exchanging their Series A or Series B shares for common stock or by purchasing the common stock, or both.

8. Respondents delivered or caused to be delivered a private placement memorandum ("PPM") or a summary of an HAE common stock offering to each of the Washington residents. HAE provided a Series A PPM to at least one Washington investor, a Series B PPM to at least two Washington investors, and a common stock PPM to at least four Washington residents, three of whom subsequently acquired HAE common stock. HAE offered common stock to at least five Washington residents with a common stock offering summary instead of a PPM. HAE also provided at least three Washington investors who invested in Series A or B shares with a subscription document offering the

1 opportunity to exchange Series A or B shares for shares of common stock.

2 Registration Status

3 9. HAE is not currently registered to sell securities in Washington and has not previously been so registered.

4 10. Oviaan and Burke are not currently registered as a securities salespersons or broker-dealers in Washington and  
5 have not previously been so registered.

6 Failure to Comply With Regulation D Rule 506

7 11. HAE claimed an exemption from registration of the HAE offerings under Regulation D Rule 506 with notice  
8 filings submitted by Antonucci to the Securities Administrator in October 2009, April 2010, and December 2010.

9 12. Regulation D Rule 506 prohibits the issuer or any person acting on behalf of the issuer to offer or sell  
10 securities by any form of general solicitation. HAE and its agents offered securities during unsolicited telephone calls  
11 to Washington residents, several of whom were not accredited investors.

12 Other Actions

13 13. On April 4, 1995, the West Virginia Securities Division issued a final order, which alleged that Antonucci  
14 violated West Virginia law for offering and selling securities, failing to supervise, and transacting business as a broker-  
15 dealer without being registered. The West Virginia Securities Division ordered Antonucci to cease and desist from  
16 violating West Virginia's securities laws.

17 14. On November 5, 1995, the Florida Department of Banking and Finance, Division of Securities and Investor  
18 Protection ("Florida Securities Division") alleged that Antonucci violated the anti-fraud provisions of Florida's  
19 securities transactions laws and the Florida Securities Division's rules for failing to supervise, to implement  
20 supervisory procedures, and to maintain books and records. On April 2, 1997, the Florida Securities Division issued a  
21 Final Order pursuant to which Antonucci agreed not to work within the securities industry unless subject to a  
22 restrictive registration agreement.

23 15. On December 22, 1998, the Pennsylvania Securities Commission issued a Summary Order to Cease and Desist  
24 against Landau and others alleging that Landau caused an unregistered broker-dealer to engage in acts that violated the  
25 Pennsylvania Securities Act. The Pennsylvania Securities Commission ordered Landau to cease and desist from

1 offering and selling a company's limited partnership interests in Pennsylvania and from otherwise violating the  
2 Pennsylvania Securities Act.

3 16. On December 10, 2004, the Maryland Securities Division entered into a Consent Order with Landau which  
4 contained findings that Landau was an unregistered broker-dealer agent, made an unsolicited phone call to a Maryland  
5 resident who was not an accredited investor, and sought the Maryland resident's business using high pressure sales  
6 tactics. The Consent Order also stated that Landau offered and sold unregistered and non-exempt securities and made  
7 material misrepresentations or omissions of material fact. The Maryland Securities Division ordered Landau to cease  
8 and desist from violating the Maryland Securities Act and revoked Landau's broker-dealer agent registration.

9 17. On July 12, 2006, the Florida Office of Financial Regulation issued a Final Order, which stated that Landau  
10 admits he was not registered to sell securities and sold an unregistered security in violation of Florida law. Landau  
11 agreed not to be associated with the securities industry in any manner for five years, after which time Landau would be  
12 subject to a restrictive registration agreement as a condition to future registration in the securities industry.

13 18. On September 20, 2011, the Pennsylvania Securities Commission issued a Summary Order to Cease and  
14 Desist against Hydro Alternative Energy, Inc., Luis Eduardo Bernal Jaller ("Jaller"), and Mark Antonucci for offering  
15 and selling unregistered securities after contacting a Pennsylvania resident by unsolicited telephone calls. On October  
16 19, 2011, Pennsylvania Securities Commission issued Findings of Fact and Conclusions of Law which described  
17 conduct substantially similar to that described in the Summary Order to Cease and Desist. The Pennsylvania Securities  
18 Commission also entered an Order that prospectively rescinded the Summary Order to Cease and Desist, ordered  
19 compliance with Pennsylvania law, and imposed costs of investigations of \$1000 on HAE, Jaller, and Antonucci.

20 Misrepresentations and Omissions

21 19. Respondents failed to provide to prospective investors material information regarding investing in HAE,  
22 including but not limited to HAE's financial statements, financial condition, significant net losses, significant working  
23 capital deficiency, and history of defaulting on loans.

24 20. Respondents failed to disclose to prospective investors material information regarding the regulatory actions  
25 discussed in paragraphs 13-18 above, as well as the bankruptcy actions discussed in paragraphs 4-5 above.

1 21. Respondents failed to disclose to prospective investors the impact on HAE of Landau's resignation due to  
2 Landau's prior status as a member of HAE's key personnel, upon whom HAE was "highly dependent" for "the  
3 continuing development of its business operations."

4 22. HAE and Ovian failed to provide to at least one prospective investor who received the Series A PPM material  
5 information regarding risks of investing in HAE that were disclosed in Series B and common stock PPMs, including  
6 but not limited to risks associated with: (1) HAE's lack of independent directors; (2) HAE's need for quality technical  
7 personnel; (3) managing and expanding into developing markets; (4) political and economic issues of a multinational  
8 company; (5) the effects of foreign currency exchange rate fluctuations on HAE's business operations; (6) HAE's  
9 inability to reliably estimate production costs; (7) HAE's limited number of third-party suppliers; (8) HAE's limited  
10 customer base; (9) intellectual property rights and exposure to infringement or misappropriation claims; (10)  
11 regulatory and economic barriers, including environmental regulations, which could lead to damages, fines, and  
12 unforeseen expenditures; and (11) HAE's lack of product liability insurance.

13 23. HAE and Burke failed to provide to prospective investors a reasonable basis for projecting an 18 or 20 return  
14 on investment. Further, HAE and Burke failed to provide information regarding the risks of investing in HAE to  
15 prospective investors who received the common stock offering summaries discussed in paragraph 8 above.

16 24. HAE claimed that it was "a debt free company," which was false at the time HAE provided a PPM containing  
17 the statement to at least one investor.

18 25. HAE's Series B and common stock PPMs contained a table labeled "COMPETITIVE / COMPARATIVE  
19 ANALYSIS," which compared undefined characteristics of water turbines to those characteristics of other power  
20 sources such as solar, nuclear, and wind turbines, among others. The table identified water turbines as having  
21 excellent "green factor," "market potential," "cost effectiveness," "base load capability," "reliability," "environmental  
22 impact," "public acceptance," "manufacturing" (including "both difficulty and number of potential suppliers"),  
23 "manufacturing costs" (including "tooling costs including plant and machinery"), and "sustainability." The table  
24 identified water turbines as having average "maintenance" and "installation" (including "both difficulty and number of  
25 potential suppliers"). The table also identified water turbines as having good "accident effect." HAE does not provide

1 a reasonable basis for the statements contained in this table.

2 Based upon the above Findings of Fact, the following Conclusions of Law are made:

3 **CONCLUSIONS OF LAW**

4 1. The offer or sale of securities as described above constitute the offer and/or sale of a security as defined in  
5 RCW 21.20.005(14) and (17).

6 2. The offer and/or sale of said securities is in violation of RCW 21.20.140 because no registration for such an  
7 offer and/or sale is on file with the Securities Administrator, state of Washington.

8 3. Scott Oviaan violated RCW 21.20.040 by offering and/or selling said securities while not registered as a  
9 securities salesperson or broker-dealer in the state of Washington.

10 4. Jonathan Burke violated RCW 21.20.040 by offering and/or selling said securities while not registered as a  
11 securities salesperson or broker-dealer in the state of Washington.

12 5. The offer and/or sale of said securities were in violation of RCW 21.20.010 because Respondents made  
13 misstatements of material fact or omitted to state material facts necessary in order to make the statements made, in  
14 light of the circumstances under which they were made, not misleading.

15 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

16 Pursuant to RCW 21.20.390(1) and based upon the above Tentative Findings of Fact and Conclusions of Law,  
17 the Securities Administrator intends to order that Respondents, Hydro Alternative Energy, Inc.; Scott Oviaan; Jonathan  
18 Burke; and Mark Vincent Antonucci, each shall cease and desist from violations of RCW 21.20.010, RCW 21.20.040,  
19 and RCW 21.20.140.

20 **NOTICE OF INTENT TO IMPOSE A FINE**

21 Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions of Law,  
22 the Securities Administrator intends to order that Respondents, Hydro Alternative Energy, Inc.; Scott Oviaan; Jonathan  
23 Burke; and Mark Vincent Antonucci, shall be jointly and severally liable for and shall pay a fine of \$5,000.

24 **NOTICE OF INTENT TO CHARGE COSTS**

25 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law, the

1 Securities Administrator intends to order that Respondents, Hydro Alternative Energy, Inc.; Scott Ovia; Jonathan  
2 Burke; and Mark Vincent Antonucci, shall be jointly and severally liable for and shall pay investigative costs of  
3 \$2,500.

4 **AUTHORITY AND PROCEDURE**

5 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the  
6 provisions of Chapter 34.05 RCW. The Respondents, Hydro Alternative Energy, Inc.; Scott Ovia; Jonathan Burke;  
7 and Mark Vincent Antonucci, may each make a written request for a hearing as set forth in the NOTICE OF  
8 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If a respondent  
9 does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative  
10 Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that  
11 respondent, to impose any fines sought against that respondent, and to charge any costs sought against that respondent.

12  
13 Signed and Entered this 29th day of June 2012.

14 

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16  
17 William M. Beatty  
18 Securities Administrator

19 Approved by:

20 

21 Suzanne Sarason  
22 Chief of Enforcement

Presented by:

23 

24 Drew Stillman  
25 Enforcement Attorney

Reviewed by:



Jack McClellan  
Financial Legal Examiner Supervisor