

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-036

Pennichuck East Utility, Inc.

**Petition for License to Cross Merrimack River in the
Towns of Litchfield and Merrimack**

Order *Nisi* Granting License

O R D E R N O. 26,026

June 16, 2017

In this order *nisi*, we grant the request of Pennichuck East Utility, Inc. (PEU), for a license to construct and maintain a water main under the Merrimack River in the Towns of Litchfield, and Merrimack, New Hampshire. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission's order and have the opportunity to comment or request a hearing prior to the order taking effect.

I. INTRODUCTION

On March 2, 2017, PEU filed a petition pursuant to RSA 371:17 and :20 to construct and maintain a water main under the Merrimack River between the towns of Litchfield and Merrimack. The construction plan includes the installation of approximately 5,600 linear feet of water main and three or more pumps. PEU submitted the pre-filed direct testimony of John J. Boisvert, PEU's chief engineer, along with engineering maps and plans depicting the proposed crossing.

On May 24, 2017, Commission Staff recommended that the license be granted. The petition, its attachments, Staff's recommendation and subsequent docket filings, other than any

information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at

<http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-036.html>

II. SUMMARY OF PETITION

A. Crossing Location and Construction

The proposed crossing is in Litchfield and Merrimack, at Pennichuck Water Works, Inc.'s¹ (PWW), existing Merrimack River intake, north of the Town of Merrimack Wastewater Treatment Facility, south of the Anheuser Busch Brewery on the west side of the river, and almost directly west of the intersection of Talent Road and New Hampshire Route 3A on the east side of the river. The project will include nearly 5,600 linear feet of water main. From west to east, the project will include 3,900 linear feet of 12-inch diameter ductile iron main to be constructed in the Town of Merrimack leading up to the crossing. A 30-inch pipe sleeve will be installed under a nearby railroad to bring the water main from the west side to the east side of the railroad.

The river crossing will include an 18-inch diameter high density polyethylene water main and 16-inch ductile iron water main totaling approximately 700 feet. PEU will use horizontal directional drilling (HDD) to make a borehole to accommodate the 16-inch diameter ductile iron water main. There will be approximately 1,400 feet of 12-inch diameter ductile iron water main from the end of the crossing to the interconnection point on the NH Route 3A side of the river in Litchfield. This connection will allow for up to 1.5 million gallons per day to be delivered to the east side of the Merrimack River into the PEU distribution system. Initially, PEU sought to install the entire crossing using HDD technology, but geologic conditions and technical considerations resulted in the Company taking a hybrid approach, whereby the main on the east

¹ PEU and PWW are wholly owned subsidiaries of the Pennichuck Corporation.

side of the river will be installed using traditional open cut methods and within the confines of a coffer dam. The main within the central third of the river will be placed on the river bottom and protected by woven concrete mats to protect the pipeline. The other one third portion of the crossing will utilize the HDD drilling method. PEU anticipates that this crossing will be in service by the end of 2017.

B. Regulatory Requirements & Property Rights

Both PWW and PEU continue to work on obtaining the necessary permits. They anticipate filing a Wetlands and Shoreland Protection permit with the NH Department of Environmental Services (DES) soon. The Company has confirmed that it will not need a DES alteration of terrain permit for the project. The NH Department of Transportation will require a trench permit for work within the shoulder of Route 3 in Merrimack to Route 3A in Litchfield and the Town of Merrimack will require a street opening permit to perform work on Mast Road.

PEU has already applied for and received approval from DES for a loan from the Drinking Water State Revolving Loan Fund in the amount of \$2.4 million to complete this project. The financing was approved in Order No. 26,006 (April 19, 2017). PEU is also seeking Commission approval to enter into a special contract with PWW to purchase water that will be delivered through this crossing. *See* Docket No. DW 17-071. PEU indicates that it has been in contact with the owners of land over which PWW has existing easements to inform them of the proposed project. No new easements or land acquisitions are required on the West side of the Merrimack River. PEU is in active negotiations with the remaining property owner, between properties owned by the U.S. Fish and Wildlife Service, and the remaining private landowner, between the U.S. Fish and Wildlife Service property and NH Route 3A. PEU will not begin construction until all easements are in place.

C. Necessary for Service to the Public

PEU asserts that the crossing “is necessary, in order to meet the reasonable requirements of service to the public” pursuant to RSA 371:17. The new main will serve as a primary source of supply for PEU’s Litchfield system as well as portions of its Pelham, Windham, and Londonderry systems. It will also serve as a secondary source of supply for the Town of Hudson’s water system. Currently, three wells in the Town of Litchfield provide primary sources of supply for the PEU and Hudson systems. Those three wells have come under increasing scrutiny by DES in recent years as increasing water withdrawals are exceeding recharge to the aquifer. According to the Company, a reduction of withdrawal from the wells is expected to be declared by DES to prevent further degradation of the aquifer. The crossing is also expected to alleviate drought concerns and provide service for normal or expected customer growth in the five town area east of the Merrimack River. PEU asserts that the crossing and resulting interconnection with PWW offers “the most reliable, technically feasible and cost effective solution to the current and long term supply needs” to the Company.

D. Summary of Staff Review

According to Staff, the proposed specifications related to the design and construction of this crossing conform to applicable construction standards and PEU may exercise the requested license without substantially affecting the rights of the public in the Merrimack River. Staff recommended approval of PEU’s petition. *See* Staff Memorandum dated May 24, 2017.

III. COMMISSION ANALYSIS

Under RSA 371:17, anyone wishing to “construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state,” when such facilities

are necessary to meet the reasonable requirements of service to the public, must obtain a license from the Commission. Under RSA 371:20, the Commission shall grant a license if it finds that the license “may be exercised without substantially affecting the public rights in said waters or lands.” RSA 374:17 defines “public waters” to include all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe. DES is assigned responsibility under RSA 271:20 for preparing, maintaining and publishing an official list of all public waters in the state, which can be found at <https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/olpw.pdf> The Merrimack River is included in the official list.

Based on the information presented in PEU’s petition and Staff’s recommendation, we find that the proposed crossing is necessary for PEU to meet the reasonable requirements of service to the public, as required by RSA 371:17. We find that the requested license may be exercised without substantially affecting the public rights in the affected public waters, as required for approval under RSA 371:20. We therefore approve the petition, subject to the conditions contained in the ordering clauses set out below related to ensuring the safe construction, operation, and maintenance of the proposed crossing. We issue our decision on a *nisi* basis to provide any interested person the opportunity to submit comments on PEU’s petition or to request a hearing.

PEU is responsible for obtaining any and all other permits for the construction and installation of the proposed crossing from any federal, state, and local authorities having jurisdiction. PEU is responsible for securing the necessary easements. Our approval is only for the pipeline proposed by PEU in this docket. In addition, because DES is responsible by statute for maintaining the official list of public waters, we require that notice of the proposed crossing

be sent to DES. We also require that notice of the crossing be sent to the Towns of Litchfield and Merrimack, the New Hampshire Attorney General and affected abutting landowners.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Pennichuck East Utility, Inc., is authorized pursuant to RSA 371:17 to construct, install, operate, and maintain a water main beneath and across the public waters as described in its petition and depicted in its filings; and it is

FURTHER ORDERED, that the construction of the crossing including the pipelines shall be implemented as depicted in the petition documents; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc., apply for and obtain all necessary state and local permits or approvals and secure all necessary easements prior to the commencement of work on this project; and it is

FURTHER ORDERED, that all future alterations that impact the crossing shall be submitted to the Commission at least 60 days prior to the alteration being made; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc., shall provide a copy of this Order *Nisi* to (i) the Town Clerk of Litchfield and Merrimack, New Hampshire; (ii) the New Hampshire Attorney General, (iii) the owners of the land bordering on said public waters at the location of the crossing pursuant to RSA 371:19; and (iv) the New Hampshire Department of Environmental Services, by first class mail, no later than June 26, 2017, to be documented by affidavit filed with this office on or before July 14, 2017; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc., shall cause the summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be


no later than June 26, 2017, and to be documented by affidavit filed with this office on or before July 14, 2017; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than July 3, 2017, for the Commission's consideration; and it is


FURTHER ORDERED, that any person interested in responding to such comments or request for a hearing shall do so no later than July 10, 2017; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 17, 2017, unless Pennichuck East Utility fails to satisfy the publication obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the Order *Nisi's* effective date.


By order of the Public Utilities Commission of New Hampshire this sixteenth day of June, 2017.



Martin P. Honigberg
Chairman

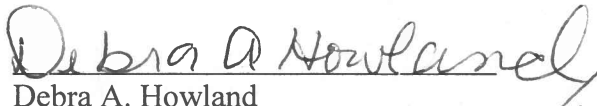


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director