

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**Docket No. DW 19-\_\_\_\_\_**

**Pennichuck East Utility, Inc.**

**Petition for a License to Construct and Maintain a  
Water Main under Locke Lake**

Pennichuck East Utility, Inc. (“PEU”) is a regulated public utility pursuant to RSA 362:4 and provides retail water service to approximately 7,000 customers in the towns of Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare, and Windham. PEU respectfully petitions the Commission, pursuant to RSA 371:17, for a license to construct, via horizontal directional drilling (“HDD”), and maintain a 3-inch high-density polyethylene (“HDPE”) water main in an 8-inch HDPE sleeve under the bed of Locke Lake in the Town of Barnstead, New Hampshire. PEU is undertaking the project in order to provide reliable service to the customers in the Locke Lake Colony. In support of this request, PEU states as follows:

**History and Overview of Locke Lake HDD Project**

1. PEU’s Locke Lake Colony water system is a stand-alone water system with approximately 755 residential customers. The Locke Lake Colony development surrounds Locke Lake as seen on Attachment JJB-2 attached to the accompanying testimony of John J. Boisvert, chief engineer of PEU. PEU acquired the water system assets and franchise territory in Docket No. DW 09-051 by Commission Order No. 25,051, dated December 11, 2009. Since 2009, PEU has made and continues to make significant capital improvements to the Locke Lake water system.

2. The instant capital improvement project involves installation, by HDD, of

approximately 850 linear feet of 3-inch water main inside an 8-inch sleeve under the bed of Locke Lake to connect two portions of the Locke Lake water system. The project is within PEU's franchise. The project is best illustrated in Attachment JJB-4, PEU-Locke Lake Easement Deed Plan which is attached to the pre-filed testimony of John J. Boisvert. Attachment JJB-3, engineering plans, contains additional construction specifics. The course of the project runs from the beach on Georgetown Road on the northeast side of Locke Lake to the beach on Varney Road on the southwest side of the lake. See Attachment JJB-4. Because PEU is hoping to complete this project this winter during frozen lake conditions, PEU anticipates in-service date for the pipeline of June 1, 2020. This main will be dedicated. No customer service connections will be tapped into this pipeline. PEU has submitted a Shoreland Permit by Notification to the State. Aside from RSA Chapter 371, no other local, State, or Federal permits are necessary.

#### **Legal Authority for Commission Review**

3. Pursuant to RSA 371:17, “[w]henver it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit...under or across any of the public waters of this state... it shall petition the commission for a license to construct and maintain the same.” “For the purposes of this section, ‘public waters’ are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe.”

4. Pursuant to RSA 371:20, the standard for issuing a license is whether the license may be exercised “without substantially affecting the public rights in said waters or lands”. “[L]icenses may be granted without hearing when all interested parties are in agreement...”.

5. There appears to be sufficient reason to conclude that the State may have an interest in the waters of Locke Lake, thereby making it a public water body for purposes of RSA

371:17. Although Locke Lake is an artificially created pond where the bed of the lake is privately owned<sup>1</sup>, it is in excess of 10 acres. The lake was created from a naturally occurring stream, Webster Stream. Locke Lake is listed on the N.H. Department of Environmental Services' ("NHDES") list of public water bodies for the limited purposes of: RSA 483-B:4 (Shoreland Protection Act), and RSA 233-A:1 (which defines a Public Boat Access Area as being "an area adjacent to a public body of water which is owned or controlled by the state.")

<https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/olpw.pdf>

Locke Lake is hydrologically connected by way of a low-head spillway and culvert to Half Moon lake which is a natural, public water body containing a boat launch. Because the public and State may have had an interest in the natural waters of Webster Stream prior to damming, in regulation under RSA 483-B, and because of the hydrologic connection to Half Moon lake and the definition of Public Boat Access Area, the original stream may be deemed a public water body thereby triggering review under RSA 371:17. It is unclear whether the public has acquired an interest in the artificial waters per dedication or otherwise. Nonetheless, PEU seeks a license and approval from the Commission for its HDD project to ensure that it has satisfied all permitting and licensing requirements prior to commencing construction.

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<sup>1</sup>The submerged land under Locke Lake is owned by the Locke Lake Colony Association ("Association"). It is well-settled law "that ownership of the riparian uplands carries with it ownership to the thread of the adjoining river". *N.H. Water Resources Board v. Lebanon Sand & Gravel, Inc.* 108 N.H. 254, 258 (1967) citing *State v. Canterbury*, 28 N.H. 195, 216 (1854); *Norway Plains Co. v. Bradley*, 52 N.H. 86 (1872) *Sleeper v. Laconia*, 60 N.H. 201 (1880); and *Kent v. Taylor*, 64 N.H. 489 (1888). The river, or in this case, Webster Stream, is now Locke Lake, but the Association retained ownership of the submerged lands by virtue of its ownership of the land prior to damming of the stream. See, Town of Barnstead Tax Map 41, Lot 2 and Map 44, Lot 3, attached as Attachment A, Barnstead Tax Maps and Cards. PEU offers the attached tax maps to illustrate land ownership. Although the Association's submerged lands are not specifically shown on the tax maps, the tax maps do depict the beach lots owned by the Association. The project will involve these beach lots.

### **Prior Commission Review of Project**

6. PEU wishes to note that the Commission has previously reviewed this project in the context of Docket No. DW 18-132. In that docket, the Commission approved financing from the N.H. Drinking Water State Revolving Loan Fund (“SRF”) for three Locke Lake projects that included diversion to alternative arsenic treatment for PEU’s Airstrip Well. Order No. 26,189 at 1. The Commission found the financing to be “consistent with the public good” and reviewed the use of the financing proceeds under its public good standard. This standard is not the same as RSA 371:17 and whether the project is “necessary...to meet the reasonable requirements of service to the public”, however, the evidence already before the Commission in Docket No. DW 18-132 supports that this project is necessary for service to PEU’s Locke Lake customers. Indeed, the project is part of PEU’s Comprehensive (Corrective) Action Plan required by the NHDES in response to the Significant Deficiency found in the 2017 Locke Lake Sanitary Survey. See, Docket No. DW 18-132, updated Comprehensive (Corrective) Action Plan attached to Staff’s Recommendation at Commission Docket Book Tab 5, electronic page 15. See also the 2017 Locke Lake Sanitary Survey, Attachment JJB-1 to Mr. Boisvert’s testimony. In its recommendation letter in Docket No. DW 18-132, Staff opined that PEU had “demonstrated that the proposed use of the funds is appropriate and consistent with the Company’s duty to provide “reasonably safe and adequate and in all other respects just and reasonable” service to its customers” as required by RSA 374:1. Staff Recommendation, Tab 5, electronic page 3. The NHDES support for the project is evidenced by the fact that the NHDES awarded SRF funds to PEU for the project and that the project qualifies for 15% principle forgiveness. As the Commission is aware, the NHDES SRF program is a competitive process under RSA Chapter 486 whereby SRF funds are awarded based on need. For these reasons, PEU believes it has

established RSA 371:17's necessity requirement.

**Necessary to Meet Reasonable Requirements of Service to the Public**

7. The HDD project is necessary to address several problems and concerns in the Locke Lake water system. First and foremost, the NHDES has lowered the arsenic standard from 10 parts per billion (ppb) to 5 ppb. The Airstrip Well has arsenic concerns which PEU treats with disposable adsorptive media. This new, lower standard will increase the cost to treat Airstrip Well water. PEU has a different, cheaper arsenic treatment system at its Peacham Road treatment plant which uses a co-precipitation and filtration system. This system is more reliable and, importantly, more predictably compliant with the new standard. The HDD project will allow PEU to divert raw water from the Airstrip Well to Peacham Road and take advantage of the cheaper and more reliable treatment. As noted in Mr. Boisvert's testimony at page 3, this change will save approximately \$61,000 in annual treatment expense. Second, PEU is under mandate from NHDES to develop additional sources of supply for the Locke Lake community water system (See Attachment JJB – 1 for the NHDES Sanitary Survey). The volume of water delivered from the Airstrip Well is necessary. Abandonment of the well would further reduce the supply of water to Locke Lake and, therefore, is not an option. PEU has evaluated additional groundwater sources in the Locke Lake region and, to date, has not found any feasible alternatives that would enable compliance with the capacity requirements of the NHDES.

8. There are also general benefits of the project. The HDD project will result in cost savings. By diverting the Airstrip Well water to Peacham Road, PEU will no longer need to maintain a separate treatment/storage and pumping station for the Airstrip Well. Eliminating this station will reduce operations and maintenance costs over the long term.

9. There are also construction savings that result from winter construction. If PEU

can conduct this project this winter in ice-covered lake conditions, the tracking and locating (alignment and depth) of the pipeline by positioning contractor personnel and tracking equipment on the ice will provide a more precise “fixed” position than if the tracking were done from a boat when the water is thawed. Tracking from a boat would require specially trained personnel and more sophisticated equipment thereby making the project more costly. PEU’s contractors estimated non-winter construction would add approximately \$30,000 to \$40,000 in additional costs as opposed to tracking from the ice surface. Therefore, there is a benefit to doing the project this winter.

#### **Alternatives Considered**

10. As noted on page 3 of Mr. Boisvert’s testimony, the proposed project is the most economical solution to PEU’s water quality and water supply needs. The project will involve approximately 850 feet of pipe. In comparison, if PEU were to run pipe around the lake to interconnect with the existing water system mains on Georgetown Road and Varney Road and the Peacham Road treatment facility, the project would require 8,000 to 11,000 feet. This would result in a more costly project to accomplish the same goal. Crossing the lake minimizes the amount of pipeline needed as well as reduces the installation of main in roadways. The latter increases the cost of the project.

#### **No Substantial Effect on Public Rights**

11. The completed project is not expected to “substantially affect” the public rights. impede any public interest the State may have in the waters of Locke Lake. This is because the project is not designed to contact or impact the lake water. There is also no public access to Locke Lake and no public boat launch. There is a public boat launch on Half Moon lake, however, there is no appreciable means by which to navigate from one lake to the other because

the two lakes are connected by a low-head spillway and culvert.

12. PEU plans to complete the work in the winter when the lake is in a frozen state and this further protects any interest the public has in the lake. For these reasons, PEU believes it has established that the license may be exercised “without substantially affecting the public rights in said waters.”

**Notice  
All Interested Parties in Support**

13. The Association and PEU are finalizing the easement deed conveying a 30-foot wide right of way easement over the submerged lands from the Association. See Attachment JJB-4. The project involves no other property owners. The fact that the Association and PEU are finalizing the easement deed evidences that the Association supports the project. PEU will also follow up under separate cover with a letter of support from the Association. Additionally, as noted above, the NHDES supports the project and chose to fund the project under its competitive SRF program. Lastly, Staff and the OCA supported the use of the financed funds for this project. See Order No. 26,189. For these reasons, PEU believes the Commission can approve this license, without a hearing, as allowed under RSA 371:20 when all parties are in support of the project.

14. Regarding notice, PEU has provided the Attorney General with a copy of the instant petition and supporting documents pursuant to RSA 371:19 and the Commission’s obligation to provide such notice to the Attorney General. Because the project impacts only the property of the Association, PEU believes the landowner notification specified in RSA 371:19 has been fully satisfied.

WHEREFORE, PEU respectfully requests that the Commission:

A. Issue an Order *Nisi* finding that its project to install a 3-inch main in an 8-in sleeve under the bed of the artificially created Locke Lake will not substantially adversely affect any rights the public may have in the waters of Locke Lake;

B. Grant PEU a license to construct and maintain the water main beneath Locke Lake as requested in this petition and as illustrated in the testimony of John J. Boisvert and attachments;  
and

C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

PENNICHUCK EAST UTILITY, INC.

By its Attorney,

NH BROWN LAW, PLLC

Date: December 12, 2019

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Certificate of Service

I hereby certify that a copy of the foregoing petition and supporting materials has been emailed this day to the Office of the Consumer Advocate and the Town of Barnstead. A hard copy has been provided to the Attorney General's Office.

Date: December 12, 2019

Marcia A. Brown  
Marcia A. Brown, Esq.