

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

DW 20-156

Pennichuck East Utility, Inc.

Request for Change in Rates

PETITION TO INTERVENE OF RICHARD M. HUSBAND

Pursuant to the New Hampshire Public Utilities Commission (“Commission”)’s [Order of Notice dated December 17, 2020](#) (“Order of Notice”) issued in the above-captioned matter, [N.H. Code Admin. Rules Puc 203.17](#) and [N.H. R.S.A. 541-A:32](#), the petitioner, Richard M. Husband, hereby respectfully petitions for leave to intervene in this proceeding as a party, with all rights as such to the full extent allowed by law. In support of his petition, the petitioner states:

1. The petitioner is a New Hampshire resident living at 10 Mallard Court, Litchfield, New Hampshire 03052, and is a residential customer of Pennichuck East Utility, Inc. (“PEU”).
2. This proceeding concerns PEU’s request for temporary and permanent rate increases, with the latter “designed to yield an overall increase of 21.05 percent in its annual revenues to an amount of approximately \$10,715,419 ...” *See* Order, p. 1.
3. Under the Commission’s [Order of Notice](#), interested persons have until January 22, 2021 to petition to intervene in this matter, *id.*, p. 7, and this petition is filed pursuant to the same, in a timely fashion.
4. Pursuant to [Puc 203.17](#), “[t]he commission shall grant one or more petitions to intervene in accordance with the standards of [R.S.A. 541-A:32](#) ...” *Id.*

5. Under [R.S.A. 541-A:32, I\(b\) and \(c\)](#), a petition to intervene *must* be granted if the petitioner states facts demonstrating how his/her rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding (or the petition otherwise qualifies under the law), and the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention. Under [R.S.A. 541-A:32, II](#), the PUC *may* grant a petition to intervene “at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly conduct of the proceedings.”
6. As there has been no discovery or even the prehearing conference in this proceeding to date, the petitioner reserves the right to amend his position and/or raise additional concerns and interests, but avers that his rights, duties, privileges, immunities and/or other substantial interests may be affected in this case for at least the following reasons.
7. The petitioner is a residential customer of PEU who would be adversely affected by the proposed temporary and permanent rate increases. Such status alone entitles the petitioner to intervene and litigate “any impacts of the rates or services provided to customers as a result of the [request] under consideration.” [Order No. 25,886 \(Apr. 25, 2016\)](#) at 3.
8. As is discussed in public comment letters filed in this case, residents of the Town of Litchfield, including the petitioner, are already overpaying for the water at issue (especially in relation to the price paid by other PEU customers), the quality of which does not merit a rate increase. *See, e.g.*, [2](https://puc.nh.gov/Regulatory/Docketbk/2020/20-156/COMMENTS/20-</div><div data-bbox=)

[156 2020-12-16 COMMENT CUTTER.PDF](#);

<https://puc.nh.gov/Regulatory/Docketbk/2020/20-156/COMMENTS/20->

[156 2020-12-16 COMMENT OBRIEN.PDF](#);

<https://puc.nh.gov/Regulatory/Docketbk/2020/20-156/COMMENTS/20->

[156 2020-12-16 COMMENT HAWKINS.PDF](#);

<https://puc.nh.gov/Regulatory/Docketbk/2020/20-156/COMMENTS/20->

[156 2020-12-17 COMMENT GARAND.PDF](#);

<https://puc.nh.gov/Regulatory/Docketbk/2020/20-156/COMMENTS/20->

[156 2020-12-29 COMMENT MAILLOUX.PDF](#). This is particularly unjust and

unreasonable to the extent that PEU’s proposed rate increases are grounded in costs associated with connecting many new Litchfield residents to the utility due to contamination of their wells by PFCs attributed to Saint-Gobain Performance Plastics Corporation (“Saint-Gobain”): existing Litchfield PEU customers received no benefit from the connection and many of those compelled to become PEU customers preferred their well water over the utility’s water and would not have made the connection but for the PFC contamination. Beyond its normal scrutiny, the Commission should carefully examine all costs underlying PEU’s rate increase requests to ensure that PEU customers—particularly, but not exclusively those in Litchfield—are not being saddled with costs that should be paid by Saint-Gobain. As examples, the petitioner notes that Litchfield (and other PEU) customers should not be responsible for debt service (interest) on infrastructure necessitated by the PFC contamination or taxes associated with the new Litchfield water infrastructure, as PEU requests, *see* [Direct Testimony of](#)

[Donald Ware dated November 23, 2020](#) at 8:14-15, 17:20-18:2, or any new fire hydrants or other infrastructure necessitated by the PFC contamination.

9. In relation to the Litchfield and other PFC contamination, Saint-Gobain entered into a [Consent Decree](#) with the State of New Hampshire, accessible at the URL <https://www4.des.state.nh.us/nh-pfas-investigation/wp-content/uploads/2018/03/final-cd-20180320.pdf>, which provides that the corporation is responsible for the cost of the water infrastructure in Litchfield necessitated by PFC contamination. *See id.* at 6 and Footnote 2. All costs that result from that obligation—including but not limited to debt interest and taxes associated with the infrastructure—should, therefore, be the responsibility of Saint-Gobain. Indeed, the corporation received only a limited release under the [Consent Decree](#), and that release expressly reserves the State’s right to pursue other “costs” resulting from the PFC contamination. *Id.* at ¶ 32h.
10. The petitioner, and all Litchfield PEU customers and residents, have an even greater concern. On information and belief, much (if not the vast bulk) of the water that is the subject of the proposed rate increases is drawn from three wells, the so-called “Dame,” “Ducharme” and “Weinstein” wells, located in the Town of Litchfield itself.¹ This water is being withdrawn in apparent contravention of the safe yield of Litchfield’s aquifers and to the potential detriment of all Litchfield water resources. If so, such withdrawals are unlawful, extremely injurious to Litchfield, should result in the town receiving compensation for any overdraws to

¹ Suggesting that the costs of water service to Litchfield should be lower than other PEU municipal customers receiving the water, not more expensive.

date, and preclude approval of PEU's request. Under [R.S.A. 374:2](#) and 378, utility charges cannot be approved "for any service rendered by it or to be rendered in connection therewith" that is not just and reasonable, or if the charges are unlawful.

11. Two of the three Litchfield wells believed to underly PEU's services and rate increase requests, the paired Dame and Ducharme or "Dame-Ducharme" wells as they are collectively known, have been overdrawn for years. The petitioner is acutely aware of this as he has lived on Darrah Pond, a 12 acre "great pond" in Litchfield which is located in the same aquifer as the Dame-Ducharme wells, for 15 years. The pond has suffered over the years as a result of excessive extractions from the wells, generally remaining several feet below its normal tree line level. Obviously, this negatively impacts use and enjoyment of the pond (particularly as it is extremely shallow such that the decline in pond level substantially reduces the pond's size).
12. The Dame-Ducharme wells are owned by the Town of Hudson, which the DES made obtain a safe yield study in 2002 in relation to the pond's decline. Based on this study, the DES concluded that the safe yield for Dame-Ducharme well withdrawals should be limited to .79 million gallons per day during normal periods of precipitation and .89 million gallons per day during periods of above average precipitation. This is discussed in a letter from the DES to the Litchfield Conservation Commission attached to this petition as Exhibit "A."
13. The Town of Hudson also owns the third Litchfield well, the Weinstein well, that PEU uses for its services. As indicated in the attached Exhibit "B," the DES

determined in 2003 that the normal safe yield for the Weinstein well is .65 million gallons per day. As indicated by the DES in Exhibit “B,” extractions over this amount “may contribute to the partial and/or periodic dewatering of wetlands, streams, and private wells” in Litchfield.

14. From materials filed in [Docket No. 19-091](#), more than 2.1 million gallons of water were pumped per day from Litchfield’s wells in 2018/2019. *See* page 3 of Exhibit “H” to Petition for Declaratory Ruling and Request for Mediation, a copy of which is attached to this petition as Exhibit “C.”
15. More than 2.1 million gallons per day is recklessly more than the only 1.44 million gallons of water per day (.79 MGD for Dame-Ducharme, .65 MGD for the Weinstein well) that the DES determined was a normal safe yield from all three Litchfield wells in 2002-2003, and the petitioner is not aware of any DES change in its 2002-2003 determinations. Darrah Pond levels reached particularly horrific levels this past summer in 2020, following the huge 2018/2019 well extraction levels.
16. As a great pond, Darrah Pond is held in trust by the State under the “public trust doctrine” established by common law and statute, and entitled to preservation for public use, with the State’s title extending to the pond’s natural high water mark. *State v. George C. Stafford & Sons, Inc.*, 99 N.H. 92, 96-97 (1954)(“It is a basic proposition which has become well settled by usage, statute and judicial decision that lakes and great ponds in New Hampshire belong to the public and are held in trust by the State for public use ... [T]he title of the State to the bed of the lake extends to the natural high water mark ...”)(citations omitted); [R.S.A. 271:20](#).

The diminishment of Darrah Pond by extractions from the Dame-Ducharme wells violates the public trust doctrine and [R.S.A. 271:20](#), prohibiting payment of PEU charges arising from such unjust, unreasonable and unlawful service under [R.S.A. 374:2](#) and 378.

17. The Commission should not only deny PEU charges associated with overdraws from the Litchfield wells, but issue an order restricting withdrawals and/or PEU's use of withdrawals from the wells to the daily rates discussed herein.
18. The petitioner is an attorney duly licensed to practice in New Hampshire since 1989, is familiar with the Commission's rules and has been involved in numerous Commission cases in both a personal and representative capacity. Moreover, while the petitioner cannot represent the other petitioning Litchfield intervenors in this proceeding, if the Commission does not mind, he may be of assistance to them in the process. Accordingly, the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing the petitioner's intervention.

WHEREFORE, for the reasons expressed, the petitioner respectfully requests that the Commission:

- A. Grant this petition and allow the petitioner to intervene in this proceeding as a party, with all rights as such to the full extent allowed by law; or
- B. Schedule a hearing on this matter; and
- C. Grant such other and further relief as is just, lawful and otherwise appropriate.

Respectfully submitted,

/s/ Richard M. Husband
Richard M. Husband
10 Mallard Court
Litchfield, NH 03052
Telephone No. (603)883-1218
E-mail: RMHusband@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 22nd day of January, 2021, served a copy of this petition and its exhibits, by electronic mail, on all individuals and parties identified on the service list for this proceeding, including Pennichuck East Utility, Inc. and the Consumer Advocate.

/s/ Richard M. Husband
Richard M. Husband