

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 20-156

Pennichuck East Utility, Inc.
Permanent Rate Proceeding

OBJECTION TO INTERVENOR HUSBAND'S REQUEST THAT THE
COMMISSION ORDER LIMITS ON WATER WITHDRAWALS
AND
CONSIDER RESPONSIBLE PARTY OBLIGATIONS STEMMING FROM
CONTAMINATION OF THE STATE'S GROUNDWATER

NOW COMES, Pennichuck East Utility, Inc. (PEU), in accordance with N.H. Admin. R. Puc 203.07(e), and hereby objects to the request by intervenor Richard M. Husband for the Commission to issue an order restricting water withdrawals from wells in Litchfield, New Hampshire that are owned by the Town of Hudson and to consider in this proceeding how much Saint-Gobain should compensate for its contamination of the State's groundwater. In support of its objection to Mr. Husband expanding the scope of noticed issues in this proceeding, PEU states as follows:

1. On September 23, 2020, PEU filed its Notice of Intent to file its rate case. On November 23, 2020, PEU filed its full rate case schedules as well as tariffs increasing rates effective December 24, 2020. On December 17, 2020, the Commission issued Order No. 26,436 and suspended the taking effect of PEU's tariffs, opened an investigation into PEU's rate filing, scheduled a prehearing, and noticed issues to be considered in the proceeding.

2. On January 22, 2021, Mr. Richard M. Husband filed a petition to intervene. In addition to requesting party status, pursuant to RSA 541-A:32, Mr. Husband also requested that the Commission "issue an order restricting withdrawals and/or PEU's use of withdrawals from

the wells to the daily rates” discussed in his petition. See Para. 17. Mr. Husband set forth facts and law in support of his request, as is required under Puc 203.07(d), however, he did not title his pleading as such. Requests for relief from the Commission are more appropriately sought in motions and are not usually cloaked in a petition to intervene.

3. Notwithstanding the error of form, because Mr. Husband has requested Commission action and has requested the Commission consider issues not noticed in Order No. 26,436, PEU is compelled to object so as to preserve its rights. To that end, and as ordered by the Commission, PEU commits to writing its oral objection made at the January 27, 2021 prehearing.

4. Pursuant to the requirements under New Hampshire’s Administrative Procedures Act, RSA 541-A:31, III(d), the Commission noticed this proceeding for a specific and narrow scope:

- (1) Whether the proposed ratemaking modifications are consistent with Order No. 26,179 in the Company’s last rate case;
- (2) What standards would apply to the proposed modifications;
- (3) the prudence of relevant (capital) investments;
- (4) Whether the (proposed) rates are just and reasonable pursuant to RSA 374:2 and RSA 378, including all ratemaking sub-components;
- (5) The accuracy of all rate petition schedules; and
- (6) The justness and reasonableness of proposed modifications to current ratemaking methodologies.

5. Mr. Husband’s concern that the water supply wells that the Town of Hudson owns and operates in the Town of Litchfield, from which PEU obtains a portion of its water supply¹, are being overdrawn by the Town of Hudson is not an issue noticed in this proceeding. While Mr. Husband could make a colorable argument that the cost of the water PEU purchases from the

¹ The Commission approved PEU’s water supply agreement with the Town of Hudson in Order Nos. 22,778 (October 30, 1997) and 22,793 (November 21, 1997) in *Consumers New Hampshire Water Company*, Docket No. DE 96-227.

Town of Hudson is within the scope of this rate proceeding, limits on how much water the Town of Hudson withdraws from its wells and the effect of Hudson's withdrawals on surface water levels bears no relation to the issues noticed in this proceeding. Again, PEU does not own the wells. Additionally, the Town of Hudson is not even a party to this proceeding to defend its right to withdraw from its wells.

6. In addition to the issue of water withdrawals not being a noticed issue, the Commission does not have jurisdiction to grant Mr. Husband the relief he seeks. RSA Chapter 485-C governs wells and groundwater withdrawal permits. RSA 485-C:21 specifically delegates jurisdiction over water supply wells and groundwater withdrawal permits to the N.H. Department of Environmental Services (NHDES). See also RSA 485-C:2, V and PART Env-Wq 403. Therefore, the relief Mr. Husband seeks is the jurisdiction of NHDES, not the Commission. Furthermore, appeals of NHDES decisions concerning groundwater withdrawals are to the Water Council, again, not the Commission. RSA 21-O:7, IV. Mr. Husband has raised these issues in the wrong forum.

7. Mr. Husband, in paragraph 8 of his petition, also requests the Commission consider the issue that Saint-Gobain should pay for customer water, pay for the debt service of water infrastructure, and pay for property taxes PEU pays on the contributed assets from Saint-Gobain. Although these expenses as well as how much of the revenue requirement that includes these expenses that customer classes pay are issues within the scope of issues noticed in this proceeding, how much of these costs Saint-Gobain pays as a responsible party under the State's hazardous waste and water pollution statutes, is an issue within the jurisdiction of the NHDES, not the Commission. RSA Chapters 485, 485-C, 147-A, and 147-B. As such, having Saint-Gobain pay for customer's water, pay for the debt service of water infrastructure, and pay for

property taxes on the infrastructure Saint-Gobain paid for under the Consent Decree² is a policy issue involving the State (through NHDES), the impacted customers, and the responsible party. For these reasons, PEU objects to the Commission considering how much Saint-Gobain should be obligated to pay.

8. The Saint-Gobain consent decree, Attachment A (Consent Decree), hereto, does not waive any private right of action “on behalf of any other party.” See Consent Decree at Para. 7. Accordingly, Mr. Husband’s remedy is within the purview of the NHDES and/or a New Hampshire court, and not with this Commission. Furthermore, the NHDES has already opined on the extent of Saint-Gobain’s obligation to provide alternate water and infrastructure. In a certified letter sent to customers in November, and attached hereto as Attachment B, the NHDES specifically stated:

“As you may know, the full cost of connecting to the water main and either decommissioning your well or connecting your well to an outside faucet and/or irrigation system is being paid for by Saint-Gobain. However, once the service contractor’s contracts are completed, NHDES will consider Saint-Gobain’s obligation to provide alternative water to affected properties to have been satisfied.”

Therefore, the public policy on the extent Saint-Gobain must pay for water and infrastructure has already been set by the State pursuant to the 2018 Consent Decree. This is not an issue that can be relitigated and considered by the Commission. It is notable also that this public policy issue is before the New Hampshire legislature. Intervenors Boehm and Lascelles introduced HB 135 to address how much a responsible party should pay for customer water and infrastructure

² As part of the Consent Decree, Saint-Gobain paid for over \$4.2M in water mains and services which is now on PEU’s books as CIAC; Saint-Gobain paid for customer services lines from the curb stop to the residence-which customers now own; and Saint-Gobain paid for other infrastructure that the towns or State now own.

expenses. The legislation, however, would still keep jurisdiction with the NHDES, not the Commission. See Attachment C.

9. Because the Commission does not have jurisdiction over compensation for contamination of the State's groundwater, Mr. Husband's issues of Saint-Gobain paying for customer water, debt service, and property taxes are not within the scope of this proceeding.

WHEREFORE, Pennichuck East Utility, Inc. respectfully requests the Commission:

A. Issue an order appropriately limiting the scope of Mr. Husband's participation in this proceeding to the issues noticed in Order No. 26,436; and

B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK EAST UTILITY, INC.

By its Attorney,

N.H. Brown Law, PLLC

Date: January 29, 2021

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Certificate of Service

I hereby certify that a copy of this objection has been emailed this day to the Docket-Related Service List for this proceeding.

Date: January 29, 2021

Marcia A. Brown
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