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May 18, 2021

TO: Commissioners

FROM: Mary E. Schwarzer, Esq., Hearings Examiner

RE: DW 21-022, Pennichuck East Utility, Inc.
Petition for Approval of 2021 Qualified Capital Project Adjustment Charge

HEARINGS EXAMINER’S REPORT

At your request, I served as the presiding officer over the prehearing conference (PHC) held in the above-referenced matter on May 17, 2021. As I stated at the PHC, while Staff counsel in this proceedings and I are both members of the Commission’s Legal Division, we have not and will not discuss this docket.

As a Hearings Examiner, I am authorized to recommend action to the Commission pursuant to RSA 363:17 and New Hampshire Code of Administrative Rules Puc 203.14(c). The PHC was held remotely, consistent with Governor Christopher Sununu’s Emergency Order #12, due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic pursuant to Executive Order 2020-04, and as subsequently extended.

On February 11, 2021, Pennichuck East Utility, Inc. (PEU or Company) filed testimony and related schedules in support of its request that the Commission find its Qualified Capital Project Adjustment Charge (QCPAC) for the year 2021 and its 2020 capital project expenditures prudent; its request for preliminary approval of the Company’s 2021 capital project expenditures; and the Company’s request for authority to pay interest incurred on its fixed asset line of credit (FALOC) by incorporating the interest into the amount borrowed from Co Bank. On March 10, 2021, PEU filed a request to amend its petition by clarifying its customer notice (Bates page 027) and to correct typographical errors on two other pages.

Pursuant to an Order of Notice (OON) issued on April 2, 2021, a PHC was scheduled for May 17, 2021. The OON directed PEU to notify all persons desiring to be heard by publishing a copy of the OON on its website no later than one business day after the date the OON was issued. The Commission’s Executive Director was also directed to post the OON on the Commission’s website as of the same date.

Appearances

James J. Steinkrauss, Esq., of Rath, Young and Pignatelli, for PEU
Christopher R. Tuomala, Esq., for Commission Staff (Staff)

Procedural Matters

Some PEU witnesses stated that the OON had been posted to the Company's website, but others were uncertain. Staff counsel was not sure the OON had been independently posted on the Commission website. The parties agreed that the OON incorrectly describes matters at issue as inclusive of whether "plant additions PEU constructed in 2019 are prudent...." The parties agreed that the 2020 plant additions and not the 2019 plant additions are at issue. No petitions to intervene were filed. No requests for intervention were made at the PHC.

PEU stated that it mailed the revised customer notices to all customers on or about March 11, 2021. PEU also updated the petition posted on the Company's website to include the requested revisions. No confidential material was discussed. There were no pending motions for confidential treatment, and no exhibits were premarked for this PHC. There were four attendees who were members of the parties' staff.

Positions of the Parties

PEU stated that the incorrect use of "2019" in the OON did not require that the OON be reissued. PEU stated that the actual notice the customers received, in the form of the original and revised customer notices, clearly identified that the 2020 plant additions were the ones at issue. PEU suggested that a new OON could confuse its customers.

Staff agreed that a new OON was not required, stating both that the error ("2019" rather than "2020") was akin to a typographical error, and that the value of plant additions in 2019 and 2020 were similar, resulting in QCPACs of a similar order of magnitude.

Hearing Examiner's Recommendation

I recommend that the Commission find that, from the perspective of the average customer, the "2019" error is more substantive than the category "typographical error" is intended to encompass. *See* Puc 203.10. Therefore, I recommend that the Commission reissue the OON. *See, e.g.*, Order No. 26,457 at 2 (February 12, 2021) (delay in posting order to website necessitated re-issue of the order *nisi*). I also recommend that future OONs require petitioners to file an affidavit of publication. *See* Puc 203.12(d). If the Commissioners instead find the parties' analysis persuasive, I recommend that the Company be directed to file an affidavit of publication to clarify that the OON was posted as directed on April 3, 2021.

On May 17, 2021, following the PHC, PEU filed a statement into the docket, acknowledging that it had not posted the OON on the Company's website and asking that the Commission re-issue the OON. PEU also asked that it be directed to file an affidavit of publication. I recommend that the Commission conclude that the Company's May 17 filing renders moot the issues raised during the PHC and my recommendations regarding those issues.

By: /s/ Mary E. Schwarzer

Mary E. Schwarzer, Esq., Hearings Examiner