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TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

Website:
www.puc.nh.gov

PUBLIC UTILITIES COMMISSION
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

May 18, 2021

TO: Commissioners

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

RE: DE 21-023 Pennichuck Water Works, 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 Water Works, Inc. (PWW 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. Pursuant to an Order of Notice (OON) issued on April 2, 2021, a PHC was scheduled for May 17, 2021. The OON directed PWW 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 of its issuance. The Commission’s Executive Director was also directed to publish the OON on the Commission’s website no later than the same date.

Appearances

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

Procedural Matters

When the PHC turned to procedural matters, Attorney Steinkrauss notified the Hearings Examiner that PWW had not posted the OON on its website as required.

No petitions to intervene were filed, and no requests for intervention were made during the PHC. No confidential material was discussed; there were no pending motions for confidential treatment. There were four attendees who were members of the parties' staff.

Positions of the Parties

PWW acknowledged that the Company's non-compliance with the OON's directive to post the OON on the Company website would require a new OON and another PHC. PWW agreed to file a statement into the docket documenting the issue and requesting a new OON. PWW seemed receptive to responding to on-going discovery, pending the Commission's issuance of a new OON.

Staff concurred with PWW's position that a new OON was required. Staff stated that the parties had begun the discovery process. Staff recommended that discovery could continue while the Commission considered this notice issue. Staff suggested that in future OONs should direct petitioners to file an affidavit of publication, suggesting that notice issues of this nature may be avoided were that step taken. Staff acknowledged that a comment had been filed in this docket. In Staff's opinion, the comment does not rise to the level of an informal or *pro se* request to intervene.

Hearing Examiner's Recommendation

Based on PWW's admission that it failed to post the OON on its website as directed, I recommend that the Commission issue a new OON and schedule another PHC. *See, e.g.,* Order No. 26,457 at 2 (February 12, 2021) (Utility's delay in publishing order on its website necessitated re-issue of the order *nisi*). I recommend that future OONs require petitioners to file an affidavit of publication, to minimize future notice issues. *See* Puc 203.12(d). I recommend that the discovery process continue. I recommend that the comment on file does not rise to the level of a request to intervene.

On May 17, 2021, following the PHC, PWW filed a statement into the docket, acknowledging that the OON had not been posted as directed, and asking the Commission to re-issue the OON. PWW also asked that it be directed to file an affidavit of publication.

By: /s/ Mary E. Schwarzer

Mary E. Schwarzer, Esq., Hearings Examiner