

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-088

**PENNICHUCK WATER WORKS, INC., PENNICHUCK EAST UTILITY, INC. AND
PITTSFIELD AQUEDUCT COMPANY, INC.**

REQUEST FOR CHANGE IN RATES

COMMENCEMENT OF ADJUDICATIVE PROCEEDING AND NOTICE OF HEARING

On November 21, 2023, Pennichuck Water Works, Inc. (PWW), Pennichuck East Utility, Inc. (PEU), and Pittsfield Aqueduct Company, Inc. (PAC) (collectively, the Pennichuck Utilities) filed a joint petition to establish consolidated rates for water services between the three companies for effect January 1, 2025. The request would have the effect of changing each company's existing rates. On December 15, 2023, the New Hampshire Department of Energy (DOE) moved to dismiss the petition on the grounds that, among other reasons, it is inappropriate to adjudicate three separate utilities' rates in a single docket. On December 21, 2023, the Pennichuck Utilities objected to the motion to dismiss. The motion remains pending before the Commission.

Pursuant to RSA chapter 541-A, the Commission commences an adjudicatory proceeding in this docket. As a first stage of the proceeding, the Commission will consider the merits of the DOE's motion to dismiss. If the Commission denies the motion, the Commission will issue supplemental notice on how it will proceed with the Pennichuck Utilities' request to change rates. All docket filings, other than any information subject to confidential treatment, are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-088.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

Each of the Pennichuck Utilities is a regulated, water utility that provides water services pursuant to a tariff on file with the Commission. All of the Pennichuck Utilities are wholly owned by the Pennichuck Corporation, which is in turn wholly owned by the City of Nashua. PWW provides service to approximately 29,368 customer accounts in Nashua, Merrimack, Amherst, and Hollis, as well as in satellite franchises in Bedford, Derry, Plaistow, Milford, Epping, Salem, and Newmarket. See Joint Petition to Consolidate Rates at 1. PEU provides services to approximately 8,623 customer accounts in the towns of Litchfield, Londonderry, Windham, and Pelham, as well in its satellite franchise areas in Atkinson, Sandown, Derry, Raymond, Plaistow, Hooksett, Derry, Bow, Lee, Exeter, Chester, Conway, Middleton, Barnstead, Winnisquam Village, and Weare. *Id.* PAC has 672 customer accounts in Pittsfield. *Id.* at 2.

On November 21, 2023, the Pennichuck Utilities filed a joint petition to establish consolidated rates between all three companies to be effective January 1, 2025. The proposed consolidated rates would result in changes to all three companies' existing rates, with PWW's and PEU's rates increasing and PAC's rates decreasing. See Testimony of Donald L. Ware at 22–24. In their petition, the Pennichuck Utilities represented that these consolidated rates were contingent on the Commission's approval of a merger between all three companies into a single entity. This corporate consolidation would also be effective January 1, 2025. On December 15, 2023, the Pennichuck Utilities filed a petition to effect this corporate consolidation and the Commission opened Docket No. DW 23-101 to adjudicate the issue.

Broadly speaking, the Pennichuck Utilities aver that consolidation of rates and corporate entities is appropriate because, given their small size, neither PEU nor PAC

can provide economic rates to their customers or access financial services, such as bank loans, necessary to maintain the viability of their business operations. *See generally* Testimony of John J. Boisvert. The Pennichuck Utilities maintain that a larger, merged utility will help alleviate both of these issues without disadvantaging PWW's customers. *Id.*

On December 15, 2023, the DOE moved to dismiss the joint petition for consolidated rates in this docket. In essence, the DOE argues that it is inappropriate for three separate utilities to file a joint rate case and that the appropriate procedure would be for the Commission to first approve the petition to consolidate and then commence a ratemaking proceeding for the new entity. In support of this argument, the DOE notes that—given time limitations on the Commission's abilities to suspend proposed tariffs—a rate case is generally limited to twelve months. *See* Motion to Dismiss at 2 (citing RSA 378:6(a)). By contrast, there is no time limitation on adjudicatory proceedings for the corporate consolidation of utilities. *Id.* (citing RSA 378:33). Therefore, the DOE maintains, adjudicating both a consolidation and a rate case together could place unnecessary time constraints on both proceedings and prevent the DOE, the Commission, the Pennichuck Utilities, and the public from fully investigating whether: (1) consolidation of the corporate entities is generally appropriate in the first place; and (2) if so, whether the specific rates the Pennichuck Utilities proposed in this docket are appropriate for the new, merged entity.

On December 18, 2023, the Commission suspended the Pennichuck Utilities' proposed tariffs, and requested that the Pennichuck Utilities file a response to the motion to dismiss. On December 21, 2023, the Pennichuck Utilities objected to the motion. The Pennichuck Utilities argue that there is nothing that precludes the Commission from adjudicating more than one utility's rates in a single proceeding.

Moreover, the Pennichuck Utilities maintain their current rates—particularly PEU’s—are insufficient to allow them to obtain a reasonable rate of return on their investments, and that the DOE’s proposal—for the Commission to consider consolidation, and then adjudicate appropriate rates—would deny them necessary relief for an extended period of time. The Pennichuck Utilities therefore argue that the Commission should “entertain both the consolidated rate and merger petitions and vet multiple rate options at the same time as proposed.” Objection to Motion to Dismiss at 10.

With respect to the DOE’s concerns over the competing statutory time limits, the Pennichuck Utilities represent that they are “prepared to coordinate with the DOE, [the Office of the Consumer Advocate], and other parties to agree on comprehensive scheduling orders for the consolidated rate and joint merger petitions to provide time for the necessary investigation and review on the merits for both” *Id.* at 11.

Parallel to these joint motions, PEU and PAC individually filed “placeholder” notices of intent to change rates on November 28, 2023. Both utilities explained that they intended to proceed with the joint, consolidated rate case in Docket No. DW 23-088, but that they were filing separate notices to preserve their rights in case the Commission dismissed the joint petition. The Commission docketed PEU’s notice in Docket No. DW 23-096 and PAC’s notice in Docket No. DW 23-097.

II. ISSUES PRESENTED

The initial phase of this proceeding presents *inter alia*, the following issues: whether it is appropriate and/or lawful for the Commission to adjudicate the rates of three separate utilities in a single, consolidated proceeding; and what is the most efficient and fairest manner to adjudicate the Pennichuck Utilities’ various petitions

before the Commission. Accordingly, an adjudicative proceeding will be convened to address these issues.

The Commission will be conducting any hearings scheduled in this matter in person. The Commission will consider requests to conduct hearings using a hybrid format to permit remote participation by a specific individual only if the Commission has determined that a sufficient reason has been provided for why that individual would be unable to attend in person. Any party requesting that a specific individual be permitted to participate remotely should file a written request with the Commission's Clerk's Office no later than fifteen (15) days prior to the hearing date. If the Commission determines that one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA chapter 541-A, and the Commission's procedural rules; and it is

FURTHER ORDERED, that the Commission will hold a hearing in this matter at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on January 31, 2024, at 1:00 p.m.¹ Three hours shall be allotted for this hearing; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

¹ On December 29, 2023, in response to a Commission request, the parties proposed holding a hearing on this matter on January 23, 2024 at 9:00 a.m. The Commission, however, is unable to hold a hearing on that date, and thus schedules a hearing on this alternative date.

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to the Pennichuck Utilities and any other parties on the service list, on or before January 26, 2023. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before January 30, 2023; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, the Pennichuck Utilities shall notify all entities and individuals desiring to be heard at this


hearing by publishing a copy of this order of notice on their websites no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before January 19, 2023. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.

So ordered, this tenth day of January, 2024.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket#: 23-088

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