

**DW 05-176**

**PENNICHUCK EAST UTILITY, INC.**

**Petition for Authority to Engage in Business as a Public Utility in a Limited Area of the  
Town of Raymond and For Approval of Rate Schedules**

**Order *Nisi* Approving Franchise Rights and Rate Schedules**

**ORDER NO. 24,623**

**May 12, 2006**

**I. BACKGROUND**

Pennichuck East Utility, Inc. (PEU) is a regulated public utility pursuant to RSA 362:2 and RSA 362:4 and serves customers in 14 municipalities in New Hampshire, including the Town of Raymond. The New Hampshire Public Utilities Commission (Commission) first authorized PEU to provide water service in 1998. *See, Consumers New Hampshire Water Co.*, 83 NH PUC 191 (1998).

On November 2, 2005, PEU filed a petition seeking authority to engage in business in a new development known as Clearwater Estates in the Town of Raymond. The petition also requested approval for rates to be charged in the new franchise area. PEU avers that it possesses the requisite managerial, technical, and financial capability to operate the Clearwater Estates water system. In support of the petition, PEU submitted: testimony of Bernard J. Rousseau, Vice President of Pennichuck Water Service Corporation, an affiliate of PEU; a fully executed Standard Agreement (Agreement), Use and Access Easement Deed, Bill of Sale, and Assignment of Warranties; and a proposed Public Water Supply Well Protective Radius Area Easement. PEU also supplied engineering plans of the development bearing an approval stamp from the Town of Raymond Planning Board, dated May 20, 2004.

On December 15, 2005, PEU supplemented Mr. Rousseau's testimony with an additional exhibit, full-sized plans of the Waterline Easement for the Clearwater Estates system.

On March 20, 2006, PEU amended its petition to request application of PEU's new consolidated rate, rather than the proposed PEU-A rate. PEU made this request in light of PEU's rate case, Docket No. DW 05-072, wherein the Commission consolidated all PEU rates to provide for a monthly fixed charge of \$15.58 per 5/8-inch residential meter and a consumption charge of \$4.75 per hundred cubic feet of water. *See Pennichuck East Utility, Inc.*, Order No. 24,591 (February 24, 2006).

The proposed franchise area consists of approximately 18 acres on Patriots Way, Bruins Lane, and Red Sox Lane off Route 27 in Raymond. It is being built by Fire Lake Corporation. When fully built out, Clearwater Estates will consist of 32 duplex residential condominiums, for a total of 64 units, and will rely on two community wells as a water source. Full build-out is anticipated to be completed over a three or four year period and fourteen customers are currently being served by the system.

According to the Agreement between PEU and Fire Lake Corporation, PEU will purchase the water system at a rate of \$400 per customer. PEU will reimburse Fire Lake Corporation for all meters set prior to closing. PEU will make further investment in the project each month after closing based on the number of meters set during the previous month, for a period of up to five years from the date of the execution of the Agreement. Fire Lake Corporation will provide PEU with a well head easement plan illustrating the protective radius and a title insurance policy or a legal opinion to ensure Fire Lake Corporation can convey good title to the easement area.

On May 4, 2006, Staff of the Commission (Staff) filed a letter recommending the Commission grant PEU's franchise request and allow PEU to charge customers of Clearwater Estates its present consolidated PEU rate. After reviewing the filing and conducting discovery, Staff agreed that PEU possessed the requisite managerial, technical and financial capability to operate the Clearwater Estates water system. Staff attached PEU's discovery responses to its letter. Staff concluded the new consolidated rate would cover the revenue requirement of the new Clearwater Estates system and was appropriate since the Commission had decided to approve a single consolidated rate for all of PEU's water systems. Staff also reviewed letters from the New Hampshire Department of Environmental Services (NHDES), dated June 23, 2004, and July 6, 2004, providing approval of the plans and specifications for the Clearwater Estates water supply. Staff believes these letters satisfy the requirements of RSA 374:22, III as to the availability and suitability of water in the new franchise.

Staff noted that PEU is likely purchasing the water system at less than original cost. Also, the Agreement calls for PEU to make further investment in the water system based on the number of meters set. Given this, Staff recommended the Commission require PEU to book the difference between the original cost of the assets and the purchase price as Contributions in Aid of Construction (CIAC) so as not to include developer contributions in future rates.

## **II. COMMISSION ANALYSIS**

Pursuant to RSA 374:22, "[n]o person or business entity shall commence business as a public utility within this state...without first having obtained the permission and approval of the commission." The Commission grants requests for franchise authority upon a finding that it

is for the public good pursuant to RSA 374:26. In determining whether a franchise is in the public good, the Commission assesses the managerial, technical, and financial abilities of the petitioner. *See, Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000). Pursuant to RSA 378:5 and RSA 378:7, the Commission is authorized to investigate whether rates, fares, charges or prices a utility proposes to put into force are just and reasonable. We apply these authorities to the case at hand.

For the reasons stated below, we find that PEU's acquisition of assets and its request to provide water service to the Clearwater Estates development are for the public good. We conclude that the record demonstrates that PEU has the requisite managerial, technical and financial abilities to obtain the requested franchise. PEU has successfully operated water utilities in this state since 1998. PEU's filing contains a letter from NHDES indicating the water system meets the suitability and availability requirements of RSA 374:22, III. PEU has also secured proper easements and access to the water system by the terms of the Agreement it entered into with Fire Lake Corporation.

We also find that application of PEU's consolidated rate to the Clearwater Estates franchise is just and reasonable. Staff has reviewed this rate and concluded that it will generate revenue sufficient to cover operating costs at the franchise. PEU did not request a specific date by which to implement rates and, consistent with N.H. Code Admin. R. Puc 1203.05, we will thus approve the rate on a service-rendered basis as of the effective date of this order.

We agree with Staff that to the extent original cost exceeds PEU's actual cost, PEU should book the difference as Contributions in Aid of Construction (CIAC). We agree that

this is the appropriate accounting treatment of PEU's acquisition of the water system assets and booking these costs as CIAC will ensure such costs are not reflected in future customer rates.

RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing "when all interested parties are in agreement." Here, Staff and PEU are in agreement that PEU should operate the Clearwater Estates water system. Additionally the Town of Raymond was notified of the petition and has no objection to it. Notwithstanding this apparent agreement, we will approve PEU's petition on a *Nisi* basis in order to ensure that all interested parties receive notice of the proposed franchise and rates and have an opportunity to request a hearing.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that, subject to the effective date below, PEU is authorized to operate as a public water utility in a limited area known as Clearwater Estates located in Raymond, New Hampshire;

**FURTHER ORDERED**, that PEU is granted authority, pursuant to RSA 378, to charge customers of the Clearwater Estates water system the PEU tariff rates currently in effect, on a service-rendered basis, effective as of the date of this order, unless the Commission orders otherwise; and it is

**FURTHER ORDERED**, that PEU shall cause a copy of this Order *Nisi* to be mailed to the Raymond Town Clerk as well as published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than May 22, 2006 and to be documented by affidavit filed with this office on or before June 12, 2006; and it is

**FURTHER ORDERED**, that a copy of this *Order Nisi* shall be sent by first class mail, no later than May 22, 2006, to all current customers served by the Clearwater Estates System and mailing documented by affidavit filed with this office no later than June 12, 2006; and it is

**FURTHER ORDERED**, that all persons interested in responding to this *Order Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than May 30, 2006 for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than June 5, 2006; and it is

**FURTHER ORDERED**, that this *Order Nisi* shall be effective June 12, 2006, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

**FURTHER ORDERED**, that the Petitioner shall file a compliance tariff with the Commission on or before May 26, 2006, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this twelfth day  
of May, 2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary