

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 12-109

PENNICHUCK WATER WORKS, INC.

Request for Franchise and Rates, Beede Waste Oil Site, Plaistow

Order *Nisi* Granting Request

ORDER NO. 25,393

July 18, 2012

I. BACKGROUND

Pennichuck Water Works, Inc. (PWW) is a regulated public utility pursuant to RSA 362:2 and RSA 362:4 and serves over 26,000 customers in 12 municipalities in southern New Hampshire. On April 27, 2012, PWW filed a petition for authority to provide water service to customers in the vicinity of the Beede Waste Oil Site in the Town of Plaistow. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2012/12-109.html>.

The United States Environmental Protection Agency (EPA) has designated the Beede Waste Oil site as a "Superfund" site. It is owned by 11 Kelley and 42 Old County Road Properties, LLC (Developer), a New Hampshire limited liability company established by the major settling parties in the Superfund case and having a principal business address in Nashua, NH. The Developer is obligated to provide drinking water to the site and initially plans to connect 14 properties, one of which is a 9 unit apartment building, to the water system. The properties are currently serviced by private wells that either have been, or are at risk of being,

impacted by contamination from the site. PWW has entered into an agreement (Agreement)¹ with the Developer for construction of a water main extension from PWW's adjacent Twin Ridge water system to serve the Beede site. The extension will be paid for by the Developer, constructed to PWW standards and ultimately owned and operated by PWW once accepted. An estimated additional 37 residential homes or lots located along the route of the extension could potentially connect over time.

PWW filed a plan showing the location of the proposed new franchise. PWW filed an amended plan on May 11, 2012 to include a listing of the tax map parcels that make up the proposed franchise. PWW anticipates completion of the main extension this year. PWW has indicated the proposed expansion does not require the approval of the Pennichuck Board of Directors or Pennichuck's sole shareholder, the City of Nashua. PWW proposes to charge its existing general metered rates in the new franchise. The Agreement also provides that PWW pay the Developer a one-time amount equal to the anticipated annual revenue from each customer connection made within five years. These payments are in accordance with Section 33(B) of PWW's tariff.

PWW recently installed a new well to serve both its Twin Ridge system and the interconnected Rolling Hills system currently owned by PWW's sister utility, Pennichuck East Utility, Inc. (PEU). The well is anticipated to eliminate historic water use restrictions in those systems, which serve 108 total customers, and to supply adequate water for the new Beede franchise. The Developer will pay PWW a one-time System Upgrade Fee in the amount of

¹ The Agreement is between the Developer and Pennichuck East Utility, Inc. PWW has indicated in its discovery responses that the Agreement should have been with PWW, and is in the process of securing a revised Agreement reflecting the correct entity.

\$20,526 to assess the proportional cost of the well, in accordance with tariff section 33(C). The fee is applicable because the new franchise could not have been served apart from the additional water supply available from the new well. The calculation of the fee is included in the filing. The NH Department of Environmental Services (DES) provided correspondence dated May 2, 2012 indicating that the requirements of RSA 374:22, III regarding the suitability and availability of water for the proposed franchise are satisfied.

On May 15, 2012, Staff filed a letter recommending the Commission approve PWW's petition. Staff stated that it had reviewed PWW's filing and had conducted discovery, which is attached to its recommendation. Staff stated that PWW has the requisite technical, managerial, and financial capability to operate the expanded system since it successfully operates the Twin Ridge system as well as other water systems in the state.

PWW notified the Town of Plaistow of its request in this docket and met with the selectmen on May 21, 2012. On May 29, 2012, PWW requested a stay for 60 days to address concerns raised by the Selectmen of the Town of Plaistow, who did not support the proposed franchise expansion. The request for stay was granted by Secretarial Letter on June 11, 2012. On June 28, 2012, The Town indicated its support of the petition to extend PWW's franchise to serve customers in the vicinity of the Beede Waste Oil site in Plaistow and urged the Commission to grant approval. The Town of Plaistow stated that it based its support on: 1) its understanding that the EPA and NHDES support the proposed franchise expansion; 2) its understanding that during clean-up of the Beede Superfund site, the residents who have impaired wells will be provided financial assistance for the alternative water supply; 3) the existence of documentation that demonstrates that the proposed water line and additional franchise request

does not adversely affect the EPA-approved remedy; and 4) the assurance that if at any time the additional water line negatively affects the existing well capacity or the EPA-approved remedy for the Beede site, immediate corrective measures will be taken.

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 for the public good, the Commission assesses the managerial, technical, and financial abilities of the petitioner. *See, Southern New Hampshire Water Co., Inc.*, Order No. 19,487, 74 NH PUC 262, 263 (1989). 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.

Having reviewed PWW’s filing and Staff’s recommendation, and taking into consideration the letter of support by the Town of Plaistow, we find that PWW’s request to provide water service to customers in the Beede franchise is for the public good. The record demonstrates that PWW has the requisite managerial, technical, and financial abilities to obtain the requested franchise. PWW and its regulated affiliates, PEU and Pittsfield Aqueduct Company, Inc., provide water service to some 34,000 customers in various systems throughout New Hampshire, and PWW currently operates the adjacent Twin Ridge system. The Beede water system expansion also meets the suitability and availability requirements of DES as required by RSA 374:22, III. We find that application of PWW’s rates to the Beede franchise is just and reasonable. PWW did not request a specific date by which to implement rates and

therefore, consistent with N.H. Code Admin. R. Puc 1203.05, we will approve the rate on a service-rendered basis as of the effective date of this order.

RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing “when all interested parties are in agreement.” Here, Staff, PWW, the Developer, and the Town of Plaistow are in agreement that PWW should operate the Beede water system. Notwithstanding this agreement, we will approve PWW’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, PWW is authorized to operate as a public water utility in the area as shown on the plan filed by PWW on May 11, 2012 located in Plaistow; and it is

FURTHER ORDERED, that PWW is authorized to charge its tariff rates in the new franchise, on a service-rendered basis, effective as of the date of this order, or the date of acceptance of the water system by PWW, whichever is later; and it is

FURTHER ORDERED, that PWW file with the Commission before it begins serving customers in the new franchise area a revised Agreement between itself and the Developer as discussed above in footnote 1; and it is

FURTHER ORDERED, that PWW shall cause a copy of this Order *Nisi* to be mailed by first class mail to the Plaistow Town Clerk and to any known or prospective customers as well as to be 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 July 27,

2012 and to be documented by affidavit filed with this office on or before August 17, 2012; and it is

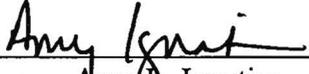
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 3, 2012 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 10, 2012; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 17, 2012, unless PWW 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 PWW shall file a compliance tariff with the Commission on or before August 31, 2012, in accordance with N.H. Code Admin. Rules Puc 1603.02(b).

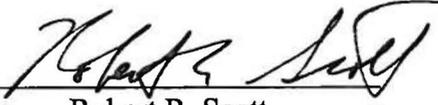
By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 2012.



Amy D. Ignatius
Chairman

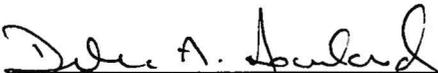


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director