

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 18-090**

**PENNICHUCK EAST UTILITY, INC.**

**Petition for Approval of Changes to Rates and Terms for Fire Protection Services**

**Order *Nisi* Approving Tariff Changes**

**ORDER NO. 26,213**

**January 24, 2019**

This order approves changes to the current non-metered private fire protection rates and terms for customers of Pennichuck East Utility. This order is being issued on a *nisi* basis to ensure that all interested persons receive notice of the decision and have the opportunity to request a hearing before the order becomes effective.

**I. BACKGROUND AND PROCEDURAL HISTORY**

In March of 2018, Commission Staff (Staff) became aware of inconsistencies in how Pennichuck East Utility, Inc., (PEU or the Company) was billing private fire protection service charges to customers residing in the Peterson Village subdivision in Pelham, and the Stone Sled subdivision in Bow. Subsequent discussions ensued among the Company, Staff, and the Office of the Consumer Advocate (OCA). As a result, the Company agreed to submit a filing modifying specific elements of its private fire protection service tariff.

On May 29, 2018, PEU petitioned to change its tariff regarding non-metered private fire protection service to provide additional specificity regarding pricing and installation for different connection sizes. In support of its petition, PEU filed copies of its proposed amended tariff pages, and the testimony of Donald L. Ware, the Company's Chief Operating Officer. On May 30, 2018, the OCA filed a letter of participation. On September 5, 2018, the parties met in a

technical session and agreed to support the tariff changes proposed by the Company in its filing. PEU also agreed to take other actions as a further remedy towards resolving the deficiencies and inequities identified in this proceeding.

On September 25, 2018, PEU submitted a supplemental response to Staff Data Request 1-1, indicating an undercollection of private fire protection revenues in an additional subdivision, Ministerial Heights in Londonderry. PEU's supplemental response also requested an additional tariff change.

On October 2, 2018, PEU filed a Motion for Protective Order and Confidential Treatment of Customer-Specific Account Information and Street Addresses (Motion for Confidential Treatment) with regard to information included in its response to Staff Data Request 1-1.

On November 27, 2018, Staff filed a recommendation that was generally supportive of PEU's petition.

PEU filed for waiver of N.H. Code Admin Rules Puc 1203.05(b) to apply the requested tariff change and customer credits on a bills-rendered basis on January 7, 2019. Staff agreed and filed its recommendation that same day. PEU's petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are at <http://www.puc.nh.gov/Regulatory/Docketbk/2018/18-090.html>.

## **II. POSITIONS**

### **A. PEU**

PEU receives applications for service from building developers installing fire suppression sprinkler systems in newly constructed homes. Although sprinkler systems require a non-metered private fire protection service connection, PEU's current tariff does not provide appropriate specificity of installation configuration for those types of service connections.

PEU notes two types of installations, which the Company has designated Option 1 and Option 2. In an Option 1 installation, developers install a single service line, 1½” or larger, to provide both domestic and fire suppression flows, and a 1” meter to accommodate the combined flows. In an Option 2 installation, the developer installs two separate service lines, a 1” service line with a 5/8” meter to provide domestic flows, and a 1½” or larger, non-metered service line to provide fire protection flows.

The Company finds the Option 1 configuration to be problematic for several reasons. First, PEU must apply the monthly \$62.32 charge for a 1” meter to Option 1 customers, which is \$41.62 more per month than if a typical 5/8” meter had been installed with a monthly charge of \$20.70.<sup>1</sup> Second, the installation of a 1” meter instead of a 5/8” meter results in higher than normal unaccounted-for or lost water due to the relative sensitivity of the two meter sizes. Third, a 1” meter requires a 2.5-times greater frequency of meter testing compared to a 5/8” meter. Fourth, the installation of a single service connection providing combined flows makes it impossible for the Company to turn off the fire protection service without also turning off the domestic service, whether resulting from non-payment for the fire protection service or from an operational problem with the fire suppression system.

#### 1. Subdivisions with Private Fire Protection Service Installations

There are three housing subdivisions in PEU’s current franchise that have private fire protection service installations: Peterson Village in Pelham; Stone Sled Farms in Bow; and Ministerial Heights in Londonderry.

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<sup>1</sup> Prior to November 16, 2018, the minimum monthly charge for a 5/8” meter was \$17.19, and was \$51.76 for a 1” meter. See *Pennichuck East Utility, Inc.*, Order No. 26,179 (October 4, 2018) (order approving rate increase effective for bills rendered after November 16, 2018).

a. Peterson Village

In Peterson Village, 21 homes are Option 1 customers with one service line paired with either a 3/4" or 1" meter. Currently, PEU charges each customer for either a 3/4" or 1" meter, in addition to consumption charges. These customers, however, do not pay a monthly non-metered fire protection service charge.

b. Stone Sled Farms

In Stone Sled Farms, 17 homes are Option 1 customers with one service line paired with a 1" meter. In this subdivision, however, instead of imposing the more expensive 1" meter charge, PEU charges the 5/8" meter charge plus the 1½" non-metered private fire protection service charge each month.

c. Ministerial Heights

In Ministerial Heights, 64 homes are Option 2 customers with a 2" service line that splits outside the home into two services: a 1½" non-metered fire protection service; and a 1" domestic service providing water through a 5/8" meter. Prior to June 2003, these customers paid a 2" non-metered fire protection charge in addition to the standard 5/8" meter charge. PEU, however, ceased billing these customers the non-metered fire protection charge in June 2003.

2. Proposed Tariff Changes

The Company proposed prohibiting future Option 1 installations by mandating that new domestic and private fire protection hook-ups be installed separately with two distinct services and outside shut-offs. PEU also proposed establishing a grandfathered rate for Option 1 customers whose fire protection was installed and in service prior to December 31, 2018. PEU would charge those customers a combined fixed rate of \$30.41 per month, which is the equivalent charge for a 5/8" meter (\$20.70) plus the charge for a non-metered 1½" private fire

protection service (\$9.71).<sup>2</sup> PEU has identified up to 82 homes that may qualify for the grandfathered rate: 40 potential customers in Peterson Village (21 existing at the time of filing); and 42 potential customers in Stone Sled Farms (39 existing at the time of filing).

PEU also proposed basing its non-metered fire protection charge on the size of the fire service tap, as opposed to the size of the pipe entering the property. The fire service tap can either be off of the water main in the street or off of the service.

### 3. Proposed Customer Credits at Peterson Village

PEU proposed credits to its existing Peterson Village Option 1 customers. PEU calculated credits totaling \$9,566.05 through October 2018. The proposed credits are based on the difference between the previously billed charges paid by those customers, based on either a 1” or 3/4” meter, and the fixed monthly charges they would have paid had the proposed grandfathered rate been in effect during that same time period.

### 4. Previous Customer Undercharges

#### a. Stone Sled Farms

From 2007 through 2018, seventeen Option 1 customers were undercharged relative to PEU’s tariffed rate. Through October 2018, these customers were undercharged by a total of \$43,070.34. Rather than charging them the monthly minimum charge for a 1” meter per its tariff, the Company billed them the 5/8” meter charge plus the 1½” non-metered private fire protection service charge each month. At the time of PEU’s filing, the difference between the two billing approaches resulted in customers paying \$26.51 less per month than the appropriate tariffed rate.<sup>3</sup>

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<sup>2</sup> Prior to November 16, 2018, the minimum monthly charge for a 5/8” meter was \$17.19, and the monthly non-metered 1½” private fire protection service rate was \$8.06. Order No. 26,179.

<sup>3</sup> \$51.76 monthly 1” meter rate versus \$17.19 monthly 5/8” meter rate plus \$8.06 monthly 1½” non-metered private service rate. As of November 16, 2018, the monthly difference was \$31.91. Order No. 26,179.

b. Ministerial Heights

From 2003 through 2018, the 64 Option 2 customers were not charged a non-metered fire protection service rate, resulting in a total undercollection of \$92,997.75 through October 2018. PEU indicated that its present management is not certain as to the precise reason behind the decision to cease charging a non-metered fire protection rate to those customers in 2003. The Company stated that this billing discrepancy would not have been discovered through its normal electronic billing integrity reports, but PEU became aware when it manually cross-referenced hard-copies of its billing and installation records in September 2018.

5. Education of Municipal Officials of Tariff Changes

PEU agreed to mail a letter to each municipality, and the municipality's building and/or fire inspector, explaining the approved tariff changes and the technical specifications and design standards for installation of metered and private fire protection services, within 30 days of a Commission order approving the proposed tariff changes. The Company also agreed to meet with officials of the municipalities to discuss the proposed changes, and to file a report by no later than December 31, 2018, detailing which municipal officials were contacted and which officials agreed to meet.

6. Motion for Confidential Treatment

PEU filed its Confidentiality Motion seeking protective treatment of certain confidential customer-specific data contained in the Company's discovery response to Staff Data Request 1-1. The Company's response included schedules containing street addresses, account numbers, and billing histories of various customers. The Company relied on RSA 91-A:5, IV, which exempts from public disclosure "files whose disclosure would constitute an invasion of privacy." PEU argued that there is a recognized privacy interest in individually identifiable customer information, particularly where that information is tied to financial information.

PEU stated that its discovery response includes customer street addresses. PEU asserted that the customer-specific street addresses and account numbers are not necessary to inform the public of the conduct and activities of the Commission, because PEU has provided other information which should be sufficient to inform the public that Commission approval of credits to certain of the customer groups is just and reasonable.

7. Motion for Waiver of Puc 1203.05

PEU filed its Motion to Waive Puc 1203.05 seeking Commission approval to implement the rate change on a bills-rendered basis. PEU stated that implementation on a bills-rendered basis would be just and reasonable, and in the public interest as it would be considerably less confusing to the existing affected customers as their bills would not be prorated and split. It would also save the Company the cost involved with the time required to calculate the multiple individual customer bills.

**B. Staff**

Staff believes that the tariff changes proposed by PEU will result in just and reasonable rates to all affected customers. Staff recommended that the Commission approve the tariff changes proposed by the Company.

Staff reviewed the basis for the Company's proposed credits to Peterson Village customers and the underlying calculations. Staff concluded that the customer credits would provide an equitable solution to resolve a previous regulatory oversight relative to an emerging issue. Staff believes that the proposed customer credits are just and reasonable and recommended that the Commission approve them.

Staff recommended that within 30 days of a Commission order approving the proposed credits, the Company submit a revised schedule containing an updated calculation of the proposed credits to the Peterson Village customers. Staff further recommended that PEU be prohibited from any future recovery of these customer credits via a future general rate increase.

Staff calculated that over the twelve-year period in which Stone Sled Farms customers were undercharged, the resulting subsidization by PEU's other customers on an annual basis amounted to approximately \$3,600. During 2017, that equated to approximately \$0.46 per customer. As a result, Staff concluded that PEU's other customers did not significantly subsidize the 17 undercharged Stone Sled Farms Option 1 customers. Further, while Staff thought it was inappropriate for PEU to charge the Stone Sled Farms customers a rate that was not previously included in its approved tariff, Staff believed the Company's intention in doing so was to remedy a tariff inequity. Staff concluded that the result of PEU undercharging the Stone Sled Farms customers is akin to the customer credits proposed by the Company for the Peterson Village customers.

Staff calculated that over the fifteen-year period in which Ministerial Heights customers were undercharged, the resulting subsidization by PEU's other customers on an annual basis amounted to approximately \$6,200. During 2017, that equated to approximately \$0.78 per customer. As a result, Staff does not believe that PEU's other customers significantly subsidized the 64 undercharged Ministerial Heights customers. Staff further concluded that PEU intended to correct an identified tariff inequity for Ministerial Heights customers and, therefore, ceased billing the previous non-metered fire protection charge. Unfortunately, however, PEU did not follow through with making the appropriate tariff changes that would have resulted in the reinstatement of a more appropriate fire protection charge.

Staff believes that outreach and educational efforts undertaken by the Company will prove beneficial to all parties concerned, including the individual municipalities, PEU's customers, and the Company. Staff, therefore, recommended that the Commission approve this requirement. Staff also recommended that the Commission provide an alternative date to the reporting date deadline of December 31, 2018.

Staff agreed with the Company's concern that public disclosure of customer-specific street addresses and account numbers contained in its response to Staff 1-1, may constitute an invasion of privacy. Staff recommended that the Commission grant PEU's Motion for Confidential Treatment of this information.

Staff agreed with the Company that a waiver of Puc 1203.05(b) is just and reasonable, and in the public good as it reduces cost and confusion.

### III. COMMISSION ANALYSIS

In determining whether rates are just and reasonable, the Commission must balance the customers' interest in paying no higher rates than are required against the investors' interest in obtaining a reasonable return on their investment. *Appeal of Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In this way, the Commission fulfills its duties as an arbiter between the interests of customers and those of a utility's owners. RSA 363:17-a. The Commission exercises its discretion and judgment in striking this balance. *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606, 634-36 (1986).

The Company and Staff agree on proposed tariff changes designed to make its fire protection rates and terms reasonable and equitable. PEU also proposed customer credits. We find the new tariff terms and charges and the customer credits to be just and reasonable pursuant to RSA 378:7. We therefore approve them. We also agree with Staff that the Company should be prohibited from any recovery of the customer credits in a future general rate increase.

Regarding whether information is subject to public disclosure, the New Hampshire Supreme Court and the Commission apply a three-step test. *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008); *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,863 at 2 (February 1, 2016). Under the test, the Commission first inquires whether the information involves a privacy interest, and then asks if there is a public interest in

disclosure. *Id.* at 2. The Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.*

The New Hampshire Supreme Court has held “that the names and addresses of residential customers are entitled to confidential treatment under RSA 91-A:5, IV.” *Public Service of New Hampshire*, Order No. 25,059 at 13 (December 31, 2009) (citing *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106, 113 (2005)). In this case, the customer identities do not assist the public in understanding our decisions regarding the proposed tariff changes. Therefore, we determine that customer identities, including addresses and account numbers, should be kept confidential and should not be disclosed to the public pursuant to RSA 91-A:5, IV.

Last, we address the proposal that PEU provide a report of contacts with municipal officials. We are not as concerned whether a municipal official has agreed to meet as we are with making sure that the building inspectors and fire inspectors in PEU’s service territory understand the installation configuration that will now be required. We will therefore direct PEU to file a report no later than April 1, 2019, that details the Company’s outreach efforts, the meetings held, and the Company’s plans to inform such officials with whom the Company has not yet met.

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

**ORDERED, NISI**, that subject to the effective date below, PEU’s request for changes to its fire protection tariff are APPROVED; and it is

**FURTHER ORDERED**, that PEU shall undertake the outreach to customers and municipalities in its service territory, as described in this order; and it is

**FURTHER ORDERED**, PEU shall file a report with the Commission, by no later than April 1, 2019, describing in detail the Company's outreach efforts to municipal building and fire inspectors and its plan to inform such officials with whom the Company has not yet met of the Company's fire protection rates and installation configuration requirements; and it is

**FURTHER ORDERED**, that PEU shall submit updated schedules showing the revised amounts of customer credits for customers residing in the Peterson Village subdivision, reflecting the additional time and charges accrued from October 2018, within 30 days of the effective date of this order; and it is

**FURTHER ORDERED**, that PEU shall pay the customer credits to Peterson Village customers taking fire protection service, as described in this order and pursuant to the updated schedules required in the previous ordering clause; and it is

**FURTHER ORDERED**, that PEU's motion for confidential treatment is GRANTED; and it is

**FURTHER ORDERED**, that PEU's motion for waiver of Puc 1205.03(b) is GRANTED; and it is

**FURTHER ORDERED**, that within 20 days of the effective date of this order, PEU shall file tariff pages in conformance with the changes approved in this order; and it is

**FURTHER ORDERED**, that PEU shall cause a summary of this order 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 February 4, 2019, and to be documented by affidavit filed with this office on or before February 8, 2019; and it is

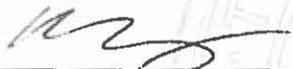
**FURTHER ORDERED**, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing which states

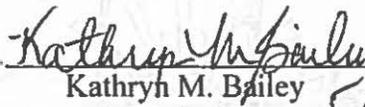
the reason and basis for a hearing no later than February 11, 2019, for the Commission's consideration; and it is

**FURTHER ORDERED**, that any person interested in responding to such comments or request for hearing shall do so no later than February 18, 2019; and it is

**FURTHER ORDERED**, that this *order* shall be effective February 24, 2019, unless PEU fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

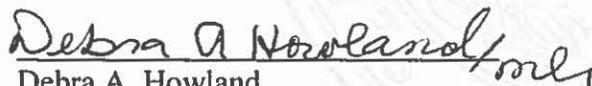
By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of January, 2019.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director