

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-176

PENNICHUCK WATER WORKS, INC.

Motion to Modify Franchise Order NISI No. 25,393

Order *Nisi* Granting Petition to Expand Franchise

O R D E R N O. 26,592

March 11, 2022

This order approves a petition of Pennichuck Water Works, Inc. to expand its existing franchise authority in Plaistow to include one additional lot located at 28 Walton Road. The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2020/20-176.html.

I. PROCEDURAL HISTORY

Pennichuck Water Works, Inc. (PWW, or the Company) filed a motion on October 29, 2020, to modify Order No. 25,393 to grant a limited expansion of PWW's existing franchise in the Town of Plaistow. PWW subsequently filed a petition on December 23, 2020, requesting approval pursuant to RSA 374:22 and RSA 374:26 to expand the Company's existing system to serve one additional residential home adjacent to the previously approved franchise area.

On October 19, 2021, the Commission issued a notice of commencement of adjudicative proceeding and prehearing conference on this matter. At the prehearing conference held, as scheduled, on November 3, 2021, PWW withdrew its motion to modify Order No. 25,393. However, the Company stated that it intended to rely on the

attachments to that motion to support its December 23, 2020, petition for franchise expansion.

On November 16, 2021, PWW filed a proposed procedural schedule developed jointly with the NH Department of Energy (Energy). The Commission issued a procedural order on November 22, 2021, approving the schedule. In the same order, the Commission directed PWW to file, by January 4, 2022, a status report of its discussions with Energy regarding the petition for franchise expansion. On January 5, 2022, PWW filed a letter requesting acceptance of its late-filed status report, noting that Energy did not object to the filing. On January 11, 2022, Energy filed a letter stating its position on this matter, taking no exception to the Company's petition.

II. POSITIONS OF THE PARTIES

A. PWW

In Order No. 25,393 (July 18, 2012) issued in Docket DW 12-109, the Commission granted PWW franchise authority to extend its water system to serve the Twin Ridge community in Plaistow. The approved franchise territory was delineated on maps provided with the Company's petition in that docket. PWW now seeks approval to expand that franchise territory to include one additional residential home located at 28 Walton Road in Plaistow. The Company's petition is made in response to a request from the Beede Site Group (Beede), an unincorporated association that owns, by and through 11 Kelley and 42 Old County Road Properties, LLC, the Beede Waste Oil Superfund site in Plaistow. *See* Testimony of Donald L. Ware, Attachment DLW-1 at 1. Beede requested that PWW be prepared to provide water service to the 28 Walton Road residence in the event contamination stemming from the superfund site were to adversely affect the private water well on that property. Accordingly, PWW submitted

its request for franchise expansion as a proactive step to ensure a quick response and avoid the need to seek emergency approval of the Commission in such an event.

In its January 5, 2022 letter, PWW confirmed that it is not seeking contingent franchise approval under RSA 374:27¹, as the Company anticipates exercising the requested franchise expansion authority within two years of approval by the Commission. The Company's chief engineer testified at the November 3, 2021 prehearing conference that the request to expand the existing franchise in Plaistow stems from a concern regarding potential contamination of an existing well on the lot that is the subject of the expansion request.

B. Department of Energy

Energy stated that it "takes no exception to the Company's request" for the franchise expansion. Energy further stated that, pursuant to RSA 12-P:2, IV, it considers the docket record to be complete for consideration by the Commission.

III. 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 will grant a request for franchise authority if it finds that it is for the public good. RSA 374:26. When determining whether a proposed franchise is for the public good, the Commission assesses, among other things, the managerial, technical, and financial abilities of the petitioner. *See Pennichuck Water Works, Inc.*, Order No. 25,393 at 4 (July 18, 2012) (granting PWW's request for franchise and rates authority in Plaistow). Under RSA 374:22, III, no water company shall obtain the permission or approval of the

¹ RSA 374:27 Time Limit states that "Authority granted under RSA 374:20-22 and 374:24-26 may only be exercised within 2 years after the same shall be granted, and shall not be exercised thereafter."

Commission to operate as a public utility without first satisfying any NH Department of Environmental Services (NHDES) requirements concerning the suitability and availability of water. Pursuant to RSA 378:5 and 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.

The Commission has previously found that PWW possesses the requisite managerial, technical, and financial capabilities to provide water service. *Id.* at 4. Based on our review of the record and the letter of tacit support filed by Energy, we find that PWW continues to possess the managerial, technical, and financial capabilities to provide water service. We further find that the expansion of the franchise area granted herein is limited to the residential lot at 28 Walton Street identified in the Company's October 29, 2020 filing at Attachment A.

We note that an expansion of the Company's existing franchise authority requires the approval of NHDES pursuant to RSA 374:22, III. In the current docket, the Company provided a copy of a letter from NHDES dated May 2, 2012, referencing PWW's water main extension to the Twin Ridge Condominiums in Plaistow approved in Docket DW 12-109. In that letter, NHDES "determined that this system meets the suitability and availability criteria of NH RSA 374:22, III, relating to the proposed water main extension," subject to certain conditions enumerated in the letter. The Company submitted a copy of the NHDES letter with its petition in the current docket to show that "PWW has suitable and available water to serve #28 Walton Road." We note, however, that while the proposed expansion is located within the same town and immediately adjacent to PWW's existing franchise territory, the NHDES letter applied specifically to the franchise area as proposed in Docket DW 12-109.

We further note that an earlier letter from NHDES, dated February 9, 2012, and attached to the Company's current petition at Bates Pages 33-35, states: "In light of the *declining and diminished yield in the system's sources, well siting constraints within the water system area and surrounding areas, and the method of construction of this new well*; NHDES grants [the] request for a waiver to the pertinent sections of Env-Dw 301.06 subject [to] the conditions stipulated below" followed by the same conditions listed in the May 12, 2012 letter, including several continuing reporting requirements (emphasis added). Accordingly, we find that the extension of PWW's franchise authority to 28 Walton Road in Plaistow remains subject to compliance with any further NHDES requirements that may be warranted prior to any additional line connections pursuant to RSA 374:22 III. We, therefore, direct the Company to submit a copy of this order to NHDES to ensure that NHDES records concerning PWW's franchise in Plaistow are complete.

PWW also requested authority to charge its current tariffed rates in the new franchise extension. Pursuant to RSA 378:7, the Commission shall set rates that are just and reasonable, as it has done recently for PWW. *See, e.g., Pennichuck Water Works, Inc.*, Order No. 26,425 (November 24, 2020) at 4, and *Pennichuck Water Works, Inc.*, Order No. 26,070 (November 7, 2017) at 17. Based on the record in this docket and Docket DW 12-109, and Energy's statement that it "takes no exception to the Company's request," we find the application of PWW's consolidated rates within the limited franchise expansion approved herein to be just and reasonable in the event PWW is asked to extend service to the customer located at 28 Walton Road in Plaistow.

Finally, we note that Commission approval in this docket does not constitute prior approval of capital costs that may be incurred in any future line extensions made pursuant to the authority granted in this order.

Based upon the foregoing, it is hereby

ORDERED NISI, that Pennichuck Water Works, Inc.'s request for a franchise expansion pursuant to RSA 374:22 to provide water service to the residence located at 28 Walton Road in the Town of Plaistow in the event such service is requested is APPROVED, subject to the effective date below; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file a statement with the Commission confirming the approval of and compliance with all requirements of the New Hampshire Department of Environmental Services that may apply pursuant to RSA 374:22, III prior to the initiation of installation or connection of the approved system extension to 28 Walton Road in the Town of Plaistow; and it is

FURTHER ORDERED, that the rates, terms, and conditions of Pennichuck Water Works, Inc.'s consolidated tariff shall apply to the residence at 28 Walton Road in Plaistow as identified in the petition filings in this docket; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall cause a copy of this order to be published on its website within one business day of this order, and to be documented by affidavit filed with the Commission on or before April 7, 2022; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall provide a copy of this order to the New Hampshire Department of Environmental Services within two business days of this order, to be documented by affidavit filed with the Commission on or before April 7, 2022; and it is

FURTHER ORDERED, that 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 March 18, 2022 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 March 25, 2022; and it is

FURTHER ORDERED, that this order shall be effective April 11, 2022, unless Pennichuck Water Works, Inc. 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

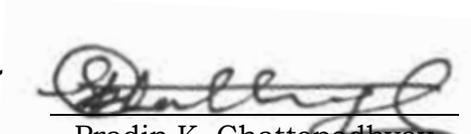
FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file an updated franchise boundary description and map with the Commission on or before April 25, 2022; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall file a compliance tariff with the Commission on or before April 25, 2022 in accordance with N.H. Code Admin. Rules Puc 1603.02(b).

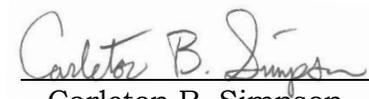
By order of the Public Utilities Commission of New Hampshire this eleventh day of March 2022.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 20-176

Printed: 3/11/2022

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