

THE STATE OF NEW HAMPSHIRE



**PUBLIC UTILITIES COMMISSION**  
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Debra A. Howland

May 23, 2007



Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

Re: Docket No. DW 06-172  
Pennichuck East Utility, Inc.  
Petition for the Transfer of Daniels Lake Water Works, Inc.  
Settlement Agreement

Dear Ms. Howland:

Enclosed please find a Settlement Agreement resolving all issues related to the petition of Pennichuck East Utility, Inc. (PEU) to acquire the assets and franchise of Daniels Lake Water Works, Inc. (PEU). Please note that the agreement is signed by PEU and Commission Staff (Settling Parties).

In Docket No. DW 00-247, *Investigation into Daniels Lake Water Works, Inc.*, the Commission placed Daniels Lake in receivership and assigned the management of the utility to Water Systems Operators, Inc. (WSO). 85 NH PUC 846 (2000). The Settlement Agreement recommends that WSO be fully compensated for its un-reimbursed operation costs upon closing of the transfer. Although WSO did not intervene in this docket, Staff advised Mr. Joseph Damours of WSO of the settlement terms. Mr. Damours expressed satisfaction with the payment provision. Staff will assist WSO in terminating the receivership and closing Docket No. DW 00-247 once the transfer is completed.

You will note that the Settling Parties recommend that the Commission approve the terms of the Settlement Agreement without hearing. We make this recommendation because the docket was fully noticed and no person requested intervention. In addition, the expeditious transfer of Daniels Lake to PEU will permit PEU to begin long-overdue improvements to the Daniels Lake system as soon as possible.

If you have any questions, please contact me. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Suzanne Amidon', with a large circular flourish above the name.

Suzanne Amidon  
Hearings Examiner/Staff Attorney

Enclosure

cc: Service List

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**PENNICHUCK EAST UTILITY, INC.  
DW 06-172**

**PETITION TO ACQUIRE ASSETS AND FRANCHISE RIGHTS OF DANIELS LAKE  
WATER WORKS, INC.**

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

This Agreement is entered into this 22<sup>nd</sup> day of May, 2007, between Pennichuck East Utility, Inc. (PEU) and the Staff (Staff) of the Commission with the intent of resolving all of the issues in the above-captioned proceeding.

**II. PROCEDURAL BACKGROUND**

PEU provides water service to approximately 5,000 customers located in limited areas of the towns of Litchfield, Londonderry, Windham, Pelham, Atkinson, Sandown, Derry, Raymond, Plaistow, Hooksett, Bow, Chester, Exeter and Lee. On December 29, 2006, PEU filed with the Commission a petition for approval of the transfer to PEU of the assets and franchise rights of Daniels Lake Water Works, Inc. (Daniels Lake) located in the Town of Weare. With its petition, PEU filed a copy of an Asset Purchase Agreement (APA) signed by Josef Fitzgerald, owner of Daniels Lake, by which PEU would acquire all of the utility assets of Daniels Lake for the purchase price of \$1,000.00.

Daniels Lake was authorized to do business as a public utility in New Hampshire pursuant to *Re Daniels Lake Water Works, Inc.*, 80 NH PUC 671 (1995). Docket No. DW 00-247 was opened by the Commission on October 24, 2000 to investigate the quality of Daniels Lake's service to customers and whether Daniels Lake remained viable as a public utility. The Commission placed Daniels Lake in receivership pursuant to RSA 374:47-a through Order No.

23,604 issued December 22, 2000. Daniels Lake has been operated by Water System Operators, Inc. (WSO) since December 29, 2000. 85 NH PUC 846 (2000).

On January 22, 2007, the Commission issued an Order of Notice in the instant docket establishing a prehearing conference for February 28, 2007. There were no interventions. Following the prehearing conference, PEU and Staff submitted a proposed procedural schedule, which provided for one round of discovery and a technical session on May 17, 2007. The Commission approved the procedural schedule by secretarial letter dated March 2, 2007.

PEU and Staff conducted discovery as scheduled and met in a technical session on May 17, 2007. WSO was notified of the technical session but did not attend. The technical session resulted in this Settlement Agreement between PEU and Staff.

### III. TERMS OF AGREEMENT

PEU and Staff have reached agreement on all issues as follows.

#### A. Transfer of Assets and Franchise Rights

PEU and Staff agree that the transfer to PEU of the utility assets and real property of Daniels Lake as provided for in the APA, as well as the associated franchise rights, is just and reasonable and in the public interest consistent with N.H. Code Admin. Rules Puc 203.20(b) and recommend the Commission approve the transfer. PEU and Staff further agree that PEU has the requisite technical, managerial and financial capabilities to operate the Daniels Lake system, and that the Daniels Lake system meets the suitability and availability requirements of DES as per RSA 374:22,III.

B. Issuance of Order Without Further Proceedings

PEU and Staff agree and recommend that the Commission issue an order approving the transfer of assets and franchise rights of Daniels Lake as soon as possible. PEU and Staff agree and recommend that no further hearing be held on this matter since this docket has been fully noticed to the public and no interventions were requested. An order without further hearings would also be in the public interest because PEU proposes to begin undertaking capital improvements at the Daniels Lake system immediately following the transfer during the upcoming summer months.

C. Recovery of Capital Improvements and Acquisition Costs

PEU and Staff agree that there is an urgent need for capital improvements at Daniels Lake, especially considering the length of time this system has been in receivership. PEU plans to begin those improvements as soon as possible during 2007. Therefore, Staff and PEU agree and recommend that the Commission allow PEU to include the Daniels Lake system in PEU's rate case, Docket No. DW 07-032 (filed on April 20, 2007), such that the anticipated improvements in Daniels Lake can be considered for recovery in PEU's rate case. In addition, Staff and PEU agree that recovery of PEU's acquisition costs associated with the Daniels Lake system should take place in Docket No. DW 07-032. Staff and PEU agree that notice to Daniels Lake customers of that rate proceeding will be necessary.

D. Planned Capital Improvements

PEU's preliminary plans for capital improvements at Daniels Lake include the installation of meters; improvements to water supply including treatment for iron and manganese

and the addition of chlorine for bacteriological control; evaluation of the existing well; pump station reconstruction; replacement of the existing storage tank; addition of booster pumps and generator; and other improvements to be determined once a more detailed evaluation is conducted.

E. Customer Rates

Staff and PEU recommend, consistent with PEU's intention as expressed in its petition in the instant docket, that the Commission authorize PEU to continue to charge the existing flat rate approved by the Commission in Order No. 24,622 (May 12, 2006) in Docket No. DW 00-247. Staff and PEU further recommend that, once a water meter is installed at a customer premise, PEU be authorized to charge PEU's current authorized metered tariff rate.

F. Payment to Current Receiver and Establishment of Deferred Asset

The Commission authorized WSO to add a surcharge to customer bills to begin to compensate WSO for the excess of expenses over revenues for the receivership period to that point in time. See Order No. 24,622 (May 12, 2006). Staff and PEU recommend that, effective the date of the transfer of the system to PEU, the surcharge end. Once the revenues and expenses of the receivership period are reconciled, it is expected that WSO will still have a balance due from the system. PEU agrees to pay WSO for that balance, and Staff and PEU agree and recommend the Commission authorize PEU to treat that payment as a deferred asset on its books. Staff and PEU further agree and recommend to the Commission that the detail of recovery of that deferred asset take place in Docket No. DW 07-032.

G. Closing on APA

Staff and PEU further agree and recommend to the Commission that it condition approval of this Settlement Agreement upon the occurrence of the closing on the APA within 45 days of any Commission order approving the Settlement Agreement.

IV. CONDITIONS

The making of this Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in these proceedings is true or valid.

This Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition, and if the Commission does not accept said provisions in their entirety, without change or condition, the Agreement shall at PEU's or Staff's option, exercised within thirty days of such Commission order, be deemed to be null and void and without effect and shall not constitute any part of the record in this proceeding nor be used for any other purpose.

The Commission's acceptance of this Agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that (as the parties believe) the adjustments and provisions set forth herein in their totality are just and reasonable and that the revenues contemplated by this Agreement will be just and reasonable under the circumstances.

The identification of the resolution of any specific issue in this Agreement does not indicate Staff's or PEU's agreement to such resolution for purposes of any future proceeding, nor does the reference to any other document bind Staff and the parties to the contents of, or

recommendations in, such document for purposes of any future proceeding. The Commission's approval of the recommendations in this Agreement shall not constitute a determination or precedent with regard to any specific adjustments, but rather shall constitute only a determination that the income requirement and rates resulting from this Agreement are just and reasonable.

The discussions which have produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in their respective names by their fully authorized agents.

Respectfully Submitted:

PENNICHUCK EAST UTILITY, INC.

By McLane, Graf, Raulerson & Middleton,  
Professional Association

Dated: 5/22/07

By:   
Sarah B. Knowlton, Esq.

STAFF OF PUBLIC UTILITIES  
COMMISSION

Dated: 5/23/07

By:   
Suzanne G. Amidon, Esq.  
Staff Attorney