

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 06-172

ORDER OF NOTICE

On December 29, 2006, Pennichuck East Utility, Inc. (PEU) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of the transfer of assets and franchise rights of Daniels Lake Water Works, Inc. (Daniels Lake) located in the Town of Weare to PEU. With the petition, PEU filed a copy of the Asset Purchase Agreement (APA) signed by Josef Fitzgerald, the reputed owner of Daniels Lake, by which PEU would acquire all assets of Daniels Lake. PEU also filed copies of the warranty deeds related to the transfer of real estate from Daniels Lake to PEU and copies of maps depicting the real estate.

Upon Commission approval of the transaction, PEU proposes to operate the Daniels Lake water utility and provide service to the approximately 30 customers in Daniels Lake's franchise territory under the terms and conditions of PEU's current tariff on file with the Commission. Specifically, PEU requests authority to charge Daniels Lake customers Rate A as set forth in its tariff.¹ Currently, Daniels Lake customers are provided service on a flat unmetered rate of \$42 per month, or \$504 per year. Under PEU's Rate A, a typical customer would pay \$604.96, an increase of approximately 20 percent over current rates.

PEU recites that 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). PEU notes that since December 22, 2000, Daniels Lake has been in receivership pursuant to RSA 374:47-a,

¹ The Commission in Order No. 24,591 (February 24, 2006) approved a settlement agreement which consolidated three existing rate groups (A, B and L) into two rate groups (A and L). The only difference between rate A and rate L is that rate L includes a surcharge for residents of Litchfield for municipal fire protection.

and, since December 29, 2000, has been operated by Water Systems Operators, Inc.(WSO). *Re Daniels Lake Water Works, Inc.*, 85 NH PUC 846 (2000). PEU states that, on November 1, 2002, Daniels Lake was administratively dissolved by the New Hampshire Secretary of State pursuant to RSA 293-A:14.20. PEU states its understanding that, as a matter of law, upon dissolution of Daniels Lake as a corporation, the Daniels Lake assets transferred to Daniels Lake's sole shareholder, Josef Fitzgerald. PEU further states that notwithstanding the dissolution of Daniels Lake, Mr. Fitzgerald has authority to sell Daniels Lake's assets to wind up and liquidate the business pursuant to RSA 293-A:14.05

PEU states that Mr. Fitzgerald and PEU signed the APA on June 28, 2006. Pursuant to the APA, Mr. Fitzgerald and Daniels Lake will transfer all of the Daniels Lake assets to PEU for the purchase price of one thousand dollars (\$1,000). PEU describes the Daniels Lake assets to include the water supply and distribution system facilities, underground piping, all pump house buildings or other structures, related real property, including easement rights and in some cases warranty deeds to parcels of land, storage tanks and related equipment and franchises.

PEU attests that it has the requisite technical, managerial and financial expertise to acquire and operate the Daniels Lake assets based on its proven track record of operation of a water utility business in New Hampshire since 1998. PEU states that the transfer of Daniels Lake assets and franchise to PEU is consistent with the public good because it will end the receivership of Daniels Lake and allow for necessary improvements and operational stability to the system. PEU requests that the Commission approve the transfer as in the public good consistent with RSA 374:30.

The filing raises, inter alia, issues related to the present ownership of Daniels Lake and whether Josef Fitzgerald has the legal ability to transfer the Daniels Lake assets to PEU pursuant

to RSA 293-A:14.05; whether it is in the public good to terminate Daniels Lake receivership according to RSA 374:47-a; how to fully compensate WSO for operation of the Daniels Lake utility during the receivership; whether the transfer of the Daniels Lake assets to PEU is consistent with the public good pursuant to RSA 374:30; whether PEU has the technical, managerial and financial expertise to acquire and operate Daniels Lake as a water utility pursuant to RSA 374:22; whether it is in the public interest to grant PEU a franchise to operate as a utility in the Daniels Lake franchise area; whether imposing PEU's existing tariff rates on the customers of Daniels Lake is just and reasonable; and whether it is appropriate to allow PEU to operate Daniels Lake according to its existing tariff. Each party has the right to have an attorney represent them at their own expense.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on February 28, 2007 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15(c) shall be considered; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, PEU, the Staff of the Commission and any Intervenors hold a Technical Session to review the petition and allow PEU to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.12, PEU shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than February 7, 2007, in a newspaper with general circulation in those portions

of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before February 28, 2007; and it is

FURTHER ORDERED, that PEU send a copy of this Order of Notice by first class mail to each customer of Daniels Lake, to Town Clerk for the Town of Weare, to Mr. Josef Fitzgerald and to Water Systems Operator, Inc.; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to PEU and the Office of the Consumer Advocate on or before February 23, 2007, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before February 28, 2007; and it is

By order of the Public Utilities Commission of New Hampshire this twenty-second day of January, 2007.



Debra A. Howland
Executive Director & Secretary

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.