

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 11-267

PENNICHUCK EAST UTILITY, INC.

Petition for Waiver of Short Term Debt Limit

Order *Nisi* Approving Waiver

ORDER NO. 25,326

February 1, 2012

I. BACKGROUND

On December 9, 2011, Pennichuck East Utility, Inc. (PEU) filed a petition seeking a waiver of the short term debt limit delineated in N.H. Code Admin. Rules Puc 608.05. PEU seeks to increase its short term debt limit from 10% to 17% of its net fixed plant through the end of 2012. PEU seeks to use this debt, primarily to finance its budgeted capital improvements, to retire an existing long term loan, and to declare and pay a dividend to improve its debt-equity ratio. The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at <http://www.puc.state.nh.us/Regulatory/Docketbk/2011/11-267.html>.

According to PEU, the Company's balance of short term debt, as of October 31, 2011, was 7.21% of its net fixed plant in service, partly due to the need earlier in 2011 to retire a 2006 promissory note to its parent, Pennichuck Corporation, in the amount of \$725,389. The note was not renewed because of the pending acquisition of Pennichuck Corporation by the City of Nashua. PEU expects its short term limit to extend past the 10% limit in early 2012 due to several circumstances. The Company expects minimal net income or perhaps a small loss for

2011 and also expects an operating loss in 2012. The Company has cash needs for its planned capital expenditures, net of anticipated State Revolving Loan Fund (SRF) borrowing, of \$2.0 million in 2012. As a result of its current minimal operating income, PEU is currently unable to issue new long term debt, including the anticipated SRF loans, due to loan covenants under its existing Business Finance Authority of New Hampshire (BFA) loan. Those covenants require PEU to have earnings of at least 1.5 times interest expense at the time of issuance of any new long term debt. As a result, PEU wishes to use short term debt to retire the BFA loan, thus eliminating the restriction and enabling it to access the SRF. Finally, as part of the Company's ongoing effort to improve the debt-equity ratio of its capital structure, an issue which arose in a prior docket, PEU wishes to use \$900,000 of short term debt to declare and pay a dividend. In its petition, PEU points out that pursuant to the settlement agreement approved by the Commission in Docket No. DW 11-026 regarding the City of Nashua's acquisition of Pennichuck Corporation, PEU will not seek rate relief in 2012 and, as a result, normal cash flow is not a viable option to meet these additional cash requirements in 2012. PEU therefore seeks an extension of its short term debt limit to 17% of its net fixed plant through the end of 2012, such short term borrowing to be made through the existing Money Pool Agreement with Pennichuck Corporation. The Company will be addressing its long term financing needs subsequent to the closing of the acquisition of Pennichuck Corporation by the City of Nashua.

On January 23, 2012, Commission Staff recommended the Commission grant PEU's request but only up to a level of 15% of its net fixed plant in service. Staff stated that while it supported extending the limit to finance capital expenditures and to retire the BFA loan, it did not feel that borrowing short term debt to pay a dividend was appropriate. Staff stated the

proportion of equity in PEU's capital structure was now at 40%, reducing the need to further address the debt-equity ratio. Staff also stated that PEU indicates that it expects little or no positive earnings in 2011, another reason the anticipated dividend is not appropriate. Staff cited the approximately \$600,000 in net cash flow that PEU receives annually for depreciation through its current rates and, combined with the additional \$2.5 million in cash derived from a short term debt limit of 15% of net fixed capital, would supply ample cash flow for PEU to meet its cash needs until its long term financing is addressed following the Nashua acquisition of Pennichuck Corporation. On January 26, 2012, Staff filed a letter stating that PEU did not object to Staff's recommendation of a short term debt limit of 15% of net fixed plant.

II. COMMISSION ANALYSIS

Pursuant to N.H. Code Admin. Rules 201.05(a), the rules of the Commission may be waived if the Commission finds that the waiver is in the public interest and that it will not disrupt the orderly and efficient resolution of matters before the Commission. We agree with Staff that a waiver of the short term debt limit in Puc 608.05 would serve these purposes. PEU indicates it will exceed the 10% short term debt limit due to little or no current earnings, the cash needed for its 2012 budget for capital expenditures, and the need to retire a long term loan in order to have the ability to access low-cost SRF loans. PEU has indicated its agreement with Staff that a 15% debt limit is adequate. PEU's proposed uses of the short term loans from the Money Pool Agreement appear reasonable and we will approve a waiver up to a level of 15% of PEU's net fixed plant through December 31, 2012. Following the City of Nashua's acquisition of PEU's parent, Pennichuck Corporation, PEU will evaluate its alternatives for permanent debt financing. If PEU does not secure suitable long term financing to bring its short term debt limit back below

10% before year-end 2012, it should advise the Commission as soon as practicable and make the appropriate filing for further consideration.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Pennichuck East Utility, Inc.'s request for a waiver of Puc 608.05 up to a limit of 15% of its net fixed plant is **APPROVED** subject to the effective date below; and it is

FURTHER ORDERED, that PEU's waiver will expire on December 31, 2012; and it is

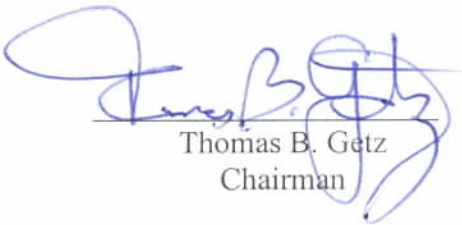
FURTHER ORDERED, that PEU shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than February 13, 2012 and to be documented by affidavit filed with this office on or before February 20, 2012; and it is

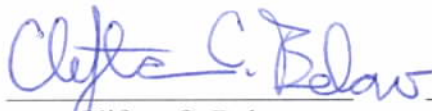
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than February 20, 2012 for the Commission's consideration; and it is


FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 27, 2012; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 9, 2012, 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 first day of February,
2012.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director



SERVICE LIST - EMAIL ADDRESSES - DISCOVERY MATERIALS

Pursuant to N.H. Admin Rule Puc 203.09 (d) and 203.11 (a) (11) Electronic copies of all discovery shall be served on every person designated for discovery filings on the Commission's official service list. [Discovery shall not be filed as part of a docket filing pursuant to 203.02]

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPLC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.