

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

**DOCKET NO. DW 20-XXX**

**PENNICHUCK EAST UTILITY, INC.  
TOWN OF SALEM, NEW HAMPSHIRE**

**PETITION TO TRANSFER SERVICE TERRITORY AND ASSETS  
AND TO COMMENCE BUSINESS**

NOW COME Pennichuck East Utility, Inc. (“PEU”) and the Town of Salem (“Salem” or “Town”) (together the “Parties”), pursuant to RSA 374:30, and jointly ask that the New Hampshire Public Utilities Commission (“PUC” or “Commission”) approve the transfer of portions of PEU’s service territory abutting Routes 28 and 111 in the Town of Windham (“Windham”), along with certain assets, to Salem. In addition, Salem, pursuant to RSA 374:22 and RSA 362:4, III-a. (a), asks the Commission for permission to commence business in the Town of Windham. As explained herein, Salem would not be considered a public utility because it will not charge new customers a rate higher than 15 percent above what it charges its municipal customers and it will provide an equal level of water service. In support, the Parties state as follows:

1. Salem is a municipality duly established and existing under New Hampshire law, RSA Chapter 31, which owns and operates a public water system providing service in Salem.
2. PEU is a regulated water utility pursuant to RSA 362:2 and 362:4. It is a subsidiary of Pennichuck Corporation, which is owned by the City of Nashua. PEU’s authority to provide water service in Windham stems from Order No. 17,597 in Docket No. DE 85-39.
3. Windham is a municipality duly established and existing under New Hampshire law, RSA Chapter 31, which does not own or operate a public water system.

4. Salem, PEU and Windham are signatories, along with the Manchester Water Works (“MWW”), the Town of Derry, the Hampstead Area Water Company (“HAWC”), and the Town of Plaistow, to the Agreement Regarding the Southern New Hampshire Regional Water Interconnection Project (“Interconnection Agreement”). See Attachment A. The Office of the Attorney General approved the Interconnection Agreement on April 22, 2019.

5. The purpose of the Interconnection Agreement, which was developed in collaboration with the Department of Environmental Services (“DES”), is to address water issues within Windham, Salem, Plaistow, and the HAWC service territory, including contaminated wells in Windham and Windham’s need for additional water capacity. The Interconnection Agreement facilitates the flow of safe and reliable drinking water from MWW through Derry, Windham, Salem, Atkinson, and Plaistow.

6. Among other things, the Interconnection Agreement provides that Salem will construct, own, operate, and maintain a 20-inch water transmission main along Route 128 in Windham from the Derry town line to the Salem town line. In addition, Salem will construct, own, operate, and maintain a 12-inch water main along Route 111 in Windham from the intersection with Route 28 to the vicinity of Klemms Mobil Station.

7. Pursuant to the Interconnection Agreement, PEU agreed that it would cooperate with any filings with the PUC that would be required for Salem to serve retail customers in Windham, and that it would surrender its franchise rights in agreed-upon areas. In particular, Salem and PEU have agreed that PEU will transfer its franchise rights in the areas identified on the map provided as Attachment B, which, in general, about the 20-inch transmission water main along Route 28 in Windham and the 12-inch water main along Route 111.

8. The Windham Board of Selectmen voted at its May 18, 2020 meeting to support this Petition. The Board of Selectmen thoroughly vetted the issues through a series of duly-noticed public meetings. See Attachment C.

9. Pursuant to RSA 374:30, “[a]ny public utility may transfer or lease its franchise, works or system, or any part of such franchise, works or system, exercised or located in this state...when the commission shall find it will be for the public good and shall make an order assenting thereto, but not otherwise.” In determining whether a proposed franchise transfer is for the public good, the Commission assesses, among other things, the managerial, financial and technical expertise of the acquiring party. See, *Lakes Region Water Co., Inc. and Dockham Shores Estates Water Company, Inc.*, Order No. 25,963, at 7 (November 10, 2016).

10. PEU does not currently serve customers in the areas abutting Route 28 but it does provide service to 17 customers in areas abutting Route 111, beginning at the intersection of Route 111 and Range Road and heading southwest along Range Road to its intersection with Edgewood Drive. PEU owns certain assets in that section of Range Road (acquired as a contribution in aid of construction), which it proposes to transfer to Salem at no cost. In the attached pre-filed testimony of Donald L. Ware, Chief Operating Officer of PEU, he describes in detail the portions of the service area that PEU would surrender, as well as the assets that would be transferred, and he explains why the transfer to Salem would be for the public good. See Attachment D.

11. RSA 374:22, I provides that no person or entity shall commence business “in any town in which it shall not already be engaged in such business...without first having obtained the permission and approval of the commission.” Moreover, RSA 362:4, III-a. (a) (1) makes clear that a municipal corporation furnishing water services outside its municipal boundaries is subject

to the franchise application requirements of RSA Chapter 374. RSA 374:26 further requires that the Commission grant such permission “whenever it shall, after due hearing, find that such engaging in business...would be for the public good.” The Commission has stated that “[w]hen determining whether a proposed franchise is for the public good, the Commission assess, among other things, the managerial, technical, and financial expertise of the petitioner.” *Town of Derry*, Order No. 26,255 at 8 (June 7, 2019).

12. Attachment E is the pre-filed testimony of Roy Sorenson, Salem’s Director of Municipal Services. As required by RSA 374:22, he demonstrates that Salem has the financial, technical and managerial expertise to operate and maintain a public utility. In addition, Mr. Sorenson explains that Salem will, as agreed to with Windham, provide service to customers in Windham at rates 15% above the rates it charges in Salem and consistent with the terms and conditions under which it provides service in Salem, and that such rates are below PEU’s rates.

13. As required by RSA 374:22, III, DES has certified that Salem has satisfied DES requirements concerning the suitability and availability of water for service in Windham. In addition, DES confirms that the transfer of the service area from PEU to Salem is consistent with the Interconnection Agreement and is for the public good. See Attachment F.

14. In conclusion, it will be for the public good for PEU to transfer the identified portions of PEU’s service area to Salem and for Salem to engage in business in Windham because, as described herein, such actions will advance the purposes of the Interconnection Agreement. Inasmuch as all interested parties are in agreement, PEU and the Town of Salem ask that the Commission approve this Petition without hearing pursuant to RSA 374:26, or, in the alternative, grant approval by Order *Nisi*.

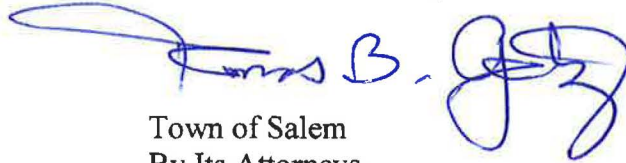
WHEREFORE, the Parties respectfully request that the Commission:

- A. Approve the transfer of the PEU service area and assets as described herein to Salem;
- B. Permit Salem to commence business in Windham; and
- C. Grant such other and further relief as it deems appropriate.

Respectfully submitted,



Donald L. Ware  
Chief Operating Officer  
Pennichuck East Utility, Inc.



Town of Salem  
By Its Attorneys,  
McLANE MIDDLETON,  
PROFESSIONAL ASSOCIATION  
Thomas B. Getz, Bar No. 923  
11 South Main Street, Suite 500  
Concord, NH 03301  
(603) 226-0400  
[thomas.getz@mclane.com](mailto:thomas.getz@mclane.com)

Certificate of Service

I hereby certify that on the 21<sup>st</sup> of May, 2020, an electronic copy of the foregoing Petition was delivered to the New Hampshire Public Utilities Commission.



---

Thomas B. Getz