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PUBLIC UTILITIES COMMISSION
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

May 11, 2021

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

Re: Docket No. DW 20-080 - Pennichuck East Utility, Inc. and Town of Salem
Petition to Transfer Service Territory and Assets and to Commence Business
Staff Recommendation

Dear Ms. Howland:

The purpose of this letter is to offer the recommendation of Commission Staff (Staff) of the New Hampshire Public Utilities Commission (Commission) regarding the joint petition of Pennichuck East Utility, Inc. (PEU or the Company) and the Town of Salem (Salem or the Town) (collectively, the Petitioners).

The Petitioners requested Commission approval of PEU's transfer of a portion of its franchise and certain assets in the Town of Windham (Windham) to Salem, pursuant to RSA 374:30. Salem also requested permission to provide water service in that area of Windham, pursuant to RSA 374:22 and RSA 374:26. Salem, lastly, requested that it not be considered a public utility as a result of the franchise transfer and provision of water service outside its municipal boundaries, pursuant to RSA 362:4, III-a (a), thus not subject to Commission regulation.

After review, Staff recommends the approval of the franchise and asset transfer from PEU to Salem. Staff also recommends that the Commission grant Salem permission to provide water service in the proposed franchise area.

Staff, however, recommends that Commission temporarily approve Salem's request for exemption from public utility regulation and defer its final determination until an outstanding wholesale water contract between the Petitioners is finalized. Staff, additionally, recommends that the Commission direct the Petitioners to: (1) file the finalized wholesale water contract once approved by the respective municipal and company authorities; and (2) in the interim, file monthly reports updating the Commission on the status of that wholesale water contract, until such time the finalized contract is submitted. Staff, lastly, recommends that the Commission issue its order on a *nisi* basis to ensure that interested persons receive notice of the decision and have the opportunity to submit comments or request a hearing before the order becomes effective.

I. Background and Petitioners' Positions

On May 21, 2020, the Petitioners submitted a Petition to Transfer Service Territory and Assets and to Commence Business (Petition). The Petitioners also submitted the testimonies of Donald L. Ware, Chief Operating Officer of PEU, and Roy Sorenson, Director of the Municipal Services Department for Salem, which is responsible for water services in Salem.

According to the Petition, PEU and Salem, among other parties, are signatories to the Agreement Regarding the Southern New Hampshire Regional Water Interconnection Project (Agreement), approved by the New Hampshire Attorney General on April 22, 2019. Petition at 2 (the Agreement is located at Attachment A of the Petition). The Agreement, developed in collaboration with the New Hampshire Department of Environmental Services (DES), addresses water contamination and capacity issues within certain Southern New Hampshire communities, including Windham, by facilitating water transmission from Manchester Water Works. *Id.* The interconnection project is divided into phases, with Phase I's funding comprised of monies from DES's Drinking Water and Groundwater Trust Fund and the State of New Hampshire MtBE¹ settlement funds. *Id.* at 36, 135.

The Agreement provides that, as a part of Phase I, Salem will construct, own, operate and maintain a 20-inch and 12-inch water transmission main, along Route 28 and Route 111, respectively, in Windham. *Id.* The total projected cost of the water main installation is \$14.9 million. *Id.* at 129. PEU's current franchise encompasses all of Windham, including the area described, as the Town of Windham does not own or operate a public water system. *Id.* at 1, 128. The Agreement states that PEU would surrender a portion of its Windham franchise rights to Salem in order for Salem to serve customers in Windham. *Id.* at 7. The franchise exchange directly affects 17 PEU customers who would then be served by Salem after the franchise approval. *Id.* at 3, Staff 1-14. The Petitioners indicated that PEU would remove its meters from those 17 customer locations, to be replaced by meters installed by Salem. *Id.* at 132,138.

According to the Petitioners, the franchise exchange is for the public good, pursuant to RSA 374:30, partly because it is crucial to a project which addresses water capacity and contamination issues in a timely and cost effective manner. *Id.* at 4, 137. In addition, PEU provided three supporting reasons. First, PEU stated that transferring the franchise to Salem would allow PEU or DES to avoid additional income tax expenses. *Id.* at 129. If PEU were to accept the water mains after construction, the plant would be considered a contribution in aid of construction (CIAC) to which PEU estimates would result in approximately \$5.1 million of income tax liability, increasing the project cost by approximately 34%. *Id.*² According to PEU's tariff, PEU may have to collect that money from DES. *Id.* By transferring its franchise to Salem, and thereby allowing Salem to take ownership of the mains, the tax liability would be avoided as municipalities are not subject to state or federal income tax. *Id.*

Second, PEU stated that if it owned the water mains, it would be subject to approximately \$400,000 in Town of Windham and State of NH annual property taxes. *Id.* at 130. If so, PEU estimated it would need to collect \$360,000 from the Towns of Plaistow and Salem, and the

¹ MtBE stands for methyl tert-butyl ether, which is a chemical gasoline additive that is toxic for human consumption.

² The Tax Cuts and Jobs Act of 2017 removed the exemption for CIAC from taxable income previously appreciated by water utilities, effective January 1, 2018. Order No. 26,407 at fn. 1, 1 (September 28, 2020).

Hampstead Area Water Company, Inc., to cover that tax liability as PEU believes those entities are the primary beneficiaries of water transported through the mains. *Id.* Again, PEU stated that by transferring its franchise to Salem, and thereby allowing Salem to take ownership of the mains, the property tax liability concerns would be avoided as municipalities are not subject to local or state property tax, resulting in lower purchased water costs. *Id.* Salem further supported this argument. *Id.* at 137-138.

Third, PEU stated that it currently serves a portion of an area near Route 111, which is contaminated by MtBE, but the PEU wells providing water are at maximum capacity and cannot provide additional water to serve the entire area contaminated by MtBE. *Id.* The addition of a 12-inch main to that area will provide safe drinking water and allow further development. *Id.*

PEU also stated that the franchise exchange would benefit the Company by reducing the water demand on its burdened system by approximately 10,000 to 15,000 gallons per day. *Id.* at 131. The franchise transfer would also reduce PEU's property tax liability. *Id.* The Company also represented that the assets to be transferred to Salem (1,400 feet of eight-inch water main, 17 water services and two hydrants) have no value for ratemaking purposes as the property was all CIAC. *Id.* PEU, lastly, represented that the transfer will not result in any disadvantages to its current customers. *Id.* at 132.

Salem stated that it possesses the financial, managerial, and technical expertise to furnish water service in Windham, as required by RSA 374:22 and RSA 374:26. *Id.* at 4, 136. Salem bolstered its statement with the following remarks: the Town has operated a municipal water utility since 1905; Salem maintains an unrestricted water fund balance of \$2.1 million which is 51% of the water fund's operating budget; and the Town has undertaken over \$10 million in capital improvements over the past five years. *Id.* Salem further noted several other supporting statements: Mr. Sorenson develops an annual budget and capital improvement requests; Salem maintains a water capital reserve fund for emergency expenditures; the Town's Utilities Division employs 12 full-time staff to provide water service to over 7,700 homes and businesses in Salem of an average over 2.3 million gallons of drinking water per day from two reservoirs; the Salem system is comprised of over 140 miles of water main, which includes 1,750 valves and 932 hydrants; and the Town's annual water revenues in 2018 were approximately \$3.6 million, with \$2.4 million made in capital investment. *Id.* at 136-137.

Salem also represented that it is prepared to serve the possible 100 additional customers in Windham. *Id.* at 138. The Town further stated that it would charge the new customers outside its municipal boundaries rates that are no greater than a 15% difference than the rates charged to its municipal customers. *Id.* at 4, 138. Through discovery, Salem verified its statement. Staff 1-1. As such, the Petitioners argued that Salem should not be considered a public utility, pursuant to RSA 362:4, III-a (a)(1), and thus remain unregulated to that extent by the Commission. *Id.* 3-4, Staff 1-1. Subsequent to the initial discovery responses, however, PEU notified staff of their intent to enter into a wholesale water contract with Salem, which altered the initial discovery reply. Updated Staff 1-16. While the Petitioners represent that an agreement in principle has been reached, municipal approval has not yet been granted. *Id.* As such, the final terms and charges of the wholesale water agreement are not known.

The Petitioners, lastly, provided supporting statements from DES and Windham. DES confirmed “the subject public water system meets the suitability and availability criteria” of RSA 374:22, III. *Id.* at 140. DES further stated that it supported the franchise exchange as it is in the public good and in the best interests of both PEU’s and Salem’s customers, allowing both to continue to provide safe and reliable service at just and reasonable rates. *Id.* Windham also stated that it supported the Petition, including the franchise transfer from PEU to Salem and Salem’s provision of water service to Windham residents. *Id.* at 125.

II. Staff Analysis

A. Transfer of PEU Franchise and Assets to Salem

“Any public utility may transfer or lease its franchise, works, or system...when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.” RSA 374:30. Staff recommends that the Commission find the transfer of franchise and assets are for the public good.

Staff notes the reasons offered by PEU, specifically all of the income tax and property tax liability avoidance associated with Salem’s assumption of the mains, and the ability of Salem to provide clean drinking water to customers facing a possibly contaminated water supply. Staff also notes that it would alleviate PEU from its supply concerns in its existing franchise area. Staff, furthermore, recognizes that the interconnection project will provide upwards of an additional 100 customers with safe drinking water, free from contamination. Completion of that interconnection project, per the Agreement, requires the franchise exchange. Staff lastly notes that the transfer of assets from PEU to Salem will not result in any economic or detrimental impact on current PEU customers. As such, Staff supports the Petitioners’ arguments, and recommends that the Commission find the transfer of franchise and assets to be for the public good.

B. Salem’s Provision of Water Service in Windham

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 expertise of the petitioner. Hampstead Area Water Company, Inc., Order No. 26,301 at 4 (October 22, 2019). Under RSA 374:22, III, no water company shall obtain the permission or approval of the Commission to operate as a public utility without first satisfying any DES requirements concerning the suitability and availability of water. Staff recommends that the Commission find that a grant of the franchise to Salem is for the public good, and allow Salem to provide water service in Windham.

Staff first notes that Salem provided numerous reasons why the Town possesses the managerial, technical, and financial expertise required to service the franchise area. Those reasons included: Salem’s provision of water service within the municipality since 1905; providing water service currently to 7,700 residential homes and businesses of an average of 3.2 million gallons of water per day; and a full-time staff of 12 employees. Staff also notes Salem’s unrestricted water fund

balance of \$2.1 million, and that the Town has made \$10 million in capital improvements over the last five years. Given those reasons, and evidence of endorsement of Salem's ability from both Windham and DES, Staff supports the request for franchise exchange and approval of Salem's commencement of business in the franchise area as it appears Salem is quite capable of running its water system and providing service to the new customers outside its municipal boundaries.

Staff, lastly, supports approval as the Petitioners have provided the statement from DES verifying that Salem has suitable water available, pursuant to RSA 374:22, III. As such, Staff recommends approval of Salem's franchise expansion.

C. Salem as a Public Utility

Pursuant to RSA 362:4, III-a(a)(1), municipal corporations serving new customers outside their municipal boundaries are exempt from Commission regulation, other than for franchise territory expansions, if they charge rates to outside customers that are no higher than 15% above rates charged to customers inside the municipal boundaries. RSA 362:4, III-a(a)(2) further provides that municipal corporations furnishing water services shall not be considered a public utility if it supplies bulk water pursuant to a wholesale rate or contract to another municipality, village district, or water precinct.

Based on Salem's representations, in both its pre-filed testimony and discovery responses, Salem would not charge its new, non-municipal customers more than a 15% difference than the rates it charges its municipal customers. During Staff's investigation, however, the Petitioners verified through updated discovery responses received on October 7, 2020, that PEU and Salem intended to enter into a wholesale water contract, but that the contract had not yet been finalized. Updated Staff 1-16. On February 4, 2021, Staff, Salem, and PEU met to discuss the status of the approval of the proposed wholesale water contract. At the meeting, the Petitioners indicated that the Salem Board of Selectmen still had yet to approve the terms of the contract. At the time of this recommendation, the Petitioners have submitted no further update on approval.

As PEU, the intended purchaser in the contemplated wholesale water agreement, does not qualify as a "municipality, village district, or water precinct," and the price terms of the wholesale water contract are not settled, Staff cannot at this time recommend that the Commission grant final approval of Salem's request for exemption from continued Commission regulation as a public utility, other than franchise territory expansion, as it is premature.

As such, Staff recommends that the Commission temporarily approve Salem's request of exemption until such time that the finalized wholesale water contract is received and can be analyzed by Staff for recommendation to the Commission for its final determination.³ Staff makes its recommendation so that further delay in this docket does not occur awaiting finalization of the wholesale water contract. Staff recognizes that additional customers could be served much earlier

³ Staff notes that the Commission has granted temporary approval in the past to balance the benefits of immediate Commission approval with the need for further investigation. *See New Hampshire Electric Cooperative*, Order No. 21,436 (November 23, 1994) (temporarily approving special contracts for a period of one year with the cooperative and four of its major member ski areas, stating that the "Commission recognizes that these filings have benefits to [the cooperative] and its members, the ski areas and PSNH...[but] the lateness of this filing shall not preclude the Commission from undertaking a thorough analysis of the issues. We will therefore approve the special contracts for a period of one-year...pending further Commission review").

than if approval were withheld. Salem's good-faith representations that it will not charge any other non-municipal customer more than 15 % of the charge faced by its municipal customers, furthermore, provides support in Staff's recommendation that Commission regulation at this time, other than franchise expansion, is not necessary. Staff, lastly, states that the temporary exemption should be contingent upon that good-faith representation.

Accordingly, Staff recommends that the Commission direct the Petitioners to submit the finalized wholesale water agreement once it is approved and finalized by all applicable parties. Staff, furthermore, recommends that the Commission direct the Petitioners to file monthly updates regarding the status of the wholesale contract. Staff also recommends that the report provide verification that any new customers added each month, and served by Salem, are not charged a rate 15% greater than its municipal customers. If Salem indicates otherwise, Staff recommends that the Commission hold a hearing as soon as possible to determine why Salem should remain exempt from regulation, pursuant to RSA 362:4, III-a(b). Staff further recommends that the Commission include a definitive time period for its temporary approval, not to exceed one year from the date of its initial order, at the end of which, if the contract is not finalized, or abandoned by the Petitioners, the Commission may hold a hearing to determine whether or not Salem should be considered a regulated utility.

Staff, lastly, recommends that those reports be due the first day of each month after issuance of a Commission Order directing as such, and until either the contract is finalized and submitted, or the Petitioners indicate that abandonment of the wholesale water contract approval.

III. Conclusion

Staff recommends the Commission approve the franchise and asset transfer from PEU to Salem, and recommends that the Commission grant Salem permission to provide water service in the proposed franchise area of Windham. Staff also recommends temporary approval of Salem's request for exemption from Commission regulation, other than franchise territory expansion, and deferment of the Commission's final determination. Staff, lastly, requests that the Petitioners provide a finalized wholesale water contract, once approved, and monthly reports, as detailed above.

If you have any further questions regarding this matter, please do not hesitate to contact me.

Sincerely,

/s/ Anthony J Leone

Anthony J. Leone
Utility Analyst, Gas & Water Division

cc: Service List

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-1

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

In various locations, the Petition (Bates page 1 & 4), Testimony of Mr. Roy Sorenson (Bates page 138) and Attachment C (Bates page 125), it was described that the Town of Salem intends to charge customers in the Town of Windham rates both higher than, and not higher than, 15% of the rates charged in the Town of Salem per CCF, pursuant to applicable NH Laws. Please clarify and explain the Town of Salem's intended rates to the new customers in the Town of Windham specifically referencing the percentage over Town of Salem rates the Town of Windham residents will be charged.

RESPONSE:

Consistent with RSA 362:4, III-a. (a) (1), the Town of Salem does not intend to charge rates to customers in the Town of Windham higher than 15% above the rates charged in the Town of Salem. In the various locations in the Petition, Testimony and Attachment C, it was pointed out that (1) the Town of Salem would not be a public utility because it would not charge customers in Windham rates higher than 15 percent above rates in Salem, and (2) that it had agreed with the Town of Windham to charge rates at a level 15 percent higher than charged in Salem. To the extent there is any statement in the Petition or its attachments which could be construed to mean that Salem would charge rates higher than 15% above what it charges in Salem, that is not Salem's intent.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-2

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

Does the Town of Salem's current water rates contain a fixed charge? If so, will that charge also be extended to the new Town of Windham customers? What will be the differential, if any, expressed as a percentage, of the charge imposed on the Town of Windham customers over customer customers located within the municipal boundaries of the Town of Salem?

RESPONSE:

The Town of Salem uses a fixed rate per HCF. The Town of Salem will charge retail customers in Windham all other customary charges established by Salem in its schedule of fees and set forth in Chapters 455 and 477 of its Municipal Code, as may from time to time be amended, in the same amount and manner as that assessed against Salem customers plus 15%.

See Attachment A, Schedule of Fees for Fiscal Year 2020.



Town of Salem, NH Schedule of Fees for Fiscal Year 2020

(Adopted by the Board of Selectmen on 9/30/19 - effective 1/1/20)

**Municipal Services Department
Utilities/Public Works**

<u>Type</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>LAST UPDATED</u>	<u>FEE GOVERNED BY</u>
Administrative	Assessed every billing period and includes the cost of reading meters, billing, collection and administrative expenses	\$5.80		Board of Selectmen
Sewer Usage	Based on water consumption into building from meter readings	\$4.85/100 cubic foot effective Jan 1, 2020	9/10/2018	
Sewer	Flat fee charge if no meter on water supply	\$99.38/quarter		
Water Usage	Based on water consumption into building from meter readings	\$3.65/100 cubic foot effective Jan 1, 2020	9/25/2017	
Meter Costs (for home, lawn, or business)	5/8" standard size meter and horn (for 3/4" service)	\$454.00	8/13/2018	
	1" size meter and horn	\$714.00		
	1 1/2" meter and horn	\$790.00		
	2" meter and horn	\$968.00		
	other sizes	call for pricing		
Final Fee	Charge for reading meter for a sale of property or change in tenancy	\$25/manual reading \$10/automated reading		
Bad Check Fee	Charge for check returned from bank for insufficient funds, etc	\$25		
Backflow Inspection	Charge for state-required inspection of backflow device - done annually or semi-annually based on degree of hazard. If the test fails, there will be a full charge for the retest after repairs.	\$40 first device tested or retest of faulty device \$21.25 discount rate for additional units in a building after the first full rate charge		
Certified Fee	Charge for certified letters sent for notification of potential water shut off for non-payment (current U S Postal Service rate at time of charge)	refer to Postal Service for rate		
Shut Off for Nonpayment Fee	Charge to customer for nonpayment	\$50	9/30/2019	
Shut Off Fee	Charge to shut off water upon request of owner	\$15		
Turn On Fee	Charge to turn on water upon request of owner	\$15		
Sewer Betterments	Existing betterment contracts from 1988 through 2006	\$254 - \$350		
Water Betterments	Existing betterment contracts for 1999 through 2007	\$132 - \$207		
Sewer Assessment after Feb 9, 2004	single family home	\$7,500 lump sum or *		
	single family home w/in-law/acc	\$10,200 lump sum or *		
	existing single family home adding in-law/acc only	\$2,700 lump sum or *		
residential properties	mobile (manufactured) home (on single parcel)	\$7,500 lump sum or *		
	mobile (manufactured) home (in park)	\$5,100 lump sum or *		
	two family/condex	\$11,100 lump sum or *		
	three family	\$13,500 lump sum or *		
	one bedroom apartment	\$3,750 lump sum or *		
	two bedroom apartment	\$5,000 lump sum or *		
	three bedroom apartment	\$7,500 lump sum or *		
Water Assessment	single family home	\$5,000 lump sum or *		
	single family home w/in-law/acc	\$6,800 lump sum or *		

after Feb 9, 2004	existing single family home adding in-law/acc only	\$1,800 lump sum or *
residential properties	mobile (manufactured) home (on single parcel)	\$5,000 lump sum or *
	mobile (manufactured) home (in park)	\$3,400 lump sum or *
	two family/condex	\$7,400 lump sum or *
	three family	\$9,000 lump sum or *
	one bedroom apartment	\$2,500 lump sum or *
	two bedroom apartment	\$3,333 lump sum or *
	three bedroom apartment	\$5,000 lump sum or *

* May be paid in annual installments for 20 years with interest calculated on Municipal Bond Bank summer/fall sale rate applied to the preceeding calendar year

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-3

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

For all other charges imposed, or that may be imposed, such as connection, reconnection, termination, late fee, MSDC, etc... what will be the differential, if any, expressed as a percentage, the Town of Salem intends to charge the Town of Windham customers compared to customers located within the municipal boundaries of the Town of Salem?

RESPONSE:

The Town of Salem will charge retail customers in Windham all other customary charges established by Salem in its schedule of fees and set forth in Chapters 455 and 477 of its Municipal Code, as may from time to time be amended, in the same amount and manner as that assessed against Salem customers plus 15%.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-4

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

Are there any other fees or charges to the Town of Windham customers that are either billed and or collected by any other party besides the Town of Salem?

RESPONSE:

No.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-5

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

How often does the Town of Salem plan to bill the new customers in the Town of Windham?
Does the Town of Salem anticipate any challenges in this regard?

RESPONSE:

The Town of Salem bills residential customers quarterly and commercial customers monthly.
We anticipate additional staff time and related expenses.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-6

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Petition Attachments, Bates page 16

Are there currently any known wholesale water customers in the Town of Windham who are expected to take service from the Town of Salem under a wholesale agreement?

RESPONSE:

There are currently no known wholesale water customers in the Town of Windham although the Town of Salem and PEU have discussed an arrangement for emergency back-up service or supplemental supply when there is insufficient water, which would be provided by the Town of Salem at the retail rate that applies to customers in the Town of Windham.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-7

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Petition Attachment, Bates page 16

Will the Town of Salem be providing fire protection / fire flow capacity to customers in the Town of Windham? Please explain further.

RESPONSE:

Although hydrants will be located in Windham, the purpose of said structures is for water quality, not fire suppression. It was established early within the SNHRW planning process that the town of Derry could not support fire flows to the town of Windham. The Town of Windham service area would need a water storage tank within Windham in order for water system to achieve fire flow within the town.

See Attachment B, Weston & Sampson memorandum, February 21, 2020.



100 International Drive, Suite 152, Portsmouth, NH 03801
Tel: 603 431 3937

MEMORANDUM

TO: Roy Sorenson, Town of Salem

FROM: Jeff McClure & Sam Kenney, Weston & Sampson

DATE: February 21, 2020

SUBJECT: SNHRW – Fire Flow Availability in the Town of Windham

This memorandum summarizes previous correspondence between Southern New Hampshire Regional Water (SNHRW) project stakeholders regarding fire flow availability in the town of Windham. It was established early within the SNHRW planning process that the town of Derry could not support fire flows to the town of Windham. Discussions during the NHDES coordinated stakeholder meetings were consistent that the infrastructure necessary to support fire flows direct from Derry's water system were not included in the project goals.

Whereas NHDES maintains meeting minutes for the monthly stakeholder meetings, the following documents also specifically mention the overall water supply goals for the project and the lack of fire flow availability within Windham:

1. **Letter from David R. Caron, Derry Town Administrator to Clark Freise, Deputy Commissioner, NHDES – March 21, 2018.** Mr. Caron outlines the following: "The State and its engineers represent that Derry will not be responsible for fire flow beyond its borders, and that facilities will be installed as part of this project to maintain fire flow pressure in the Town of Derry. Based on representations made by W&S, communities south of Derry shall be responsible for their own fire flows, and a pressure reducer valve at the Town line will ensure Derry's fire flow within its boundaries."
2. **Regional Supply Basis of Design – January 4, 2019.** This document provided the engineering basis from which the SNHRW project would be constructed and was distributed by NHDES to all project stakeholders. The document contained the following statements which state fire flow was not provided to the Town of Windham:

"SNHRW Supply Limitations

The SNHRW supply conceptual design is based on supplying domestic demand only (no fire flow) to all end users defined in Table 2. The domestic demand provided will be to satisfy or supplement (depending on the user) maximum day demands only, except for Windham where all conditions of domestic demand including peak hour, will be met with SNHRW supply.

Water storage tanks are present or are proposed as part of the SNHRW project in Salem, HAWC and Plaistow. Storage tanks, by definition, are designed to provide storage to meet peak hour demands in a water system. Since a water storage tank is not present or proposed under the SNHRW project for Windham, peak hour demands need to be satisfied via pumping capacity at the Rockingham Road Pump Station in Derry. **The estimated peak hour demand for Windham under Phase I is 417 gpm.** Upgrades to Rockingham Road Pump Station, however, should be limited to 1.0 MGD (694 gpm) capacity (for Phase 1 of the SNHRW project) because the impacts on the Derry water system were only evaluated for 1.0 MGD under Phase 1. Any additional SNHRW supply flow under Phase 1 could require additional upgrades to the Derry water system. During a peak hour event in Windham, storage tanks in Salem, HAWC and Plaistow should be able to meet domestic demand for all normal conditions of flow in those water systems while the peak hour demand in Windham is being satisfied by the Rockingham Road Pump Station. Back pressure sustaining valves or other flow control valves should be incorporated into the SNHRW designs to allow this hydraulic condition to occur. It should be noted that in addition to the SNHRW demand, the Rockingham Road Pump Station is satisfying all normal conditions of flow (including peak hour demands) and fire flow in South Derry."

3. **Southern Interconnect Agreement (SIA) – April 2019.** Page 10 of this document contains the following statement as it relates to Salem's fire flow responsibility in the Town of Windham under the SIA agreement: "All Water Recipients shall be responsible for maintaining their own fire flows and Salem will not be liable for any damages resulting from inadequate fire flows as a result of this agreement."

The above documents memorialized the project stakeholder meetings during which it was discussed that providing fire flow to the Town of Windham was not provided under the SNHRW project. Two mechanical limitations prevent fire flow to the town of Windham, 1) the backpressure sustaining feature on the pressure reducing valve at the Northland Road PRV building will limit large flows from passing into Windham, thereby protecting the water pressure within the Derry water system and 2) the Rockingham Road Pump Station in Derry does not contain pumps of sufficient size to pump fire flows into Windham.

The town of Windham will need to construct a water storage tank within Windham's water system in order to achieve fire flow within the town.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-8

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

Does the Town of Salem require any additional authorization, right of way, easement or any other legal authority to own, operate, maintain and replace the new water main and associated services within the Town of Windham?

RESPONSE:

No.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-9

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Testimony of Mr. Roy Sorenson, Bates Page 136

The testimony describes that the Phase I infrastructure in the Town of Windham, the water main along Route 28 and the smaller portion along Route 111, is anticipated to be complete and in service by mid-June 2020 and December 31, 2020 respectively. Is this timeframe still accurate? Are there any other infrastructure limitations, additions, etc. that would prohibit customers from taking service at the time of anticipated completion? Are there any other legal or regulatory prohibitions?

RESPONSE:

The Route 28 Water Main from the Derry Line to the Salem line, including two Pressure Relief Valve Stations, is in service. The Town of Salem is receiving 300,000 GPD of water from the new main.

The Route 111 project has been bid and awarded with a Notice of Award to the contractor. We anticipate a start date of July 13th. We do not anticipate any obstacles that would prevent it from being in service by December 31, 2020.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-10

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

When does the Town of Salem intend to begin offering service to the new customers in the Town of Windham? Has the Town of Salem and PEU created a plan to address the change-over in water service for those customers affected? Briefly explain the impact, if any, to the customers due to the switch over?

RESPONSE:

Assuming timely approval of its Petition, Salem anticipates that it will be able to offer service to customers in Windham by the end of October. Salem has discussed the transition with PEU and believes that beyond swapping out meters and setting up new billing arrangements there will be minimal, if any, impact on customers.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-11

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Mr. Roy Sorenson, Town of Salem

Will the new main along Route 28 in the Town of Windham interconnect with any existing Town of Salem owned water mains? Are customers along the new main being served by only the new main or are there other water supplies interconnecting in the immediate area? Please explain further.

RESPONSE:

The Route 28 water main connects to the Salem distribution system at the Range Road intersection. The customers along the new main will be served by the new main only.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-12

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Testimony of Mr. Roy Sorenson, Bates Page 137

Please provide a list of the job titles, certifications and years of relevant experience of any and all employees who are assigned water duties at least part-time.

RESPONSE:

Service Time for Salem:

Fred Wallace, Utilities Manager – Primary Operator	24 YRS	D3, T3, CB, CCCS
Maria Poor, Lab Chemist	12 YRS	
Scott Witkowski, Meter Foreman	17 YRS	D1, T2, CB, CCCS
Jeff Young, Systems Foreman	3 YRS	D1, T1
Tom Donahue, Distribution Foreman	3YRS	D2, T1
Jacque Sandner, Plant Operator	2 YRS	D1, T1
Luis Armas, Plant Operator	6 MOS	D2, T2
Russell Gosselin, Heavy Equipment Operator	15 YRS	D1
John Hackett, Heavy Equipment Operator	12 YRS	D1
Kelly Demers, Meter Repair	33 YRS	D1, CB, CCCS
Peter Parrino, Certified Backflow Inspector	13 YRS	CB, CCCS
Kyle Fox, Meter Repair	5 YRS	D1, T1
Andy Ramos, Meter Technician	3 YRS	CB

*Distribution- D, Treatment – T, Certified Backflow Prevention Device Inspector - CB, Certified Cross Connection Surveyor - CCCS

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-13

Date of Response: 7/6/20
Roy Sorenson

REQUEST:

Testimony of Mr. Roy Sorenson, Bates Page 138

Once the Town of Salem has had time to adequately address the additional costs and risks involved with serving the additional customers outside of its municipal boundaries, does it intend to revisit the planned rate differential of customers outside its municipal boundaries and those within its municipal boundaries?

RESPONSE:

The Town of Salem water rate is in place through 2020. The Board of Selectmen reviews rates for the coming year based on the financial statements, fund balance and staff recommendations. As for the 15% differential between Salem and Windham customers, it is intended to remain in place until such time as the Towns agree otherwise.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-14

Date of Response: 7/6/20
Donald Ware

REQUEST:

Petition, Bates Page 3 and Testimony of Mr. Donald Ware, Bates Page 131

How many customers are within the proposed area PEU is proposing to transfer to the Town of Salem? Does PEU anticipate a decrease in revenue from the transfer of these customers to the Town of Salem? Please estimate this decrease.

RESPONSE:

There are 17 customers within the section of W&E that PEU is proposing to transfer to the Town of Salem.

In 2019, those 17 customers generated just over \$29,700 of revenues and used an average of 4,140 gallons per day with a peak usage day estimated at slightly over 10,000 gpd. I have attached a spreadsheet detailing the customer location, the meter size, the 2019 usage and 2019 charges. PEU will lose all of the revenues from the customers that are transferred to Salem.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-15

Date of Response: 7/6/20
Donald Ware

REQUEST:

Testimony of Mr. Donald Ware, Bates Page 131

Relative to the immediately preceding question, does PEU anticipate a decrease in expenses, either property taxes or other, from the transfer of Company owned assets to the Town of Salem? Please estimate this decrease.

RESPONSE:

Yes. The following is an estimate of PEU's direct operating expenses associated with the surrendered customers, along with a revenue ratable portion of PWW Mgt. Fee:

1. Meter reading (204 annually)	- \$ 170
2. Billing (204 annually)	- \$ 180
3. Power (8% of total)	- \$ 1,500
4. Chemicals (8% of total)	- \$ 3,500
5. Estimated PT (Est value of \$70K)	- \$ 1,884
6. Hydrant Maint (2)	- \$ 400
7. Dig Safe	- \$ 120
<u>Sub Total</u>	- \$ 7,754
8. Mgt Fee (revenue ratio)	- \$ 7,422
<u>Total Decrease</u>	- \$15,176

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-16

Date of Response: 7/6/20
Donald Ware

REQUEST:

Testimony of Mr. Donald Ware, Bates Page 131

Does PEU anticipate entering a wholesale agreement with the Town of Salem to provide water, if, or, when necessary, through the planned, NHDES funded interconnection, between the portion of the W&E Community Water System (CWS) that PEU will retain and the portion of the W&E CWS that will be transferred to the Town of Salem?

RESPONSE:

PEU has discussed with the Town of Salem an arrangement for emergency back-up service or supplemental supply when there is insufficient well water, which would be provided by the Town of Salem at the retail rate that applies to customers in the Town of Windham. This arrangement would be similar to the one that PEU has with the Town of Merrimack.

Please note that in recent discussions NHDES indicated that they are not sure whether they will fund some, all or none of the cost of the interconnection. PEU should know about what portion of the interconnection the NHDES is willing to fund within the next 30 to 45 days.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-6

Date of Response: 7/6/20
Supplemental Response: 10/7/20
Roy Sorenson

REQUEST:

Petition Attachments, Bates page 16

Are there currently any known wholesale water customers in the Town of Windham who are expected to take service from the Town of Salem under a wholesale agreement?

RESPONSE:

There are currently no known wholesale water customers in the Town of Windham although the Town of Salem and PEU have discussed an arrangement for emergency back-up service or supplemental supply when there is insufficient water, which would be provided by the Town of Salem at the retail rate that applies to customers in the Town of Windham.

SUPPLEMENTAL RESPONSE:

See supplemental response to Staff 1-16.

DW 20-080
PENNICHUCK EAST UTILITY, INC.
TRANSFER OF ASSETS AND FRANCHISE TO TOWN OF SALEM
Staff Data Requests- Set 1

Date Request Received: 6/24/20
Staff 1-16

Date of Response: 7/6/20
Supplemental Response: 10/7/20
Donald Ware

REQUEST:

Testimony of Mr. Donald Ware, Bates Page 131

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RESPONSE:

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Please note that in recent discussions NHDES indicated that they are not sure whether they will fund some, all or none of the cost of the interconnection. PEU should know about what portion of the interconnection the NHDES is willing to fund within the next 30 to 45 days.

SUPPLEMENTAL RESPONSE:

Subsequent to the filing of the original response and in light of changed circumstances, including the extreme drought in southern New Hampshire, PEU has reconsidered the nature of its intended water supply agreement with the Town of Salem and has determined to enter into an agreement more in the nature of a traditional wholesale water supply arrangement. The parties have reached an agreement in principle that requires approval by the Salem Board of Selectmen before it can take effect. A copy of the proposed agreement is provided as Attachment A to this supplemental response.

The Southern New Hampshire Regional Water Interconnection Project Agreement provides, among other things, that Salem shall charge wholesale customers in Windham, such as PEU, a volumetric rate equal to Manchester Water Works' out-of-town rate plus \$1.50, resulting in a current rate of \$3.337, which is less than the Town of Salem's proposed retail rate for Windham customers of \$4.20 per CCF (Salem in-town rate of \$3.65 per CCF plus 15%).

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