

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**DOCKET NO. DW 20-080
PENNICHUCK EAST UTILITY, INC. AND TOWN OF SALEM**

RESPONSE TO REQUEST FOR HEARING

The Town of Salem (“Salem” or “Town”) by and through its attorneys, McLane Middleton, Professional Association, submits this response to the request for hearing filed by Ramos Real Estate, LLC (“Ramos”) and asks the New Hampshire Public Utilities Commission (“PUC” or “Commission”) to allow its Order *Nisi* in this proceeding to take effect on September 16, 2021, as originally contemplated. Pennichuck East Utility, Inc. (“PEU”) supports Salem’s position. For the reasons set forth below, Salem opposes any expansion of the limited service territory transfer that it had agreed to with PEU. Salem also asks that the Commission, pursuant to RSA 365:28, set aside the requirement that it file a compliance tariff.

I. BACKGROUND

On August 16, 2021, the Commission issued Order No. 26,509, an Order *Nisi* Approving Transfer of Service Territory and Assets and to Commence Business (“Order *Nisi*”). Among other things, the Commission approved the transfer of a portion of PEU’s franchise in the Town of Windham (“Windham”) to Salem and granted Salem authority to commence business in Windham. Moreover, because it will not charge rates in excess of 15% above the rates charged to its municipal customers, pursuant to RSA 362:4, III-a. (a) (1), Salem “shall not be considered a public utility.”

PEU and Salem filed a joint petition on May 21, 2020, seeking PUC approval of a limited transfer of PEU service territory in Windham. The limited transfer grew out of Salem’s participation in the Agreement Regarding the Southern New Hampshire Regional Water

Interconnection Project (“Interconnection Agreement”), pursuant to which Salem agreed to construct, own, operate, and maintain a 20-inch water main along Route 28 in Windham and a 12-inch water main along Route 111 in Windham. The Department of Environmental Services facilitated the regional water project to enable potable water to flow from the water systems of Manchester Water Works to Derry, Windham, Salem, Atkinson, Hampstead, and Plaistow to address concerns over limited water capacity and contaminated wells.

The Interconnection Agreement also contemplated that, subject to PUC approval, Salem, Windham and PEU could voluntarily agree among themselves to a transfer of PEU service territory in Windham to Salem whereby Salem would serve retail customers in Windham. After discussions among the three parties, Salem agreed that it would be prepared to serve only those retail customers who abut the transmission water mains constructed along Routes 28 and 111. As Salem’s Director of Municipal Services, Roy Sorenson, explained in his pre-filed testimony supporting the limited transfer, serving retail customers outside of its municipal boundaries will impose additional costs and risks on the Town. Among other things, Salem will have to build out the system, connect new customers, maintain infrastructure, respond to complaints, and read meters, all of which will require hiring additional personnel. See Petition, Attachment E, p. 6, (Bates p. 138).

Ramos seeks to expand the service territory transferred from PEU to Salem to include two parcels for potential commercial development, which would appear to require the installation of more than 1,000 feet of 8-inch transmission water main. Pursuant to Chapter 455 of Salem’s Municipal Code, a water main extension of such magnitude would cost the customer roughly \$400,000.

Salem is not prepared at this time to expand its obligations beyond the limited service territory identified in the May 21, 2020 petition because it would distract from the more pressing matters of transitioning 17 current PEU customers and interconnecting as many as 100 actual new customers who do not depend on the installation of a new water main extension. While not categorically opposed to considering expansions in appropriate circumstances in the future, Salem believes it is premature to expand the service territory northward along Lamson Road to include the Ramos parcels on Lamson Road and Roulston Road. Furthermore, it is the Town's understanding that there are currently no active plans to develop the Ramos parcels.

II. TARIFF

The Order *Nisi* also contained an ordering clause requiring the Town to file a compliance tariff by October 6, 2021. In the past ten years, the Commission appears to have issued four orders approving municipal service extensions in adjoining towns. See, Docket No. DW 18-187, *City of Dover*, Order No. 26,367 (June 17, 2020); Docket No. DW 18-099, *Town of Derry*, Order No. 26, 255 (June 7, 2019); Docket No. DW 14-186, *City of Somersworth*, Order No. 25, 712 (August 28, 2014); and, Docket No. DW 12-272, *City of Somersworth*, Order No. 25,420 (October 5, 2012). In none of these proceedings did the Commission require the respective municipalities to file a compliance tariff.

Furthermore, the PUC website has a page titled "Companies Regulated by or Registered with NHPUC" that has a section for regulated water utility tariffs. That section contains only one municipal water utility, i.e., Manchester Water Works ("MWW"), which appears to have been grandfathered in for historical reasons. Specifically, the listing for MWW has a note pointing out that, while it is no longer regulated consistent with Order No. 24,138 (March 14, 2003), and the Legislature's adoption of RSA 362:4, III-a. (a) (Laws 2002, Chapter 141:5),

MWW agreed as part of a settlement to continue posting a single-page tariff consisting of its rates in Manchester and its out-of-town rates.

Based on the Commission's treatment of other municipalities that have extended service into adjoining towns and been granted limited service territories, Salem requests similar treatment. Accordingly, inasmuch as the Town is not considered a public utility, it asks that the Commission set aside the requirement that it file a compliance tariff.

III. CONCLUSION

Salem's current focus is twofold, i.e., to efficiently manage the transition of the existing PEU customers within the transferred service territory to Salem and to effectively build out the system along Routes 28 and 111 to interconnect new customers who abut the transmission water mains. Salem considers it premature, and contrary to prudent municipal operations, to consider any expansion of the service territory beyond that which is the subject of the current transfer.

Finally, Ramos Real Estate, LLC has an attenuated interest in this proceeding inasmuch as it does not indicate that it would be a customer or that it represents any actual customer, nor does it indicate who owns the two parcels. Accordingly, its request for a hearing is not ripe but instead appears to be a hypothetical matter related to some potential future development by some other unnamed party.

WHEREFORE, the Town of Salem respectfully requests that the New Hampshire Public Utilities Commission:

- A. Deny the request for a hearing;
- B. Set aside the requirement that Salem file a compliance tariff;
- C. Allow the Order *Nisi* to take effect September 16, 2021; and
- D. Grant such other relief as it determines just and reasonable.

Respectfully submitted,

Town of Salem

By its attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

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