

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-080

PENNICHUCK EAST UTILITY, INC. AND TOWN OF SALEM

Petition to Transfer Service Territory and Assets and to Commence Business

**Order Implementing Prior Order Nisi 26,509
Approving the Transfer of Service Territory and Assets
and Commencement of Business**

O R D E R N O. 26,545

November 9, 2021

In this order the Commission terminates the suspension of its earlier Order Nisi, 26, 509, approving Pennichuck East Utility's (PEU) transfer to the Town of Salem (Salem) of a portion of its franchise, together with certain PEU assets located in the Town of Windham (Windham), granting Salem's request to provide water service in that limited area of Windham, and granting Salem an exemption from public utility status and from Commission rate regulation for its proposed water service outside its municipal boundaries.

I. PROCEDURAL HISTORY

On May 21, 2020, PEU and Salem (together the Petitioners) filed a petition along with supporting pre-filed testimony (Petition). The Petitioners requested the Commission approve the transfer of portions of PEU's service territory abutting Routes 28 and 111 in Windham along with certain assets to Salem pursuant to RSA 374:30 and RSA 374:26. In addition, Salem asked the Commission for permission to commence business in the Town of Windham, pursuant to RSA 374:22 and RSA 362:4, III-a. (a). The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the

Commission, are posted to the Commission's website at [New Hampshire Public Utilities Commission \(nh.gov\)](https://www.nh.gov/UtilitiesCommission).

On May 11, 2021, the former staff of the Commission, now with the Department of Energy (Energy), filed a recommendation in support of PEU's requested transfer. On August 16, 2021, the Commission issued an order nisi approving the transfer of a portion of PEU's franchise located in the Town of Windham to the Town of Salem and allowing the Town of Salem to operate a water utility in the Town of Windham. *See* Order No. 26,509 (August 16, 2021). On September 2, 2021, Ramos Real Estate, LLC filed a request for a hearing in this matter as allowed by the order nisi. On September 15, 2021, the Commission suspended Order No. 26,509 and scheduled a hearing on September 27, 2021. A hearing was held as scheduled.

II. POSITIONS OF PARTIES

A. PEU

At hearing on September 27, 2021, the Petitioners repeated their earlier arguments that the franchise exchange is for the public good, pursuant to RSA374:30, in part, because it is a crucial component of a project that addresses water capacity and contamination issues in a timely and cost effective manner. In addition, PEU asserted that the franchise exchange is necessary for three additional reasons. First, PEU stated that ownership of the franchise by Salem would save ratepayers money by avoiding incurring unnecessary income tax expenses. Second, PEU stated that if it owned the water mains, rather than Salem, it would be subject to approximately \$400,000 in Town of Windham and State of New Hampshire annual property taxes. Third, PEU stated the franchise exchange would have additional benefits to the

Company and its customers. PEU currently serves a portion of an area near Route 111, which is contaminated by MtBE¹. The PEU wells providing water are at maximum capacity and cannot provide additional water to serve the entire area contaminated by MtBE. The addition of a 12-inch main to that area will provide safe drinking water and allow further development. 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.

Regarding the Ramos Real Estate, LLC (Ramos) request to be included in the Salem service territory, PEU testified that the franchise area to be transferred to Salem was one lot deep along the pipeline and the Ramos lots were outside that area. Further, PEU represented that the Ramos lots are currently in the PEU franchise area and may receive water service from PEU whenever they request it. PEU opposed the Ramos request to be included in the Salem franchise area.

B. TOWN OF SALEM

At hearing on September 27, 2021, Salem reasserted its earlier arguments that it possesses the requisite financial, managerial and technical expertise to furnish water service to Windham as required by RSA 374:22 and RSA 374:26. Salem stated it will charge Windham residents rates 15% above the rates charged to Salem residents (currently, \$3.65 per 100 Cubic Feet), that is, \$4.20 per 100 Cubic Feet). As a result of these proposed rates, Salem claimed it should not be considered a public utility, pursuant to RSA 362:4, III-a (a)(1), and should thus remain unregulated by the

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

Commission. Salem opposed adding the Ramos lots to its franchise and asserted that those lots should remain in the PEU franchise territory.

C. ENERGY

At hearing on September 27, 2021, Energy reiterated its recommendation that the Commission approve the franchise and asset transfer from PEU to Salem and recommended the Commission grant Salem permission to provide water service in the proposed franchise area of Windham. Energy also questioned PEU and Salem about the status of a wholesale water supply agreement which remained incomplete at the time of hearing.

D. RAMOS

Ramos filed a letter requesting the inclusion of additional lots in the franchise. Ramos did not petition to intervene and did not appear at hearing.

III. COMMISSION 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. The additional evidence presented at hearing on September 27, 2021, further supported a finding that the transfer is for the public good. Therefore, we affirm and implement our order approving the transfer of PEU franchise and assets to Salem.

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. The additional evidence presented at the September 27, 2021, hearing further supported a finding that the record supports Salem’s demonstrated managerial, technical, and financial expertise required to provide water service in the franchise area. For these reasons, we reaffirm our finding that Salem’s operation of the additional franchise in Windham is for the public good, and we therefore affirm and implement the approval of Salem’s franchise expansion.

C. Salem’s Exemption from Regulation as a Public Utility

Pursuant to RSA 362:4, III-a(a)(1), the Commission may exempt municipal corporations serving new customers outside their municipal boundaries from 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, and the Commission finds such exemption consistent with the public good. The evidence presented at the September 27, 2021 hearing that further supports our finding that, granting Salem exemption from public

utility status, so long as it meets its commitment on rates, is for the public good. Accordingly, we affirm and implement our order granting the exemption.

D. Wholesale Contract for PEU to Purchase Water from Salem

At hearing on September 27, 2021, Energy questioned PEU and Salem about the potential bulk sale, however, the contract's terms are not currently finalized or approved by either PEU or Salem. We instruct the parties to report on the progress of this wholesale contract at six-month intervals until the contract is either finalized and submitted for Commission approval or abandoned.

E. Ramos Request for Two Lots to be in Salem Franchise

In its letter of September 2, 2021, Ramos requested that two undeveloped parcels it owns in the vicinity of the proposed pipeline, but not directly adjacent to it, be included in the Salem franchise beg acquired from PEU. Ramos did not move to intervene and did not appear at hearing on September 27, 2021. The evidence presented at hearing established that the Ramos parcels are currently located in PEU's service territory and may obtain water service by requesting it from PEU.

Based upon the foregoing, it is hereby

ORDERED, that our suspension of Order No. 26,509 is terminated effective on this date and the Order is affirmed and implemented as set forth herein above; and it is

FURTHER ORDERED, that PEU's request to transfer to Salem certain franchise areas and assets as described in this order and in the Petition is

APPROVED, pursuant to RSA 374:30; and it is

FURTHER ORDERED, that Salem's operation as a public utility in certain areas of the Town of Windham and Salem's provision of water service in those areas is **APPROVED**, pursuant to RSA 374:22 and RSA 374:26; and it is

FURTHER ORDERED, that Salem's exemption from regulation as a public utility, except for any franchise expansion, is **APPROVED**, so long as its rates to outside customers are not more than 15 percent above its municipal rates; and it is

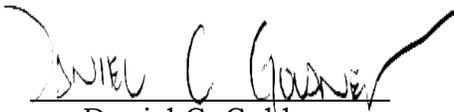
FURTHER ORDERED, that Salem and PEU shall report to the Commission in writing within six months of the effective date of this order, and each six months thereafter, on the status of the negotiations concerning PEU's bulk water purchase from Salem; and it is

FURTHER ORDERED, that the Ramos request to include two additional lots in the franchise area to be transferred to Salem is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 2021.



Dianne Martin
Chairwoman



Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 20-080

Printed: 11/9/2021

Email Addresses

ClerksOffice@puc.nh.gov
robyn.j.descoteau@energy.nh.gov
thomas.getz@mclane.com
jayson.p.laflamme@energy.nh.gov
anthony.j.leone@energy.nh.gov
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
christopher.r.tuomala@energy.nh.gov
donald.ware@pennichuck.com