

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-156

PENNICHUCK EAST UTILITY, INC.

Request for Change in Rates

Order Authorizing Temporary Rate Recoupment and Recovery of Rate Case Expenses, and Addressing Motions for Confidential Treatment

O R D E R N O . 26,637

June 6, 2022

In this order, the Commission authorizes Pennichuck East Utility, Inc. (PEU or the Company) to recoup \$936,385.39, the difference between temporary and permanent rates, based on actual customer usage. The Commission also authorizes PEU to recover \$117,878.69 in prudently incurred rate case expenses on a per-customer basis. While the overall impact of these charges will vary for customers depending on rate class and usage, average residential customers using 6.50 hundred cubic feet per month will be charged approximately \$12.45 per month for twelve months as a result of this order. The Commission authorizes these charges, to begin with, bills rendered on or after July 1, 2022. The Commission also grants a motion for confidential treatment applicable to billing rates for certain contracted services related to this rate case.

I. PROCEDURAL HISTORY

On August 16, 2021, the Commission approved temporary rates at 14.03 percent above PEU's then-current rates, effective on a service rendered basis as of December 24, 2020. *Pennichuck East Utility, Inc.*, Order No. 26,508 (August 16, 2021).

On February 18, 2022, the Commission approved a settlement agreement on permanent rates, resulting in a 16.79 percent overall revenue increase over PEU's

pro forma test year revenues. *Pennichuck East Utility, Inc.*, Order No. 26,586 (February 18, 2022).

In Order No. 26,586, and consistent with the settlement agreement on permanent rates, the Commission directed PEU to file documentation showing the difference in the actual revenues collected from December 24, 2020, and the revenues that would have been collected under the permanent rates ultimately established in this matter, along with a proposed surcharge for recovering that difference from customers. The Commission also directed PEU to file its request for recovery of rate case expenses.

On March 31, 2022, PEU filed tariff pages demonstrating the temporary and permanent rate difference along with supporting documentation. On March 31, 2022, PEU also submitted a request for recovery of its rate case expenses along with a motion for confidential treatment of certain expenses and PEU filed a motion seeking a protective order and confidential treatment of hourly billing rate information of contracted service providers. On May 20, 2022, PEU filed a supplemental motion for a protective order and confidential treatment applicable to discovery responses provided by the Company to the Department of Energy (DOE) related to those same contracted billing rates.

On May 18, 2022, the DOE filed a recommendation regarding rate case expense recovery and revenue recoupment, along with copies of certain discovery responses provided by PEU, including information the Company seeks confidential treatment of.

PEU's request and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-156.html>.

II. POSITIONS

A. PEU

PEU proposed temporary to permanent rate recoupment recovery totaling \$936,385.39. According to PEU, that amount consists of a recoupment of \$1,151,377.10 from general metered customers, a refund of \$32,454.24 to Private Fire Protection customers, and a refund of \$182,537.47 to Public Fire Protection customers. The Company proposed to recoup these amounts, through charges or credits, over a 12-month period. PEU indicated that recoupment charges would vary by usage and that general metered residential customers, on average, would be assessed \$11.26 per month in rate recoupments for 12 months.

PEU also proposed a recovery of rate case expenses totaling \$118,358.39 over a 12-month period. The Company proposed to recover that amount by collecting \$1.19 per month from each of its 8,251 customers.

PEU requested confidential treatment of certain billing rate data and rate structure associated with outside legal counsel, consultant expenses related to its updated cost-of-service study, and mailing services obtained through a request for proposals process over the course of the rate proceeding. The Company argued that disclosure of these contracted hourly rates and other private contractor information would cause competitive harm to those attorneys and could have a detrimental effect on the Company's competitive bidding efforts in the future.

B. Department of Energy

The DOE stated that it reviewed PEU's two March 31, 2022, filings for rate case expenses and reconciliation of temporary to permanent rates, as well as its accompanying motion for protective order and confidential treatment. After propounding discovery, the DOE took no exception to the request for reconciliation of

temporary to permanent rates or its motion for protective order and confidential treatment. With respect to recoverable rate case expenses, the DOE stated that the expenses allowed for recovery should be reduced by \$480.00 to \$117,878.69. Due to rounding, this reduction did not change the proposed per-customer recovery surcharge on a monthly or overall basis. The discovery attachment submitted by the DOE indicated that PEU assented to this modification. The DOE stated that it considers the record on these issues complete for consideration by the Commission.

III. COMMISSION ANALYSIS

A. Temporary-Permanent Rate Recoupment

RSA 378:29 requires the Commission to allow utilities to amortize and recover the difference between temporary and permanent rates over the effective period of the temporary rates if, upon the final disposition of the rate proceeding, the rates ultimately approved exceed the earlier-imposed temporary rates. Conversely, if the permanent rates so established are less than the temporary rates, then that difference must be returned to the ratepayer.

In this case, the temporary rates, set at 14.03 percent higher than the existing rates for all rate classes, were lower than the rates that the Commission ultimately approved for most customer classes. The Company is entitled to recoup a net revenue shortfall amount of \$936,385.39. Based on the ultimate allocation of PEU's increased revenue requirement between rate classes based on the parties' evaluation of cost-of-service in this proceeding, fire protection rate classes generally paid a greater amount through temporary rates than the permanent rates approved by Order No. 26,586. We approve recovery of the proposed revenue differential through 12 monthly surcharges or credits as proposed by the Company.

B. Rate Case Expense Recovery

The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of service appropriate for recovery through rates. *Hampstead Area Water Company, Inc.*, Order No. 26,185 at 4 (October 30, 2018). Consistent with that policy, and NH Code Admin. R. Puc Ch. 1900, we have reviewed PEU's rate case expenses and the Department of Energy's position statement, and we find the rate case expenses for PEU of \$117,878.69 to be just and reasonable. We approve the Company's recovery of this amount over a 12-month period through a uniform monthly customer surcharge of \$1.19.

C. Motion for Confidential Treatment

According to PEU, disclosure of its outside contractor's billing rates may adversely affect the contractor's competitive position in negotiating with other parties. The Company argues that the billing rates are "confidential, commercial, or financial information" and that confidential treatment of that information would be consistent with RSA 91-A and prior Commission orders.

The New Hampshire Supreme Court and the Commission apply a three-step test to determine whether documents should be kept from disclosure as "confidential, commercial, or financial information" under RSA 91-A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)); *Sprint Communications Co. L.P.*, Order No. 25,607 at 2 (December 19, 2013). Under that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* "Finally, *Lambert* directs the Commission to balance those competing interests and decide whether a disclosure is appropriate." *Id.* (citing *Lambert*, 157 N.H. at 383).

The Commission has previously held hourly billing rate information exempt from disclosure. *See Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,586 at 4-5 (October 22, 2013) (citing *Unitil Energy Systems, Inc.*, Order No. 24,746 (2007)). We find that disclosing billing rates could result in a competitive disadvantage to PEU's contactors. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. PEU has provided total invoice amounts for its contractors to inform the public of its expenses, and we deem this sufficient for the purposes of informing the public.

We, therefore, grant the Company's motion. Consistent with past practice and NH Code Admin. R. 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that PEU is authorized to recoup \$936,385.39, representing the difference between revenues billed by PEU since December 24, 2020, the effective date for temporary rates approved in Commission Order No. 26,508, and the permanent rates approved by Order No. 26,586 on February 18, 2022, through a monthly customer surcharge or credit based on individual usage as proposed in its revenue recoupment filing; and it is


FURTHER ORDERED, that PEU is authorized to recover \$117,878.69, representing its prudently incurred rate case expenses, through a surcharge in the amount of \$1.19 per customer per month for a 12-month period beginning July 1, 2022; and it is

FURTHER ORDERED, that PEU shall file clean and annotated compliance tariffs within 15 calendar days of the date of this order reflecting the recoupment and rate case expense surcharges approved herein; and it is


FURTHER ORDERED, that PEU's motions for confidential treatment are GRANTED.

Based upon the foregoing, it is hereby ORDERED,


By order of the Public Utilities Commission of New Hampshire this sixth day of June, 2022.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 20-156

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