

DW 03-023

PENNICHUCK EAST UTILITY, INC.

Petition for Franchise Approval and Rates

Order Nisi Approving Franchise and Rate Petition

O R D E R N O. 24,264

January 9, 2004

I. BACKGROUND

Pennichuck East Utility, Inc. (PEU) is a regulated utility pursuant to RSA 362:2 and RSA 362:4 and serves approximately 4,314 customers in Atkinson, Derry, Hooksett, Litchfield, Londonderry, Pelham, Plaistow, Raymond, Sandown and Windham. PEU is a subsidiary of and wholly-owned by Pennichuck Corporation.

On February 12, 2003, PEU filed a Petition requesting authority to acquire from White Rock Senior Housing I, L.P. and White Rock Development Company, L.L.C. (collectively, Developer) a water system serving the White Rock Senior Living Community (White Rock). PEU also requested authority to provide water service to White Rock. According to the filing, White Rock is a senior rental housing development located near White Rock Hill Road and Bow Center Road in the town of Bow. The development is located on lots 109 and 109-A of tax map 15, block 3, on the Town of Bow tax maps.

On July 11, 2003, PEU amended its Petition and requested approval to serve a separate and unrelated 26 unit senior living development across White Rock Hill Road known as the Pines of Bow. PEU stated the White Rock water system would be extended to Pines of Bow.

On December 1, 2003, PEU filed a motion requesting the Commission stay its consideration of a franchise for Pines of Bow and proceed with consideration of the White Rock franchise. PEU stated it would be more expeditious to limit consideration to the White Rock portion at this time since approval for Pines of Bow from the Department of Environmental Services (DES) was delayed.

On January 7, 2004, Staff filed a letter recommending the Commission grant the Petition. Staff attached to their letter data responses received from PEU during discovery.

When complete, the White Rock development will consist of 192 units in eleven buildings. Unit 1 and Unit 2 will contain 73 apartments and 40 apartments respectively. Units 1 and 2 are joined as one building. Unit 3 will contain 43 apartments. Nine other buildings are planned that would contain 4 units each. Domestic meters will be installed in each of the eleven buildings. The development is being constructed in phases over an estimated four-year period by the Developers. According to Data Responses submitted to Staff, the water system has been supplying water to tenants in Units 1 and 2 since December 2002.

PEU proposes to acquire the water system and property easements in accordance with an agreement entitled Pennichuck East Utility, Inc., White Rock Senior Living Community Water System Agreement (Agreement), dated December 9, 2002, and attached to the Petition. According to the Agreement, PEU will reimburse the Developer a one-time credit of estimated annual revenue of \$208 for each unit occupied, up to a maximum of \$39,936.00. Pennichuck will install meters as well as monitoring and control systems at its own expense.

A clause in the Agreement would require PEU to reimburse the Developer \$4,800 for each additional unit outside the White Rock development connected to the water system, to a maximum of 35 units, with the intent that such amount would be collected from the developer of any such units. This portion of the Agreement, however, is no longer relevant given PEU's motion requesting the Commission not consider the Pines of Bow franchise at this time. Service to customers outside the White Rock franchise is not anticipated under the current petition, as amended.

In Staff's letter filed January 7, 2004, Staff stated they believed PEU possessed the managerial, technical, financial and legal expertise to operate the water system. Staff cited the fact that PEU operated numerous other water systems and had been operating water systems successfully since 1998. Staff also

cited that PEU had satisfied RSA 374:22, III by obtaining a letter dated February 11, 2002 from DES attesting to the suitability and availability of water for the White Rock development.

PEU's amendment to the petition and the data responses contain letters from the Town of Bow supporting the White Rock and Pines of Bow franchises. The Town of Bow expressed its disapproval, however, of paragraph 8 of PEU's petition. That paragraph stated PEU's goal was "to eventually franchise other areas within the town of Bow not already serviced by a community water system and to interconnect other area water systems with the Proposed Franchise Area, contributing to the efficiency of service." The Town of Bow stated it had "had no opportunity to study the ramifications of a town-wide franchise for Pennichuck." The Town was not in a position to comment on whether a Town-operated or Pennichuck franchised area was in Bow's best interest. The Town of Bow requested a public hearing be held prior to final approval by the Commission.

PEU's petition also requested approval of its GM-B tariff rates for the White Rock development. According to Staff's letter, PEU has two general metered rate schedules on file with the Commission that could be applied to the development: GM-A and GM-B. The GM-A rates consist of a monthly meter charge of \$10.69 per 5/8 inch residential meter and a consumption rate of \$3.299 per hundred cubic

feet. Staff observed, the GM-B rate has a slightly higher monthly meter charge of \$13.90 per 5/8 inch residential meter and a consumption rate of \$4.289 per hundred cubic feet.

After reviewing the filing and the discovery responses, Staff concluded the annual consumption data and cost calculations to serve White Rock as well as PEU's projected revenues applying the GM-B rate were reasonable. Staff stated that its initial concerns of possible over-earnings were addressed in the projected revenue schedules submitted by PEU during discovery. PEU's estimated annual cost to serve White Rock was \$40,318. Staff determined that since the White Rock development is served by a total of only 11 meters, the revenues from the metered rates will be substantially below that which would be realized if each of the 192 customers had separate 5/8 meters. Under the GM-B rate schedule, individual meters would yield \$32,025.60 annually, whereas the annual revenues for White Rock's 11 (nine 1-inch; one-1 and 1/2 inch, and one-2 inch) meters will yield only \$7,191.72 from the fixed portion of the rate. PEU's estimated total annual revenue, both meter and consumption, under the GM-B rate is calculated to be \$39,928.60. If the GM-A schedule is applied, the combined annual meter and projected consumption revenue would only total \$31,102.91 which is well below PEU's estimated revenue requirement of \$40,318, as appeared in PEU's response to Staff Data Request 1-12.

II. COMMISSION ANALYSIS

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 shall grant requests for franchise authority and allow an entity to engage in the business as a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is in the public good. See RSA 374:26. In determining whether a franchise is in the public good, the Commission assesses the managerial, technical, financial and legal expertise of the petitioner. See *Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

We have reviewed PEU's filings and discovery responses and agree with Staff that PEU possesses the managerial, technical, financial expertise and legal ability to operate the White Rock franchise. We note PEU has been in the water utility business since 1998 and has successfully operated water utilities elsewhere in the state. PEU has complied with requirements of the DES. PEU has sought proper easements and has other agreements in place to secure proper construction of future build out of the White Rock development. We find, therefore, that PEU's acquisition of assets and service to the White Rock development is in the public good.

We have also reviewed PEU's GM-B tariff rate schedules and Staff's analysis of this tariff rate as compared to other tariff rates and find use of the GM-B tariff rates for the White Rock franchise and the revenue derived therefrom is just and reasonable.

Pursuant to RSA 374:26, the Commission may grant permission to expand a franchise without a hearing if it appears that all interested parties are in agreement. Here, the Staff, PEU, and the Town of Bow are in agreement that PEU should operate the system. The Town of Bow did, however, request the Commission provide an opportunity for a hearing prior to final approval. We believe we can best accommodate the expedience allowed under RSA 374:26, the Town of Bow's request for a hearing, and the due process provisions of RSA 378:27 which are incorporated by reference into RSA 378:28, by issuing our approval of PEU's petition by order *nisi*.

With respect to PEU's motion to move forward with consideration of the White Rock franchise and not the Pines of Bow franchise, we find that course of action to be reasonable given the circumstances. Compliance with RSA 374:22, III is essential to the Commission's review of franchise requests. Since PEU is unable to submit documentation satisfying the suitability and availability requirement, we will at the conclusion of all matters related to the White Rock franchise

close this docket. In the event PEU moves forward with the Pines of Bow franchise, we will open a new docket to review the petition and supplemental documentation.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, Pennichuck East Utility, Inc. is granted authority pursuant to RSA 374:22 and RSA 374:26 to provide service to the White Rock Senior Living Community located on lots 109 and 109-A of tax map 15, block 3, in the town of Bow; and it is

FURTHER ORDERED, that PEU is granted authority, pursuant to RSA 378, to charge rates in accordance with its GM-B tariff in the White Rock franchise area on a service rendered basis effective as of February 9, 2004; and it is

FURTHER ORDERED, that PEU shall be required to seek approval prior to any future expansion of service to any units outside the White Rock Senior Living Community itself; and it is

FURTHER ORDERED, that PEU's motion requesting the Commission delay consideration of the Pines of Bow franchise is GRANTED; and it is

FURTHER ORDERED, that PEU shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in the Bow area, and to be mailed to the Developer and to the Bow town clerk, by first class mail, such actions to be no later than January 19, 2004 and to be

documented by affidavit filed with the Commission on or before February 2, 2004; and it is

FURTHER ORDERED, that all persons interested in responding to PEU's petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than January 26, 2004; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 2, 2004; and it is

FURTHER ORDERED, that this Order Nisi shall be effective February 9, 2004, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before January 23, 2004, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New
Hampshire this ninth day of January, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary