

DW 04-129

PENNICHUCK EAST UTILITY, INC.

Petition for Franchise Approval and Rates

Order *Nisi* Approving Franchise Petition and Rates

ORDER NO. 24,370

September 10, 2004

I. BACKGROUND AND PROCEDURAL HISTORY

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, Bow, Derry, Hooksett, Litchfield, Londonderry, Pelham, Plaistow, Raymond, Sandown, and Windham, New Hampshire. The Commission first authorized PEU to provide water service in 1998. *See, Re Consumers New Hampshire Water Company, Inc.*, Order No. 22,880 (March 23, 1998).

On July 20, 2004, PEU filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting permission to expand its franchise area to include a certain area in the Town of Bow, called the Pines of Bow development. The Pines of Bow is a new senior living development proposed to be built on a site off Bow Center Road and White Rock Hill Road. The project is proposed to consist of 26 units and is being developed by B.H.P. Real Estate Associates, LLC (Developer). The Developer asked PEU to supply water to Pines of Bow. The proposed franchise is identified on the Town of Bow Tax Assessors map as Map 15, Block 4, Lot 72. The Town of Bow submitted an updated map showing additional detail on Lot 72 on August 18, 2004.

PEU also requests approval to impose rates in this new franchise area.

Specifically, PEU seeks to charge its GM-B rates, which are already on file with the Commission and have been approved for the adjacent White Rock Senior Living Community (White Rock). Each of the proposed 26 units will have a meter and a separate service line from the main. The Commission previously authorized PEU to serve White Rock by Commission Order No. 24,264, dated January 9, 2004. PEU intends to provide water to the Pines of Bow from the wells previously established to supply water to White Rock.

In support of its petition, PEU attached a copy of a Main Extension Agreement (Agreement) executed on June 30, 2004 with the Developer whereby the Developer will furnish and install 6" and 8" mains as well as other equipment consistent with PEU's standards. According to the terms of the Agreement, PEU will own the mains and other equipment installed by the Developer.

PEU also attached to its petition a copy of a deed establishing the Developer as the owner of the subject property. The Developer is responsible for supplying PEU with the necessary easements.

PEU supplied a letter from the New Hampshire Department of Environmental Services (DES) to satisfy the requirement of RSA 374:22, III with respect to the availability and suitability of water to supply the new franchise area. DES conditioned its finding of availability and suitability, though, on control of outside water usage during the spring and summer months. DES cited N.H. Code Admin. R. Env-Ws 372.10 which requires at least twelve months of water meter records to be submitted to DES to document that outside water usage is being controlled.

Also contained within PEU's petition is a letter from the Town of Bow dated June 30, 2003 which expresses the Town's support for PEU's request for both the White Rock and Pines of Bow franchises. The Town requested, however, that a public hearing be held prior to final Commission approval of the petition.

The Commission, on July 21, 2004 acknowledged PEU's filing. On September 1, 2004, Commission Staff (Staff) filed its recommendation that the Commission grant the petition. Staff stated it believes PEU has the managerial, financial, technical, and legal expertise to operate a public utility. In support of its recommendation, Staff's included a copy of PEU's response to Staff's data request #7, wherein PEU clarified that the Developer and the Town of Bow have reached an agreement altering the property line owned by the Developer. The Developer will deed the wetlands portion of Lot 72 to the Town, and retain the balance of the lot for the Pines of Bow project. PEU's franchise request in this proceeding relates only to that portion of Lot 72 that the Developer is retaining for the project. Staff stated that, according to data responses received, the White Rock wells will be used for domestic and fire protection purposes only; and that irrigation water for the Pines of Bow will be provided by a well located on-site at Pines of Bow and will be operated and maintained by the Developer or future owner, not PEU. Staff supported PEU's use of its GM-B rates, as the Commission found them to be just and reasonable in neighboring White Rock. Lastly, Staff stated that no other water utility operates in the vicinity of the development, with the exception of White Rock Water Company, Inc., a small utility serving Village Shores Estates in the Town of Bow. White Rock Water Company, Inc. does not have adequate capacity to serve customers beyond its existing franchise. Staff stated it knew of no opposition to PEU's franchise request.

On September 2, 2004, the Commission received a letter from Attorney Sherilyn Burnett Young regarding PEU's response to Staff Data Request No. 4. Attorney Young stated PEU's response that the well located on the Pines of Bow property contained volatile organic compounds was not correct. She stated contamination had been found in wells on the adjacent Town of Bow Landfill property, and that concern was expressed that pumping from the Pines of Bow well in a quantity sufficient to supply all of the needs of the Pines of Bow could cause these contaminants to migrate to the Pines of Bow well. For this reason the Developer pursued a connection to the White Rock system for the domestic water supply.

Though it had initially requested a public hearing, on September 7, 2004, the Town of Bow filed a letter with the Commission supporting PEU's provision of water service to the Pines of Bow development without further proceedings. The request for a public hearing, therefore, was withdrawn.

On September 9, 2004, Staff filed a letter with the Commission and attached a copy of all the data responses it had received from PEU. Staff stated that upon further investigation, it learned that PEU would be filing the monthly water usage reports required by DES as a condition to its suitability and availability finding.

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 of 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 filing, Staff's recommendation, and other correspondence filed in this docket and agree that PEU possesses the managerial, technical, financial expertise and legal ability to operate the Pines of Bow franchise. We note PEU has been in the water utility business since 1998 and has successfully operated water utilities elsewhere in the state. With respect to this development, PEU will own the assets of the water system after the Developer constructs the project and PEU will be assured access to the water system through easements. The cost of the water system infrastructure will be borne by the Developer and will not impact the rates of any other customers of PEU.

We will also approve PEU's use of the GM-B tariff rate schedules for the Pines of Bow franchise area. Staff observed in its recommendation that PEU's GM-B rate is largely a consolidated rate and that the Commission previously approved its use for the White Rock franchise. We note that the White Rock system will provide the water for customers at the Pines of Bow and considering that many of the same assets used at White Rock will be used by Pines of Bow customers, approval of the GM-B tariff rates for the Pines of Bow is reasonable.

For the foregoing reasons, we find that PEU's proposed service to the Pines of Bow is in the public good. We further find that the rates to be applied to the Pines of Bow through the GM-B tariff rates are just and reasonable and also in the public good.

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. Upon our

review of the record in this docket, we find that Staff, PEU, the Developer, the Town of Bow, and DES are in agreement that PEU should provide water to the Pines of Bow development. We note, however, DES's condition that outside water usage be controlled during the spring and summer and that control be documented through the filing of monthly water usage reports. DES has separate, independent jurisdiction and enforcement authority. The DES condition regarding monthly water usage reports bears directly upon PEU's compliance with RSA 374:1 to provide safe and adequate service and RSA 374:22, III to satisfy the suitability and availability requirements. We therefore grant PEU's franchise request on a *nisi* basis, subject to PEU's compliance with DES's reporting conditions.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Pennichuck East Utility, Inc. is granted authority pursuant to RSA 374:22 and RSA 374:26 to provide service to the Pines of Bow located on a portion of Lot 72 of tax map 15, block 4, 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 Pines of Bow franchise area on a service rendered basis effective as of September 29, 2004 unless the Commission orders otherwise; and it is

FURTHER ORDERED, that PEU provide a formal written description of the franchise area to this Commission consistent with the Boundary Line Agreement regarding the Town of Bow and Developer as discussed herein; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, or of circulation in those

portions of the state where operations are conducted, such publication to be no later than September 16, 2004 and to be documented by affidavit filed with this office on or before September 27, 2004; and it is

FURTHER ORDERED, that all persons interested in responding to this 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 September 23, 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 September 28, 2004; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 29, 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 October 1, 2004, in accordance with N.H. Code Admin. R. Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this tenth day of
September, 2004 .

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary