

DW 04-056

PENNICHUCK WATER WORKS, INC.

Petition for Permanent and Temporary Rate Increase

Order Approving Temporary Rates

ORDER NO. 24,377

September 30, 2004

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A. by Steven V. Camerino, Esq. and Sarah B. Knowlton for Pennichuck Water Works, Inc.; Office of the Consumer Advocate by F. Anne Ross, Esq. on behalf of residential ratepayers; and Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

On March 3, 2004, Pennichuck Water Works, Inc. (Pennichuck) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules as well as a Motion for Waiver for Certain Provisions of Puc 1604.01(a). The Commission approved the waiver request on April 15, 2004 and Pennichuck filed its revised tariff pages, Petition for Temporary Rates, and supporting documentation on May 28, 2004. The Commission, by Order No. 24,338 (June 18, 2004), suspended the proposed tariffs and scheduled a prehearing conference for July 27, 2004.

Staff and the Parties developed a proposed procedural schedule, which the Commission approved on August 3, 2004. The City of Nashua filed a Motion to Suspend Consideration of Permanent Increase in Rates. The Commission heard oral argument on the Motion and Staff and the Parties were invited to submit briefs on the issue of whether RSA 38 and RSA 378:6 allow the Commission to suspend tariffs for longer than twelve months. The Commission ultimately denied the Motion by Order No. 24,371 (September 17, 2004).

On August 19, 2004, Staff and the OCA filed pre-filed direct testimony of Jayson P. Laflamme and Kenneth E. Traum, respectively, concerning temporary rates. On August 24, 2004, the Commission heard evidence on temporary rates.

On August 26, 2004, Pennichuck filed a written description of the proposed temporary rate bill implementation formula as discussed at hearing. On August 27, 2004, Pennichuck filed with the Commission Record Request No. 1, Hearing Exhibit 9, which depicts prorated revenues generated from a June 1, 2004 rate increase implementation date.

II. POSITIONS OF THE PARTIES AND STAFF

A. Pennichuck Water Works, Inc.

Through its witnesses, Charles J. Staab and Bonalyn J. Hartley, Pennichuck stated it filed for temporary rate relief due to the significant deterioration in its earnings. Pennichuck explained its last authorized rate of return is 8.58 percent; however, as of the test year ending December 31, 2003, Pennichuck was earning 6.27 percent. Since its last rate case, Pennichuck stated its plant in service had increased by \$10 million. Pennichuck increased its rate base significantly in conjunction with the City of Nashua's combined storm water/sewer separation project. Pennichuck has also seen operating expenses increased by nearly \$2 million.

Pennichuck did not normalize the numbers in its filing for the effects of weather since, it asserts it is difficult to calculate a meaningful figure. Pennichuck noted that it had not been Staff practice in the past to normalize rate case figures for weather. Pennichuck disputed OCA's contention that Pennichuck should normalize its figures for weather and asserted that no accepted methodology exists. Notwithstanding OCA's weather normalization calculation, Pennichuck maintained the net impact would still be a 6.4 percent rate of return, well under its authorized rate of return.

Pennichuck indicated it had reached settlement with Staff on a proposed overall temporary rate increase of 8.94 percent. Pennichuck proposes to apply the temporary rate, on a service rendered basis, effective June 1, 2004, to all residential, commercial, and industrial General Metered customers. According to Ms. Hartley, the temporary rate increase would impact the average residential customer by increasing water bills by \$30 a year, or \$2.55 per month. This estimate is based on an average usage of about 11,140 cubic feet annually. Hearing Transcript of August 24, 2004 (8/24/04 Tr.) at 23 lines 17-24. This would generate \$1.3 million in revenues. 8/24/04 Tr. at 18 lines 12-20.

B. City of Nashua

The City did not participate in the temporary rate hearing but on July 23, 2004 filed a pleading that presumed the Commission would implement temporary rates in this docket.

C. Office of the Consumer Advocate

OCA does not believe Pennichuck needs a temporary rate increase. OCA's witness, Kenneth E. Traum, testified that according to Pennichuck Corporation's 2003 Annual Report, annual revenues were down in 2003 compared to 2002 due to a 10 percent decrease in consumption attributed to the wet summer. OCA averred that increasing water usage in 2003 would have increased revenues by \$954,000 and Pennichuck's net operating income by \$441,000. 8/24/04 Tr. at 15 lines 12-24. These increases would have resulted in a 7.28 percent return on investment in 2003. For this reason, OCA believes Pennichuck is still earning a reasonable rate of return and can survive during the course of the rate case without temporary rates.

The OCA expressed its concern with how Pennichuck initially proposed to implement temporary rates on a bills rendered basis. OCA argued that if a rate increase were to

be implemented on a bills rendered basis, some customers would pay higher effective rates depending on whether they were billed monthly or quarterly. 8/24/04 Tr. at 66 lines 14-23. OCA argued this inequity warranted a different implementation of temporary rates, should the Commission determine such rates were necessary. Billing all customers and not just those who are billed quarterly would be fairer according to OCA. On cross examination, OCA agreed that if Pennichuck implemented a temporary rate increase effective June 1, 2004, on all customers, that would be more fair.

OCA requested that if the Commission grants temporary rates and if permanent rates are lower than temporary rates, that the Commission order a refund of the difference back to customers at a customers' cost of money. OCA argued that Pennichuck's cost of debt is different than a residential customer's and that the Commission should consider this in authorizing refunds. OCA suggested a residential consumer's cost of money is reasonably measured by credit card interest rate, which varies between approximately 14 and 18.9 percent. OCA urged the Commission to require any refunds be calculated at this rate since 55 to 60 percent of Americans carry credit card balances. *See*, Exhibits 7 and 8.

D. Staff

Staff reviewed Pennichuck's test year and in its prefiled testimony made six adjustments: 1) adjusted cash working capital to use a 63.5 day working capital rather than a thirteen month average; 2) removed Supplemental Executive Retirement Plan (SERP) from operating expenses; 3) deducted the unfunded FAS 106 costs in rates since they will be offset by taxes due to Pennichuck being a Special Circumstances Company; 4) removed 2002 billings to the Merrimack Village District from the 2003 test year; 5) removed costs associated with the attempted acquisition of Gunstock Glen since those costs were non-recurring; and 6) removed

expenses incurred during the test year for the SERP of the former president of Pennichuck. Staff proposed a revenue requirement as follows:

Rate Base	\$43,063,625
Rate of Return	8.58%
Operating Income Requirement	3,694,859
Operating Income	2,899,955
Revenue Deficiency Before Taxes	794,904
Divided by Tax Factor	60.39%
Revenue Deficiency	1,316,284
Test Year Water Revenue	14,731,029
Revenue Requirement	\$16,047,313
Percent Increase	8.94%

Staff acknowledged that although the percent increase is 8.94 percent, the effective increase is 10.6 percent because the increase will be applied to only the General Metered customers. Staff stated it believed the resulting temporary rate was just and reasonable. Staff emphasized that the application to only General Metered customers and exclusion of fire protection customers was on a temporary basis and that Staff will review Pennichuck's Cost of Service study as part of its review of Pennichuck's permanent rate case.

III. COMMISSION ANALYSIS

Pursuant to RSA 378:27, the Commission may grant temporary rates for the duration of the proceeding if, in its opinion, the public interest so requires and the records of the public utility on file with the Commission indicate it is not earning a reasonable return on its property used and useful in the public service. The standard for approval of temporary rates is less stringent than that for permanent rates. *Appeal of Office of Consumer Advocate*, 134 N.H. 651 (1991).

We have reviewed the evidence presented regarding temporary rates and we find that Pennichuck is entitled to an increase in rates on a temporary basis. Pennichuck demonstrated that it is currently underearning and that this underearning ultimately

disadvantages both Pennichuck and its ratepayers. We note that Pennichuck and Staff calculated its requested 8.94% temporary rate increase in a manner consistent with its prior temporary rate filings. For these reasons, we find Pennichuck's temporary rate, as applied to all General Metered customers, to be just and reasonable. We recognize that all ratepayers affected by this rate increase will be protected, in that temporary rates will be reconciled with permanent rates at the conclusion of this proceeding, pursuant to RSA 378:29.

With respect to OCA's request that customer refunds, in the event they occur, be refunded with interest, we will defer consideration of this issue at this time. We note that RSA 378:29 does not specifically provide a refund mechanism, however, RSA 378:7 authorizes the Commission to determine just and reasonable rates. We have relied on that authority in the past to order refunds to customers when utilities have overcharged customers. *See Wilton Telephone Company* 87 NH PUC 272 (2002). OCA contends that refunds at an interest rate equivalent to a residential ratepayer's cost of money, such as a credit card interest rate, would be reasonable. We do not find this issue ripe at this juncture of the proceeding. Permanent rates have not yet been established and it is premature to suppose that reconciliation of temporary and permanent rates will produce a situation where customers have overpaid during the temporary rate period. For these reasons, we will defer consideration of what interest rate should apply to rate case refunds.

With respect to the effective date of the temporary rate increase, we note that Pennichuck had originally requested a waiver of Puc 1203.05, which requires rate changes to be implemented on a service-rendered basis in order to impose temporary rates on a bill-rendered basis. At hearing, Pennichuck changed its position to request temporary rates be implemented on a service-rendered basis, effective June 1, 2004. We acknowledge that the effective date

precedes the date of the temporary rate hearing, however, RSA 378:27 allows the Commission to authorize effective dates as early as the date on which the petition for a permanent rate change is filed. *See Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980). In this case, Pennichuck filed its notice of intent to file rate schedules on March 3, 2004, and filed its revised tariffs on May 28, 2004. Pennichuck produced evidence that customers had notice of the proposed rate increase by virtue of various newspaper notices and ads. As a result of that notice, numerous intervenors have sought to participate in this docket. In light of the notice, customers have had the opportunity to adjust their usage prior to the earliest date on which a temporary rate increase could become effective. Accordingly, we find implementing the temporary rate on a service-rendered basis, effective June 1, 2004, and consistent with the description submitted by Pennichuck on August 26, 2004, is just and reasonable.

Based on the foregoing, it is hereby

ORDERED, that Pennichuck Water Works, Inc.'s petition for temporary rates is **GRANTED** on a service-rendered basis effective June 1, 2004; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall submit tariff pages in compliance with this order within 15 days of the date of this order.

By Order of the Public Utilities Commission of New Hampshire this thirtieth day
of September, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary