

DW 04-120

PENNICHUCK EAST UTILITIES, INC.

**Petition for Authority to Engage in Business as a Public Utility in a Limited Area of the
Town of Lee and for Approval of Rate Schedules**

Order *Nisi* Approving Franchise Rights and Rate Schedules

ORDER NO. 24,413

December 22, 2004

I. PROCEDURAL HISTORY AND 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, Bow, Derry, Hooksett, Litchfield, Londonderry, Pelham, Plaistow, Raymond, Sandown, and Windham, New Hampshire. The New Hampshire Public Utilities Commission (Commission) first authorized PEU to provide water service in 1998. See, *Consumers New Hampshire Water Company, Inc.*, 83 NH PUC 191 (1998).

On July 8, 2004, the Commission received a Petition from Pennichuck Water Works, Inc. (PWW) to Engage in Business as a Public Utility in a limited area of the Town of Lee and for Approval of Rate Schedules. The Petition sought: 1) Authorization to purchase the Thurston Woods water system; 2) Grant of franchise authority to provide water in the proposed franchise area; and 3) Authority to charge rates according to PEU's GM-A tariff which presently consists 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.

On December 3, 2004, Commission Staff (Staff) filed a letter with the Commission recommending the Petition, with some modification, be approved. Staff stated that during discovery it became evident to Staff that the real petitioner was PEU, not PWW but that necessary documents were in the name of PWW. To remedy this oversight, PEU provided amended petition documents to Staff, which Staff forwarded to the Commission on December 3, 2004 with its recommendation letter.¹ Staff stated that PEU had demonstrated that it possesses the technical, financial, and managerial expertise to own and operate the Thurston Woods water system. Staff recommended the Commission grant PEU's request for franchise authority to serve the Thurston Woods development and charge PEU's currently effective GM-A rates to the customers served by the Thurston Woods water system.

The Thurston Woods franchise area PEU seeks to serve includes 34 single family dwelling units on Thurston Drive, Haley Court, Margaret Lane, and Depot Lane in Lee, New Hampshire. The subdivision also includes Piper Lane which, Staff notes in its recommendation letter, is comprised of single family homes served by individual private wells. PEU's service will also supply fire hydrants in the Thurston Woods subdivision, excluding Piper Lane. According to Data Response 2-5, however, PEU does not seek to charge for this fire protection service. The proposed franchise area is specifically detailed on a map made part of PEU's Data Response 1-5, Attachment 4 to Staff's letter.

PEU has entered into a Standard Agreement (Agreement) with Green & Company

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Staff attached the following documents to its recommendation letter: 1) Attachment 1, Revised Petition of PEU; 2) Assent to Assignment to PEU signed by Blackbird Investments, LLC and Green & Co. Building & Development Corp.; 3) Attachment 3, Assent to Assignment to PEU signed by PWW; 4) PEU responses to Staff Data Requests, Set 1; and 5) Attachment 5, PEU responses to Staff Data Requests, Set 2.

Building and Development to purchase equipment and obtain easements to provide water service to the Thurston Woods development. According to the Petition, subsequent to the signing of the Agreement, ownership of the development was transferred to Blackbird Investments, LLC. Green & Company Building and Development manage Blackbird Investments, LLC. For the purposes of the Petition, we will refer to both entities as the Developer. Under the terms of the Agreement, the Developer will construct the water system to standards established in the Agreement. The Thurston Woods water supply and distribution system will include a pump station, pumping equipment, pipelines from main to end, all fittings, valves, release valves, hydrants, valves boxes, service boxes, electronics, thrust blocks, backfill materials, road restoration materials and any other appurtenances and equipment required to operate the system. The Developer will transfer ownership of the water system to PEU and will convey to PEU all necessary easements for the water system. PEU will pay the Developer an investment credit of \$400 per housing unit. Meter cost and installation will be the responsibility of PEU upon closing of the Agreement between PEU and the Developer.

PEU states it possesses the requisite technical, financial and managerial capabilities to own and operate a water system in the proposed franchise area. PEU stated that the Commission has granted PEU numerous franchises in the past. PEU averred that its rendering of water service in the State establishes that it has a reputation of providing reliable and efficient water service. PEU stated it has experience in the industry and skilled employees and management.

PEU also provided the Commission with a copy of a letter from the Town of Lee Board of Selectmen stating the Town of Lee did not object to PEU's proposed operation and

servicing of the Thurston Woods subdivision. The letter contained three conditions: 1) The franchise will be limited to the Thurston Woods subdivision; 2) No surplus water will be transported out of the subdivision; and 3) All required federal, state and local permits or conditions will be met. Staff noted in its recommendation letter that it was Staff's understanding that the concurrence of local officials was advisory only to prevent potential boundary conflicts with existing water service providers. Staff further stated these conditions may potentially conflict with PEU's stated intention to possibly expand the water system but averred that this issue was not presently ripe for Commission review.

PEU provided the Commission with a copy of a letter dated April 30, 2004, from the New Hampshire Department of Environmental Services (NHDES) satisfying the suitability and availability requirement of NH RSA 374:22, III. According to PEU's Data Response 1-6 attached to Staff's recommendation letter, as of mid-September, eleven homes had been sold and five were expected to close by the end of 2004. An additional eight homes were under construction.

PEU provided financial analysis, attached as Attachment 5 to Staff's recommendation letter, as to why it proposed the GM-A tariff rate used by PEU in other franchise territories. PEU concluded, based on its calculation, that the annual cost of providing service per customer to the Thurston Woods system was \$504.82. PEU stated that this cost more closely matched the GM-A rate than the GM-B rate and using the GM-A rate would prevent subsidization from other systems. Staff reviewed this rate and concluded the GM-A rate was appropriate given the estimates of annual consumption, projected revenues and cost calculations to serve Thurston Woods. Staff noted that PEU has only two tariffed rates, GM-A and GM-B,

and that PEU proposes the lesser of the two rates.

With respect to the franchise area including six homes served by individual wells on Piper Lane, the record indicates these homes were part of the Subdivision Plan and that there will be no requirement to take service from PEU. Staff did not object to the franchise area including these homes. Staff recommended, however, that the Commission require PEU to notify each homeowner on Piper Lane of PEU's proposal to provide water service to the remainder of the Thurston Woods subdivision so that they would be aware of the option to take service from the utility.

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). Pursuant to RSA 378:5 and RSA 374:7, the Commission is authorized to investigate whether rates, fares, charges or prices a utility proposes to put into force are just and reasonable. We apply these authorities to the case at hand.

We have reviewed PEU's Petition, Staff's recommendation, and other filings in this docket and will grant the Petition. We agree with Staff that PEU possesses the managerial, technical, financial expertise and legal ability to operate the Thurston Woods franchise. PEU has

been in the water utility business in New Hampshire since 1998 and has successfully operated water utilities in this state.

In assessing whether PEU possess the managerial, technical, financial, and legal expertise to acquire and operate the Thurston Woods water system, we note that PEU has provided the Commission with a letter from DES indicating the water system meets the suitability and availability requirements of RSA 374:22,III. PEU will secure proper easements and access to the water system by the terms of the Agreement it has entered into with the Developer.

We have reviewed PEU's GM-A tariff rate schedules and Staff's analysis of this tariff rate as compared to other tariff rates and find use of the GM-A tariff rates for the Thurston Woods franchise and the revenue derived therefrom is just and reasonable. PEU did not request a specific date by which to implement the GM-A rate and we will thus approve the rate on a service rendered basis as of the effective date of this order.

Regarding the \$400 investment credit per customer that PEU will pay the Developer, Staff agreed the charge was reasonable and supports PEU's proposal to book the total amount for the 34 units in rate base. We will require, however, that any original cost in excess of the total amount which PEU will pay for the system be booked as a Contribution in Aid of Construction (CIAC). The Commission has a long-standing practice of disallowing recovery from ratepayers those amounts in excess of the amount paid for a system. Booking these costs as CIAC will ensure such costs are not reflected in future customer rates.

New Hampshire RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing "when all interested parties are in agreement." Here, the

Staff, PEU, and the Town of Lee are in agreement that PEU should operate the Thurston Woods water system. We note that the Town of Lee Board of Selectmen did not object to PEU's franchise request so long as the franchise was limited to the Thurston Woods subdivision, that no surplus water will be transported out of the subdivision, and that all required federal, state and local permits or conditions will be met. These concerns appear to be satisfied. If PEU seeks to serve beyond the Thurston Woods subdivision, it would need to file a separate request for approval with the Commission. PEU's Petition does not request approval to transport water supply beyond the bounds of this subdivision and our approval only authorizes PEU to use Thurston Woods water supplies to serve customers residing therein.

Notwithstanding the agreement among the Staff and parties recommending that the Commission grant PEU's franchise request, we will approve the Petition on a *Nisi* basis in order to ensure that all interested parties receive notice of the proposal and an opportunity to request a hearing. For the reasons stated above, we find that PEU's acquisition of assets and request to provide water service to the Thurston Woods development is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that PEU is authorized to operate as a public water utility in a limited area known as the Thurston Woods subdivision located in Lee, New Hampshire; and it is

FURTHER ORDERED, that within 10 days of the completion of the sales transaction specified in the Agreement between PEU and the Developer, PEU will provide copies of the executed transfer documents to the Commission; and it is

FURTHER ORDERED, that PEU is granted authority, pursuant to RSA 378, to charge customers of the Thurston Woods water system PEU's GM-A Tariff rates currently in

effect, on a service rendered basis, effective January 21, 2005, unless the Commission orders otherwise; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order *Nisi* to be mailed to the Town Clerk in Lee and be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such mailing and publication to take place no later than December 31, 2004 and to be documented by affidavit filed with this office on or before January 21, 2005; and it is

FURTHER ORDERED, that PEU notify each customer in the Thurston Woods development, including residents on Piper Lane, of this Order *Nisi* by providing a copy of this Order by first class mail postmarked no later than December 31, 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 January 7, 2005; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 14, 2005; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 21, 2005, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that PEU shall file a compliance tariff with the Commission on or before January 6, 2005, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director & Secretary