

**DW 05-072**

**PENNICHUCK EAST UTILITY, INC.**

**Petition for Permanent and Temporary Rate Increases**

**Order Approving Agreement Regarding Temporary Rates**

**ORDER NO. 24,513**

**September 9, 2005**

**APPEARANCES:** McLane, Graf, Raulerson & Middleton, P.A. by Sarah B. Knowlton, Esq. for Pennichuck East Utility, Inc.; Office of the Consumer Advocate by F. Anne Ross, Esq. on behalf of residential ratepayers; and Marcia A. B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

Pennichuck East Utility, Inc. (PEU) provides water service to approximately 4,500 customers located in limited areas of the towns of Litchfield, Londonderry, Windham, Pelham, Atkinson, Sandown, Derry, Raymond, Plaistow, Hooksett, Bow, and Lee. On April 8, 2005, PEU filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules.

On May 20, 2005, PEU filed a petition for a permanent increase of \$779,027 or 24.99% to its revenues. Contemporaneously, PEU filed for a temporary rate increase pursuant to RSA 378:27 of \$381,565 or 12.25%. PEU requested that temporary rates be made effective for service rendered on and after June 1, 2005.

On June 16, 2005, the Commission issued Order No. 24,476, which suspended the proposed tariffs, established a procedural schedule for the consideration of temporary rates, and set a prehearing conference for August 9, 2005. Following the prehearing conference, Staff on behalf of itself and the Parties submitted a procedural schedule for Commission approval. The Commission subsequently approved the procedural schedule on July 8, 2005.

On June 21, 2005, the Office of the Consumer Advocate (OCA) filed a notice of its intent to participate in this docket. The Commission held a hearing on temporary rates on August 9, 2005, at which PEU, OCA and Staff filed an agreement regarding temporary rates. On August 12, 2005, PEU filed with the Commission, Exhibit 4, its response to a record request made at hearing for a schedule depicting PEU's pro forma test year rate of return under the terms of the proposed temporary rate increase.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Pennichuck East Utility, Inc.**

Through its witness Bonalyn J. Hartley, PEU stated that it filed for temporary rate relief due to a significant deterioration in its earnings. PEU indicated that its last authorized rate of return was 8.3%, which was based on a return on equity of 11%. Hearing Transcript of August 9, 2005 (8/9/05 Tr.) at 7, lines 6-8. In its 2004 test year, PEU achieved a rate of return of 4.12%, representing a deficiency of some 418 basis points below the previously allowed return. Id. at 7, line 13. Thus, PEU filed for temporary rates at a level of 12.25% above the test year rates, which is an amount representing one-half of PEU's total calculated deficiency. PEU explained that it felt requesting half of the deficiency at this time was fair, and indicated that this request stems from: 1) the complexity of having three different rate groups; 2) the length of time since the data backing PEU's current rates had been reviewed; and 3) the uncertainty of how a rate increase for PEU would ultimately be applied to the three rate groups. PEU presented a Report of Proposed Rate Changes – Temporary Rates at hearing, which represented PEU's agreement with Staff and the OCA. Exh. 2. That agreement calls for a 9% increase in temporary rates, applied equally to the three rate groups, and effective on a service rendered basis as of June 16, 2005. Ms. Hartley testified at hearing that PEU, Staff, and the OCA agreed that all customer

classes would receive the same 9% increase. 8/9/05 Tr. at 12, lines 15-17. PEU estimated that with this temporary rate increase, Group L annualized bills would be \$618.07, Group A annualized bills would be \$472.91, and Group B annualized bills would be \$644.64. PEU averred that a rate increase of 9% for temporary rate purposes would result in just and reasonable rates to its customers.

### **B. Staff**

Through its witness Mark A. Naylor, Staff explained its support for a temporary rate increase of 9%. Staff noted that it had reviewed PEU's books and records on file with the Commission and calculated PEU was earning a rate of return well below its last authorized rate of return on rate base. Staff indicated that the existence of three separate rate groups all with differing rates raised a question of whether PEU's proposal in its filing to apply an equal rate increase to all three groups is appropriate. Staff supports an across-the-board 9% increase to all three rate groups for temporary rate purposes. They indicated that it supports such a temporary rate increase in this docket because: 1) Staff's review of PEU's earnings for its test year reveals a clear earnings deficiency, and thus, it concludes PEU will be entitled to some level of permanent rate increase; 2) it will mitigate rate shock to customers by increasing rates in two stages instead of one, if permanent rates are significantly higher; and 3) a temporary rate increase reduces the amount of the recoupment that would be necessary once temporary rates are reconciled with the permanent rates ultimately established.

### **C. Office of the Consumer Advocate**

OCA stated it was a signatory to the agreement presented by Staff and PEU on temporary rates and supported approval of the agreement.

### 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, which are fully reconcilable, 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 it reasonable to approve a 9% increase in PEU's rates, on a temporary basis. PEU demonstrated that based on its books and records presently on file with the Commission, it is significantly underearning, which ultimately disadvantages both PEU and its ratepayers. PEU, Staff, and the OCA agreed to an increase for temporary rates of 9%. Even after including a 9% temporary rate increase, PEU still estimates its rate of return on rate base is 5.49%. Exh. 4. We believe such an increase is reasonable in order to mitigate potential rate shock to customers and to reduce the significance of a recoupment between temporary rates and permanent rates at a later date. For these reasons, we find the proposed 9% temporary rate increase to be just and reasonable.

With respect to applying the rate increase equally to all customer classes in each of the three rate groups, we accept the recommendation from Staff and the Parties to apply the 9% increase equally to all rate groups, but will consider as part of the permanent rate case the appropriate allocation of the increase, based on a more fully developed record. In the meantime, the reconciliation mechanism found in RSA 378:29 will protect customers in the event we decide that permanent rates should not be applied equally to all three rate groups.

With respect to the effective date of the temporary rate increase, we note that PEU originally requested that its temporary rate be effective on a service rendered basis as of June 1, 2005. At hearing, Staff and the parties requested that PEU be authorized to implement temporary rates effective June 16, 2005. We acknowledge that both of these proposed effective dates precede 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). PEU filed its notice of intent to file rate schedules on April 8, 2005, and filed its revised tariffs on May 20, 2005. We issued Order No. 24,476 on June 16, 2005, notifying the public of PEU's rate case filing, suspending PEU's proposed tariffs, and establishing a prehearing conference and temporary rate hearing. In light of the notice contained in that Order, we find implementing the temporary rate on a service-rendered basis, effective June 16, 2005, is just and reasonable.

Based upon the foregoing, it is hereby

**ORDERED**, that Pennichuck East Utility, Inc.'s request for a temporary rate increase of 9% is GRANTED, on a service rendered basis effective June 16, 2005, as detailed above; and it is

**FURTHER ORDERED**, that Pennichuck East Utility, 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 ninth day of  
September, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary