

DW 05-093

PENNICHUCK EAST UTILITY, INC.

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

Order *Nisi* Approving Franchise Rights and Rate Schedules

ORDER NO. 24,521

September 22, 2005

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 4,300 customers in Atkinson, Bow, Derry, Hooksett, Lee, 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 May 13, 2005, the Commission received a Petition from PEU to Engage in Business as a Public Utility in a limited area of the Town of Chester and for Approval of Rate Schedules. The area to be served is an approximately 80 acre cluster subdivision of approximately 40 homes known as Chester Brook Estates (Chester Brook) situated at or off Ladyslipper Lane and Bayberry Road, in Chester, New Hampshire. The specific location can be viewed at the Commission's offices. PEU states that the Chester Brook Estates Association (Association) no longer wishes to operate its community water system and that the Association requests PEU take over the obligation to supply water service.

PEU specifically seeks: authorization to purchase a water system owned and

operated by the Association; grant of franchise authority to provide water in the proposed franchise area; and, 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.

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

In support of its Petition, PEU submitted a fully executed Water System Purchase Agreement (Agreement) with the Association. The Agreement requires the Association to convey to PEU all necessary use and access easements and well head protective easements for the water supply. The Association, by bill of sale, agrees to convey the physical water system to PEU, specifics of which can be viewed at the Commission's offices. PEU agrees to pay the Association an investment credit of \$350.00 per housing unit. PEU agrees to bear the cost of meters and installation, which it estimates to be \$210 per unit.

In support of its request to charge customers the existing GM-A rate, PEU submitted financial schedules showing a total investment in Chester Brook of \$28,000 and averred this investment justified the application of the GM-A rate. PEU later revised this investment total to \$33,640.

II. COMMISSION STAFF RECOMMENDATION

On September 21, 2005, Staff of the Commission (Staff) filed a letter with the Commission recommending approval of PEU's Petition. Staff stated that it had reviewed PEU's filing and had conducted discovery, attaching PEU's discovery responses to its letter. The discovery responses included a map further detailing the proposed franchise area, as well as approval from the New Hampshire Department of Environmental Services (NH DES). Staff noted that PEU had submitted a copy of a letter from the Chairman of the Chester Board of Selectmen confirming that the Town understood that PEU wished to "assume the footprint of the water source for Chesterbrook Estates."

Staff stated that in its view, PEU had demonstrated the technical, financial, and managerial expertise to own and operate the Chester Brook water system and recommended the Commission grant PEU's request for franchise authority to serve the Chester Brook development. Staff also stated that it agreed with PEU's request to apply its GM-A rate for the customers of the Chester Brook system. In support of its conclusion, Staff stated that PEU essentially has only two tariffed rates and that these rates have been carried over from Consumers NH Water Company. 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. The second rate, GM-B, 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. Staff noted that PEU plans to install a SCADA metering system at a cost of approximately \$5,000. Based on its review of PEU's calculations, level of investment, and estimated operation and maintenance expenses, Staff agreed that the GM-A rate is appropriate.

With respect to compliance with RSA 374:22, III concerning the suitability and availability of water for Chester Brook, Staff noted the letter from NH DES dated June 28, 2005,

specifically stating that the Chester Brook system was approved and that the water system satisfied the requirements of NH DES concerning basic suitability and availability of water. Lastly, Staff recommended the Commission issue an Order *Nisi* to allow a hearing if interested persons so request.

III. 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. 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 have reviewed PEU’s Petition, Staff’s recommendation, and other filings in this docket and will grant PEU’s Petition. We agree with Staff that PEU possesses the managerial, technical, financial expertise and legal ability to operate the Chester Brook franchise. PEU has been in the water utility business in New Hampshire since 1998 and has successfully operated water utilities in this state. PEU has provided the Commission with a letter from NH DES indicating the water system meets the suitability and availability requirements of RSA 374:22, III. According to the Agreement filed with the Petition, the Association will convey to PEU all necessary use and access easements and well head protective easements for

the water supply.

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 Chester Brook 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, provided all customers' meters are installed, properly operating and initial readings have been recorded for billing purposes. We further note that the Commission currently has before it a rate petition from PEU, Docket No. DW 05-072. In that docket, PEU seeks to increase rates to all PEU customers, including those at Chester Brook. We intend in that docket to review all of PEU's rates, including a reassessment of PEU's rate as applied to Chester Brook. In light of this, we will order PEU to provide a copy of this order to its new customers at Chester Brook so they will be aware of the pending rate petition.

We will allow PEU to book in the rate base a total amount of \$33,640 for the 40 units comprising the so-called Developer Credit, the Franchise/Acquisition Cost, the Meter Investment and the SCADA investment. We will require, however, that any original cost in excess of the \$33,640 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.

RSA 374:26 authorizes the Commission to grant requests for franchise authority without a hearing "when all interested parties are in agreement." Here, Staff, PEU, and the Town of Chester appear to be in agreement that PEU should operate the Chester Brook water

system and serve the customers residing therein. Nevertheless, 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 Chester Brook development is in the public good and will be approved.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Pennichuck East Utility, Inc. is authorized to operate as a public water utility in a limited area known as the Chester Brook subdivision located in Chester New Hampshire; and it is

FURTHER ORDERED, that within 10 days of the completion of the sales transaction specified in the Agreement between Pennichuck East Utility, Inc. and the Association, Pennichuck East Utility, Inc. will provide copies of the executed transfer documents to the Commission; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. is granted authority, pursuant to RSA 378, to charge customers of the Chester Brook water system Pennichuck East Utility, Inc.'s GM-A Tariff rates currently in effect, on a service rendered basis, assuming all meters are installed, effective October 21, 2005, unless the Commission orders otherwise; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall cause a copy of this Order *Nisi* to be mailed to the Town Clerk in Chester 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 October 3, 2005 and to be

documented by affidavit filed with this office on or before October 21, 2005; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. notify each customer in the Chester Brook development of this Order *Nisi* by providing a copy of this Order to each customer by first class mail postmarked no later than October 3, 2005; 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 October 10, 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 October 17, 2005; and it is

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

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall file a compliance tariff with the Commission on or before October 10, 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 September, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary