

**DW 05-136**

**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. 24,569**

**December 30, 2005**

**I. BACKGROUND**

Pennichuck East Utility, Inc. (PEU) is a regulated utility pursuant to New Hampshire RSA 362:2 and RSA 362:4 and serves in excess of 4,300 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 August 22, 2005, PEU filed a petition for approval to establish a new franchise in the Town of Chester and charge rates in the new franchise area. PEU seeks to provide water service to 22 single-family residences in a development known as Shaker Heights Estates, in the Town of Chester. The franchise area consists of an approximately 30 acre parcel of land near Route 102. The filing was accompanied by the testimony of Bernard J. Rousseau, Vice President of Pennichuck Water Service Corporation, an affiliate of PEU.

On September 22, 2005, PEU filed a supplemental plan, Exhibit BJR-2, to the pre-filed testimony of Bernard J. Rousseau. On October 25, 2005, PEU filed a Request to Amend Petition and Pre-filed Testimony. In the request, PEU stated that it had erroneously

requested approval of the PEU-A tariff rate when in fact it had meant to request approval of the PEU-B tariff rate.<sup>1</sup> PEU requested that all references in the filing and pre-filed testimony to PEU-A tariff rate be stricken and replaced with reference to PEU-B tariff rate. On November 3, 2005, PEU filed a supplemental plan, Exhibit BJR-4, to the pre-filed testimony of Bernard J. Rousseau to more clearly define the proposed franchise area.

On December 15, 2005, the Staff of the Commission (Staff) filed a letter recommending that PEU's petition be approved. Staff stated it had thoroughly reviewed the filing and had conducted discovery and attached PEU's data responses to its letter. In support of its recommendation, Staff stated PEU has entered into a Standard CWS Purchase Agreement with Remi-Sons Investments, L.L.C., the developer of Shaker Heights Estates, to purchase the water system and to provide water service to the proposed development. According to PEU's discovery response 1-1, the residential community is currently under construction, although the water system is completed. As of October 6, 2005, one customer had already connected to the system and was taking water service. Full build-out of the community is anticipated by the end of 2006, depending on sales of units in the development.

The Standard CWS Purchase Agreement states that PEU will pay \$5,000 plus costs incurred by the developer according to a Water Main Extension Agreement. Data Response 1-5, however, indicates the reference is in error and that PEU will pay only \$5,000 for the fully built water system. Staff indicated that PEU is obtaining the water system at less than original cost and, to the extent the original cost exceeds PEU's actual cost, that overage should be booked as a Contribution in Aid of Construction (CIAC). PEU's agreement with Remi-Sons

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<sup>1</sup> According to PEU's present tariff, the PEU-B rate, a/k/a GM-B rate, is \$13.90 per month for 5/8 inch service and \$4.289 per 100 cu. ft. of consumption. On September 9, 2005, in Order No. 24,513, the Commission approved this rate as a temporary rate pending the final disposition of Docket No. DW 05-072, PEU's rate case.

Investments, L.L.C. also provides that PEU will invest in meters for the homes, as well as a SCADA system for the pump station.

Staff stated the franchise area is clearly depicted on supplemental Attachment BJR-4 to the testimony of Mr. Rousseau.<sup>2</sup> PEU has also advised the Town of Chester Board of Selectmen of the requests made in the instant petition, and has not received any objections or concerns on the part of the Town. After reviewing PEU's filing and discovery responses, Staff also concluded that the PEU-B tariff rate is appropriate, just and reasonable and recommended the Commission approve it.

Staff advised the Commission that PEU submitted a letter from the New Hampshire Department of Environmental Services (DES) indicating that DES approved the Shaker Heights Estates water supply. Staff concluded PEU had fulfilled the requirements as to the availability and suitability of water pursuant to RSA 374:22, III.

Based on the petition, supplemental filings, and data responses, Staff averred that PEU had demonstrated that it possesses the technical, financial, and managerial expertise to own and operate the Shaker Heights Estates water system. Staff thus recommended the Commission grant PEU's request for franchise authority to serve the Shaker Heights development and charge PEU's currently effective PEU-B rates to the customers served by the Shaker Heights water system.

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<sup>2</sup> Franchise Description: A certain parcel or parcels of land bisecting Wason Brook and located south of N.H. State Route 102 in the Town of Chester, County of Rockingham, State of New Hampshire, and being shown as Consolidated Lot 9-63-1 on plan entitled "Map 9 Lots 63-1 Thru 7, 63-9, 63-10 & 63-11, Lot Line Adjustment, Lot Consolidation & Re-Subdivision Plan, Shaker Heights Estates Condominium, Shaker Heights Lane, Chester, New Hampshire" prepared by Cornerstone Survey Associates, Inc. and recorded in the Rockingham County Registry of Deeds as Plan No. 32213.

## 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, and financial abilities 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, supplemental information, and Staff’s recommendation in this docket and we will grant PEU’s requests. We agree with Staff that PEU possesses the managerial, technical and financial abilities to operate the Shaker Heights Estates 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 secured proper easements and access to the water system by the terms of the agreement it has entered into with Remi-Sons Investments, L.L.C. Lastly, PEU has demonstrated that the water system meets the suitability and availability requirements of RSA 374:22, III.

We next turn to the issue of rates. PEU proposes to apply its PEU-B tariff rate. Staff concluded the rates were just and reasonable and recommended the Commission approve the use of the PEU-B tariff rate for the Shaker Heights Estates franchise. We note that PEU

presently has before us, in Docket No. DW 05-072, a petition to increase its rates, including the PEU-B tariff rate. We believe resolution of appropriate rates is best done in the context of a full rate case wherein all aspects of a water utility's expenses and revenues can be reviewed. In light of the pending rate case docket, we find that PEU's proposal to charge the existing PEU-B tariff rate is just and reasonable. Accordingly, we approve the PEU-B tariff rate for the Shaker Heights Estates development until such time as permanent rates are set in Docket No. DW 05-072. In its petition, PEU did not specifically request a date by which to implement rates, and we will thus approve the rate on a service rendered basis as of the effective date of this order.

As to how PEU should book its investment in the Shaker Heights Estates water system, we must address the discrepancy between the Standard CWS Purchase Agreement, under which PEU is to pay \$5,000 plus costs incurred by the developer and the terms identified in Data Response 1-5, which indicates that PEU will pay *only* \$5,000 for the fully built water system. Staff recommended that, because PEU is obtaining the water system at less than original cost, the excess value should be booked as a Contribution in Aid of Construction (CIAC). We agree that this is the appropriate accounting treatment of PEU's acquisition of the water system assets. The Commission has a long-standing practice of disallowing recovery from ratepayers of 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. Accordingly, we will require PEU to book CIAC as appropriate.

Lastly, 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 and PEU are in agreement that PEU should operate the Shaker Heights Estates water system.

Although the Town of Chester did not participate in this docket, Exhibit 4 to the pre-filed testimony of Bernard J. Rousseau indicates the Town of Chester Planning Board approved the Shaker Heights Estates development on December 1, 2004. Additionally, PEU specifically notified the Town of Chester of the instant petition. Notwithstanding the agreement of Staff and PEU and apparent acquiescence of the Town of Chester, we will approve the Petition on a *Nisi* basis in order to ensure that all interested parties receive notice of the proposed franchise and rates and have an opportunity to request a hearing on the matter, if they so choose. For the reasons stated above, we find that PEU's request for franchise rights relating to the Shaker Heights Estates development is consistent with the public good and, accordingly, we approve the request. We also find the PEU-B tariff rate for the Shaker Heights Estates development is just and reasonable and we will approve the rate pending the outcome of PEU's permanent rate case in Docket No. DW 05-072.

**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 Shaker Heights Estates 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 Remi-Sons Investments, L.L.C., 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 Shaker Heights Estates water system the PEU-

B tariff rates currently in effect, on a service rendered basis, effective as of the date of this order, unless and until 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 the Town of Chester and 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 January 9, 2006 and to be documented by affidavit filed with this office on or before January 30, 2006; and it is

**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than January 17, 2006 for the Commission's consideration; 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 23, 2006; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective January 30, 2006, unless Pennichuck East Utility, Inc. 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 Pennichuck East Utility, Inc. shall file a compliance tariff with the Commission on or before January 30, 2006, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day  
of December, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Kimberly Nolin Smith  
Assistant Secretary