

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 17-059**

**PENNICHUCK EAST UTILITY AND PITTSFIELD AQUEDUCT COMPANY**

**Petition to Waive Competitive Bidding**

**Order Granting Motion to Waive Puc 1905.04**

**ORDER NO. 26,013**

**April 28, 2017**

On April 6, 2017, Pennichuck East Utility, Inc. (PEU), and Pittsfield Aqueduct Company (PAC) submitted a request for waiver of N.H. Admin. Rule Puc 1905.04 regarding competitive bidding requirements in the selection of legal counsel to assist with the preparation and filing of an anticipated rate case this summer. PEU and PAC are both subsidiaries of the Pennichuck Corporation (Pennichuck) and operate as public utilities subject to the jurisdiction of the Commission. In this order, the Commission grants the requested waiver.

**I. BACKGROUND**

In 2012, the City of Nashua completed its acquisition of all of the issued and outstanding shares of Pennichuck and became Pennichuck's sole shareholder. Nashua and Pennichuck filed a petition seeking approval of the acquisition in Docket No. DW 11-026. The settlement agreement approved by the Commission resulted in special modified ratemaking methodology. PEU's and PAC's attorneys, Rath Young & Pignatelli, PC (Rath), represented the City of Nashua in that transaction. The firm is currently representing Pennichuck Water Works, Inc. (PWW), another subsidiary of Pennichuck, in its rate case proceeding now pending before the Commission. *See* Docket No. DW 16-806.

As outlined in their motion, PEU and PAC intend to raise similar issues in their upcoming rate case and associated requests for ratemaking modifications that are being presented

in DW 16-806. In that case, Pennichuck issued a Request for Fee Proposal for legal services to represent PWW before the Commission. Pennichuck took a number of factors into consideration as outlined in its motion. It awarded the bid to Rath utilizing the factors included in the Commission's rules such as consideration of the availability, experience, customary fees for similar services, quality, and cost of the service provider required.

N.H. Admin Rule Puc 1905.04 provides that:

(a) All utilities serving 600 customers or more and hiring service providers for use in a full rate case shall acquire such services through a competitive bidding process if the expense for such service is estimated to be or is \$10,000 or greater.

(b) Except if not necessary under (a), for each service provider used, the utility shall also include a certification that:

- (1) The utility used a competitive bidding process, and in selecting the winning bidder, considered information concerning the availability, experience, customary fees for similar services, quality, and cost of the service provider; and
- (2) The time spent on the rate case by the service provider was undertaken in an efficient and cost effective manner.

(c) If a utility is required to use a competitive bidding process pursuant to Puc 1905.04(a) and engages a service provider who is not the lowest bidder in a competitive bidding process, the utility shall provide clear and convincing justification of its decision to do so.

PEU and PAC wish to retain Rath as their counsel to present their upcoming rate case without the need to issue competitive bidding as required under Puc 1905.04. Commission Staff and the Office of Consumer Advocate assent to the relief requested by the Companies.

## **II. COMMISSION ANALYSIS**

In considering a waiver request, the Commission shall waive the provisions of any of its rules if it finds that (1) the waiver serves the public interest; and (2) the waiver will not disrupt the orderly and efficient resolution of matters before the Commission. Puc 201.05(a). To determine the public interest, the Commission may waive a rule if (1) compliance with the rule

would be onerous or inapplicable given the circumstances of the affected person, or (2) the purpose of the rule would be satisfied by an alternative method proposed. Puc 201.05(b)

The Companies are seeking to hire Rath as counsel to represent them in their rate case proceeding. We find that a waiver of Puc 1905.04 requiring a competitive bidding process is appropriate and will permit PEU and PAC to be represented by Rath in their upcoming rate case for two reasons. First, Rath was recently selected as counsel to PWW in its current rate case by a competitive bidding process which evaluated the factors outlined in Puc 1905.04(b); and second, the waiver will not disrupt the orderly and efficient resolution of matters before the Commission.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Pennichuck East Utilities, Inc., and Pittsfield Aqueduct Company are granted a waiver of Puc 1905.04 for the good cause shown and reasons stated in their motion for the purpose of allowing Rath, Young and Pignatelli, PC to represent them in their upcoming rate case to be presented to the Commission.

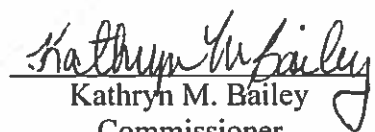
By order of the Public Utilities Commission of New Hampshire this twenty-eight day of April, 2017.



Martin P. Honigberg  
Chairman

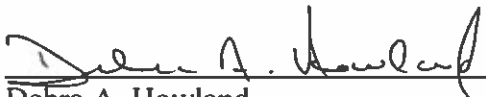


Robert R. Scott  
Commissioner



Kathryn M. Bailey  
Commissioner

Attested by:



Debra A. Howland  
Executive Director