

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 17-128**

**PENNICHUCK EAST UTILITY, INC.**

**Request for Change in Rates**

**Order Approving Temporary Rates**

**ORDER NO. 26,136**

**May 31, 2018**

**APPEARANCES:** Rath, Young and Pignatelli, P.C., by Richard W. Head, Esq., for Pennichuck East Utility, Inc.; Mr. Michael Ranaldi, *pro se*; the Office of the Consumer Advocate by Brian D. Buckley, Esq., on behalf of residential ratepayers; and Staff of the Public Utilities Commission by Alexander F. Speidel, Esq.

In this order, the Commission approves temporary rates for Pennichuck East Utility, Inc., effective on a bills-rendered basis as of January 8, 2018, until permanent rates are approved and become effective. As a result, customer bills will increase by about 12 percent. The Commission also approves adjustments to the North Country capital recovery surcharge and minimum usage requirements for customers in North Conway, Barnstead, and Middleton.

**I. PROCEDURAL HISTORY**

On August 16, 2017, Pennichuck East Utility, Inc. (PEU or the Company), a water utility serving communities in central and southern New Hampshire, submitted a notice of intent to file rate schedules seeking an increase in temporary and permanent rates. On September 26, 2017, the Company petitioned for a permanent rate increase and step adjustment pursuant to RSA 378:3, RSA 378:27, and RSA 378:28; and for temporary rates pursuant to RSA 378:27. After identifying errors in its petition, PEU withdrew its petition and refiled a revised version on October 18, 2017.

As part of its revised filing, PEU included testimony of Larry D. Goodhue and Donald L. Ware; supporting schedules; and a request for waiver of N.H. Code Admin. Rules Puc 1604.05(c)(1), which requires that a rate case be filed no more than 60 days from the original notice of intent. The waiver was granted pursuant to Puc 201.05 on October 25, 2017.

The Office of Consumer Advocate (OCA) filed a letter of participation on August 29, 2017, pursuant to RSA 363:28, II. On November 16, 2017, the Commission issued Order No. 26,074, which suspended PEU's proposed tariff and scheduled a prehearing conference for December 20, 2017.

Mr. Michael Ranaldi, a resident of the Locke Lake Association, filed a petition to intervene *pro se* on December 14, 2017, which was granted during the prehearing conference. Following the prehearing conference, a procedural schedule was established, including technical sessions, discovery, and settlement negotiations.

On February 7, 2018, PEU filed a Settlement Agreement on Temporary Rates (Settlement Agreement) entered into by all Parties and Staff (Settling Parties). A hearing was held on February 26, 2018. On February 27, 2018, PEU filed a motion for waiver of N.H. Code Admin. Rules Puc 1203.05(b), to enable the rate changes contemplated by the Settlement Agreement to be implemented on a bills-rendered basis.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-128.html>.

## **II. PEU's RATE REQUEST**

PEU's sole shareholder is the City of Nashua. Its ownership and capital structure were approved by *Joint Petition of City of Nashua, et. al, for Approval to Acquire Stock in Pennichuck*

*Corp.*, Order No. 25,292 (November 23, 2011). Under this structure, for purposes of ratemaking, the Company has virtually no equity funding in its capital structure. Instead, its operations and capital requirements are almost completely funded through debt.

Based on the ratemaking methodology approved by the Commission for Pennichuck Water Works (PWW), a sister company of PEU, the Company seeks an overall permanent increase in its annual water revenues of approximately \$1.26 million, a 17.55 percent increase in revenues, and a step adjustment of an additional approximately \$80,000 to account for the Company's asset additions made in 2017. PEU also proposed to modify the North Country capital recovery surcharge (NCCRS), which was approved in 2009. The NCCRS was developed to recover the acquisition and improvement costs for PEU's so-called "North Country systems" of Birch Hill located in North Conway, Sunrise Lake Estates located in Middleton, and Locke Lake located in Barnstead. *See* Order No. 25,051 (December 11, 2009).

PEU proposed a temporary rate increase to its annual operating revenues of approximately \$983,000, a 13.70 percent increase in revenues, beginning January 1, 2018. According to PEU, the temporary rate increase would allow the Company to collect sufficient revenues to maintain operations, satisfy its principal and interest obligations, and meet its debt covenant requirements throughout the duration of the permanent rate proceeding. Furthermore, the temporary rates would serve to mitigate rate shock should the proposed permanent rates and step adjustment (or a similar rate) receive approval.

### **III. SUMMARY OF SETTLEMENT AGREEMENT**

With one exception, the Settlement Agreement uses PEU's existing ratemaking methodology to calculate the temporary rates. The Settling Parties believe retaining the existing methodology is appropriate because the Commission has not yet had an opportunity to evaluate

the suitability of PWW's ratemaking methodology approved in Order No. 26,070, as applied to PEU. The one exception to PEU's currently approved ratemaking methodology agreed to by the Settling Parties is that with respect to the temporary rates "test year" revenues are computed using a trailing five-year-consumption-average methodology similar to that adopted for PWW in Order No. 26,070. The Settling Parties further agreed that the use of the trailing five-year consumption average is limited to this Settlement Agreement and will not be binding on the Parties, Staff, or the Commission when considering permanent rates.<sup>1</sup> Settlement Agreement at 3.

The Settlement Agreement consists of three parts. First, temporary rates would apply to all PEU customers, effective for bills rendered on or after January 8, 2018. Second, temporary rates would include a reduction in the NCCRS for Birch Hill and Locke Lake customers. Third, the NCCRS would also reflect the elimination of the 4-ccf (hundred cubic foot) minimum monthly volumetric charge for all North Country system customers. Settlement Agreement at 3.

The agreed temporary rates would increase revenues by \$816,868 from the Company's five-year average revenues of \$6,676,472, totaling an approved temporary revenue requirement of \$7,493,340 (both revenue amounts are exclusive of the NCCRS). This temporary revenue increase is 59 percent of the Company's proposed permanent revenue increase, exclusive of the proposed step increase and NCCRS revenue reduction. The proposed temporary revenue increase would be collected by applying a uniform increase in rates of 12.24 percent to all customer classes and charges, excluding the NCCRS. Settlement Agreement at 4.

The NCCRS, charged to Locke Lake and Birch Hill customers, would be reduced as a result of the refinancing of existing intercompany loans. The Locke Lake NCCRS would

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<sup>1</sup> In its permanent rate petition, 50 percent of the 5-year average for volumetric sales would be applied when determining permanent rates, with the full 5-year average to be applied in subsequent rate cases.

decrease from \$16.36 to \$12.81 per customer per month and the Birch Hill NCCRS would decrease from \$46.05 to \$12.81 per customer per month. The Sunrise Estates NCCRS will remain unchanged at \$10.74 per customer per month. The proposed decreases in the NCCRS rates would be implemented with temporary rates on a bills rendered basis on or after January 8, 2018. As a result, the overall annual NCCRS revenues would decrease from \$299,985 to \$178,915, a reduction of \$121,070. At the time of hearing, this provision was contingent on the Commission's decision regarding the intercompany refinancing request in Docket No. DW 17-157. The Commission approved that request in Order No. 26,117 (March 30, 2018). The net temporary revenue requirement, taking into account the temporary rate increase and the reduction in the NCCRS, is \$695,798 (\$816,868 - \$121,070), or 55 percent of the revenue increase requested by PEU for permanent rates, excluding the proposed step adjustment. Settlement Agreement at 4-5.

The 4-ccf minimum monthly consumption charge currently in effect for the North Country systems, was developed to account for the lower than average usage associated with the high percentage of seasonal residents. Nonetheless, with the considerable shift in the ratio of seasonal and year-round residents since Order No. 25,051 was issued, PEU now believes it can cover operating expenses based on actual usage without applying a 4-ccf minimum. As a result, the 4-ccf minimum should be eliminated with the approval of temporary rates and should not apply to bills issued after January 8, 2018. Settlement Agreement at 6.

At the conclusion of this docket, PEU will make a recommendation regarding the reconciliation between temporary and permanent rates, if ordered, as well as a refund or surcharge to customers, which will be available for review by the Parties and Staff. The Commission may then issue an order pursuant to RSA 378:29. Settlement Agreement at 6.

#### **IV. POSITIONS ON SETTLEMENT AGREEMENT**

##### **A. PEU**

Larry Goodhue, Chief Executive Officer of PEU, testified in support of the Settlement Agreement. Mr. Goodhue compared standard ratemaking methodology with the modified methodology recently adopted in Docket No. DW 16-806 for PWW. Although PEU is not requesting temporary rates to be approved under the new methodology, it does contain facets that would be advantageous if adopted now. For instance, using a five-year rather than one-year historical average for revenues would provide comparative revenues based on a normalized consumption year. This would minimize the variability of high or low consumption based on prevailing weather patterns in any given year, benefitting PEU by providing more certainty regarding revenues. Because it is a debt-only financed company, it no longer has a return on equity component providing additional revenues or profits to cover the Company's fixed costs and debt service needs. Tr. at 13.

The Company also wants to eliminate the 4-ccf minimum and reduce the NCCRS. As a part of Pittsfield Aqueduct Company, Inc.'s (PAC), 2008 rate case, Birch Hill, Sunrise Lake Estates and Locke Lake Colony, merged into PEU as of December 31, 2010. *See* Order No. 25,051 (December 11, 2009). At that time, the North Country systems had a higher percentage of seasonal residents than permanent residents. As a result, revenue collected was insufficient to cover the cost of service. Consequently, the 4-ccf per month minimum was created. Tr. at 14.

Mr. Goodhue testified that under the temporary rates in the Settlement Agreement, customers not impacted by the reduction in the NCCRS would see an increase in the average single-family residential monthly bill from \$62.68 per month to \$70.35 per month. Tr. at 22.

PEU contends the Settlement Agreement is just, reasonable, in the public's interest, and permissible for approval.

In its motion for waiver of N.H. Code Admin. Rules Puc 1203.05(b), seeking implementation of the temporary rate changes on a bills-rendered basis, PEU argued, as it had at hearing, that implementing temporary rates on a bills-rendered basis would be less confusing to customers, cost less for PEU, and give customers adequate notice of the changes in rates applicable to their usage.

### **B. Staff**

Jayson Laflamme, Assistant Director of the Commission's Gas and Water Division, testified that Staff supports the Settlement Agreement. Tr. at 28-29. Based on a comprehensive review of the petition and discovery responses, Staff believes that PEU is currently under-earning primarily because of an 18 percent increase in its operating expenses since its last rate increase.<sup>2</sup> Tr. at 30-31.

Mr. Laflamme stated that the Affiliate Management Agreement accounts for the most sizeable operating expense growth at a 33 percent increase, which includes growing employee salaries and benefits. The Company has experienced a nearly 30 percent increase in net utility plant from 2012 to 2016. There has also been a 24 percent property tax increase since 2012. Tr. at 30-31.

According to Mr. Laflamme, those expenses support the conclusion that the Company is under-earning. A temporary rate increase would aid the Company in recouping a portion of the shortfall it is now experiencing. In addition, it would mitigate the rate shock customers may incur should the permanent rate increase be approved. Tr. at 31-32.

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<sup>2</sup> PEU's last rate increase was based on a 2012 test year.

As for the use of the new ratemaking methodology proffered by PEU and previously approved for PWW in Order No. 26,070, Staff agrees that it should not be implemented at this time because it has not been fully vetted for PEU. Instead, the temporary rates should be based on the methodology approved in Docket No. DW 11-026, as modified by Commission Order No. 25,696 (July 25, 2014) in Docket No. DW 13-126. Tr. at 33-34.

Staff and the Settling Parties agreed on a rate base amount of \$9,873,201, applying a 3.94 percent rate of return, bringing the operating income requirement to \$388,568. Tr. at 34. When compared to the *pro forma* operating income, that amount results in a calculated revenue deficiency, before taxes, of \$494,924. Including taxes, the increase becomes \$816,868. The proposed overall revenue requirement is \$7,672,256, including NCCRS, which represents a 9.97 percent revenue increase. Tr. at 35. Staff concluded that the terms of the Settlement Agreement are just and reasonable and recommended that the Commission should approve the Agreement. Tr. at 59.

### **C. Michael Ranaldi**

Mr. Ranaldi stated that he was satisfied with the terms of the Settlement Agreement. Hearing Transcript of February 26, 2018. at 58.

### **D. Office of Consumer Advocate**

The OCA views the terms of the Settlement Agreement as just and reasonable and recommended its approval by the Commission. Tr. at 59.

## **V. COMMISSION ANALYSIS**

The Commission shall approve the disposition of any contested case by settlement “if it determines that the result is just and reasonable and serves the public interest.” N.H. Code of Admin. Rules Puc 203.20(b); *see also* RSA 541-A:31, V(a) (“Unless precluded by law, informal

disposition may be made of any contested case ... by stipulation [or] agreed settlement.”). Nonetheless, the Commission cannot approve a settlement agreement, even when all parties agree, “without independently determining that the result comports with applicable standards.” *Unitil Energy System, Inc.*, Order No. 24,677 at 18 (October 6, 2006) (citation omitted).

Pursuant to RSA 378:27, the Commission may approve temporary rates for the duration of a rate proceeding if the Commission finds that the public interest so requires and the reports of the public utility filed with the Commission indicate that the temporary rates are reasonable. The standard for approval of temporary rates, which are reconcilable, is less stringent than that for permanent rates. *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 660 (1991) (citing *New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518 (1949)).

The Settlement Agreement, utilizing the current ratemaking methodology, includes temporary rates to be set at the agreed-upon revenue requirement effective on bills rendered on or after January 8, 2018. Taking into account the temporary rate increase and the reduction in the NCCRS, this is a revenue increase of \$695,798, or 55 percent of PEU’s revenue request for permanent rates. The 12 percent increase in customer bills resulting from the stipulated temporary rate increase, while not insignificant, is reasonable under the circumstances. Accordingly, we approve the temporary rate increase. We also approve the reduction of the North Country capital recovery surcharge and elimination of the 4-ccf minimum usage requirement on the North Country systems’ customers to better align costs with rates. Accordingly, we find the Settlement Agreement just and reasonable and in the public interest.

We next consider the proposed effective date. RSA 378:27 allows the Commission to authorize effective dates as early as the filing date of the petition for permanent rate change. *See Appeal of Pennichuck Water Works*, 120 N.H. 562, 567 (1980) (filing date is earliest date on

which PUC may order temporary rates to take effect). The Settlement Agreement proposes temporary rates effective January 8, 2018, on a bills-rendered basis. We have reviewed PEU's assented-to motion for waiver of Puc 1203.05(b), and note that PEU has cited to the factors set forth in Puc 1203.05(c); related to reducing customer confusion (Puc 1203.05(c)(1)), reduced cost (Puc 1203.05(c)(2)); and adequate customer notice (Puc 1203.05(c)(4)). We therefore find this agreement consistent with RSA 378:27, and granting of PEU's waiver to be in the public interest. Accordingly, we approve the effective date of January 8, 2018, on a bills-rendered basis.

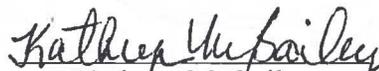
**Based upon the foregoing, it is hereby**

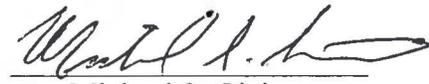
**ORDERED**, that the Settlement Agreement on Temporary Rates is **APPROVED**; and it is

**FURTHER ORDERED**, that PEU shall submit with the Commission properly annotated tariff pages consistent with the Settlement Agreement within 15 days of the date of this Order.

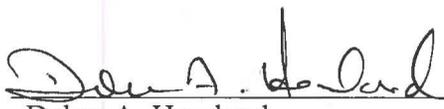
By order of the Public Utilities Commission of New Hampshire this thirty-first day of May, 2018.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director