

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-128

PENNICHUCK EAST UTILITY, INC.

Request for Change in Rates

**Order Authorizing Temporary Rate Recoupment and Recovery of Rate Case Expenses
And Granting Motion for Confidential Treatment**

ORDER NO. 26,222

February 26, 2019

In this order, the Commission authorizes Pennichuck East Utility, Inc. (PEU or the Company), to recoup the difference between its temporary and permanent rates, to recover its rate case expenses, and to credit certain customers a portion of the North Country Capital Recovery Surcharge (NCCRS). While the surcharge will vary for customers depending on usage, general metered customers, on average, will be assessed \$6.08 per month for twelve months as a result of this order. Customers in the Locke Lake and Birch Hill service areas who took service for all five months between January and May 2018 will also receive 12 monthly credits of \$1.48 and \$13.85, respectively. These changes will begin with bills rendered on or after March 1, 2019. The Commission also grants a motion for confidential treatment of the Company's attorneys' billing rates.

I. PROCEDURAL HISTORY

On May 31, 2018, the Commission approved a temporary rate increase for Pennichuck East Utility, Inc., of 12.24 percent to the base rates of all customer classes. *Pennichuck East Utility, Inc.*, Order No. 26,136 at 4 and 9 (May 31, 2018). Further, the North Country Capital Recovery Surcharge (NCCRS) applied to the customers of PEU's Birch Hill system in North

Conway, and Locke Lake system in Barnstead, was reduced. *Id.* at 5. The temporary rates took effect January 8, 2018, on a bills-rendered basis. *Id.* at 1 and 10.

The Commission also approved a 17.86 percent overall revenue increase for PEU, reflecting both an increase in base rate revenues and a decrease in NCCRS revenues.

Pennichuck East Utility, Inc., Order No. 26,179 at 15-16 (October 4, 2018). The adjustments to the NCCRS previously approved by the Commission remained in effect. *Id.* at 5 and 17.

The Commission directed PEU to file documentation showing the difference in the actual revenues collected from January 8, 2018, and the revenues that would have been collected under the permanent rate increase, along with a proposed surcharge for recovering that difference from customers. *Id.* at 17. The Commission further directed PEU to file its request for recovery of rate case expenses. *Id.*

On November 5, 2018, PEU filed executed tariff pages demonstrating the temporary and permanent rate difference along with supporting documentation. The Commission suspended the tariff until February 27, 2019. *Pennichuck East Utility, Inc.*, Order No. 26,194 (November 27, 2018). PEU also submitted a request for recovery of its rate case expenses along with a motion for confidential treatment of certain expenses. The Company filed for recovery of additional rate case expenses on January 3, 2019, and again sought confidential treatment of those expenses.

On February 8, 2019, Commission Staff (Staff) filed a recommendation for the Commission's consideration regarding rate case expense recovery and revenue recoupment.

II. POSITIONS

A. PEU

PEU proposed a net recovery of \$577,594, consisting of \$625,204 in revenue recoupments related to its base rates offset by \$47,610 in customer credits related to the NCCRS

assessed to customers in Locke Lake and Birch Hill. The Company proposed to recoup the amount, or issue credits, over a 12-month period. PEU indicated that recoupment charges would vary by usage and that general metered residential customers on average, would be assessed \$5.51 per month in rate recoupments for 12 months. Customers subject to the NCCRS in the Locke Lake and Birch Hill service areas who took service for all five months between January and May 2018, would receive 12 monthly credits of \$1.48 and \$13.85, respectively, that would offset the usage-based recoupment surcharge.

PEU also proposed recovery of rate case expenses totaling \$55,402.32 over a 12-month period. The Company proposed to recover that amount by collecting \$0.57 per month from each of its customers.

PEU's request for confidential treatment covered the hourly rates PEU paid to its outside legal counsel for services performed during the course of the rate proceeding. The Company argued that disclosure of its attorneys' hourly rates would cause competitive harm to those attorneys and could have a detrimental effect on the Company's competitive bidding efforts in the future with respect to outside legal services.

B. Staff

Staff recommended that the Commission approve the Company's proposed net revenue recoupment of \$577,594, consisting of both revenue recoupments and customer credits. Staff stated that the approval of recovery of the difference between temporary and permanent rates would be consistent with the Commission's ratemaking authority and the just and reasonable rates set by Order No. 26,179. Staff, therefore, recommended that the Commission find PEU's request just and reasonable pursuant to RSA 378:7.

Staff made no adjustments to the Company's proposed rate case expense recovery amount. Staff agreed with the Company's proposed recovery amount of \$55,402.32 as prudently incurred rate case expenses. Staff further recommended that PEU be allowed to recover those rate case expenses over a 12-month period via a monthly surcharge of \$0.57 per customer. Staff recommended that the Commission find this surcharge to be just and reasonable pursuant to RSA 378:7.

Staff supported PEU's motion for confidential treatment, agreeing with the Company that disclosure of the hourly billing information of its attorneys could have a detrimental effect on PEU and, ultimately, its customers. Staff stated that the Commission has granted confidential treatment of similar information in the past.

III. COMMISSION ANALYSIS

A. Temporary-Permanent Rate Recoupment

RSA 378:29 requires the Commission to allow utilities to amortize and recover the difference between temporary and permanent rates over the effective period of the temporary rates if, upon the final disposition of the rate proceeding, the rates ultimately approved exceed the earlier-imposed temporary rates. Here, the temporary rates for non-NCCRS customers were lower than the rates that the Commission ultimately approved. The difference created a revenue shortfall that the Company is entitled to recoup from its customers.

The net revenue shortfall of \$577,594 consists of \$625,204 in revenue recoupments, related to PEU's base rates, and \$47,610 in customer credits related to the NCCRS charge assessed to the customers in Birch Hill and Locke Lake. We approve recovery of the proposed revenue differential through 12 monthly surcharges for all of PEU's customers and 12 monthly installments of offsetting credits for the Birch Hill and Locke Lake customers.

B. Rate Case Expense Recovery

The Commission has historically treated prudently-incurred rate case expenses as a legitimate cost of service appropriate for recovery through rates. *Hampstead Area Water Company, Inc.*, Order No. 26,185 at 4 (October 30, 2018). Consistent with that policy, we have reviewed PEU's rate case expenses as well as Staff's recommendation, and we find the rate case expenses for PEU of \$55,402.32 to be just and reasonable. We approve the Company's recovery of this amount over a 12-month period through a monthly customer surcharge of \$0.57.

C. Motion for Confidential Treatment

According to PEU, disclosure of its outside attorneys' billing rates may adversely affect the attorneys' competitive position in negotiating with other parties. The Company argues that the billing rates are "confidential, commercial, or financial information" and that confidential treatment of that information would be consistent with RSA 91-A and prior Commission orders.

The New Hampshire Supreme Court and the Commission apply a three-step test to determine whether documents should be kept from disclosure as "confidential, commercial, or financial information" under RSA 91-A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)); *Sprint Communications Co. L.P.*, Order No. 25,607 at 2 (December 19, 2013). Under that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* "Finally, *Lambert* directs the Commission to balance those competing interests and decide whether disclosure is appropriate." *Id.* (citing *Lambert*, 157 N.H. at 383).

The Commission has previously held hourly billing rate information exempt from disclosure. *See Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,586 at 4-5

(October 22, 2013) (citing *Unitil Energy Systems, Inc.*, Order No. 24,746 (2007)). We find that disclosure of billing rates could result in a competitive disadvantage to PEU's attorneys. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. PEU has provided total invoice amounts for its attorneys to inform the public of its expenses and we deem this sufficient for purposes of informing the public. We therefore grant the Company's motion.

Consistent with past practice, the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that PEU is authorized to recover \$625,204 from its customers over a 12-month period through a monthly customer surcharge based on individual usage, representing the difference between revenues billed by PEU since January 8, 2018, the effective date approved in Commission Order No. 26,136, and the permanent rates approved in Order No. 26,179; and it is

FURTHER ORDERED, that PEU is authorized to surcharge its customers for recoupment of permanent rates as reflected in its revenue recoupment filing, until the full amounts of the respective temporary and permanent rate recoupments are recovered; and it is

FURTHER ORDERED, that PEU is authorized to credit the customers of Birch Hill and Locke Lake, in 12 equal monthly installments, totaling \$47,610; and it is

FURTHER ORDERED, that PEU is authorized to recover \$55,402.32, representing its prudently-incurred rate case expenses; and it is

FURTHER ORDERED, that PEU is authorized to collect a surcharge in the amount of \$0.57 per customer per month, for 12 months, to recover its rate case expenses; and it is

FURTHER ORDERED, that PEU shall file compliance tariffs within 14 calendar days of the date of this order reflecting the recoupment and rate case expense surcharges approved herein.

By Order of the Public Utilities Commission of New Hampshire this twenty-sixth day of February, 2019.



Martin P. Honigberg
Chairman

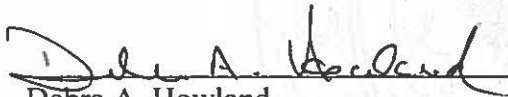


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director



SERVICE LIST - EMAIL ADDRESSES- DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov
amanda.noonan@puc.nh.gov
anthony.leone@puc.nh.gov
brian.buckley@oca.nh.gov
carolann.howe@pennichuck.com
Christopher.tuomala@puc.nh.gov
donald.kreis@oca.nh.gov
donald.ware@pennichuck.com
f.anne.ross@puc.nh.gov
james.brennan@oca.nh.gov
jay.kerrigan@pennichuck.com
jayson.laflamme@puc.nh.gov
larry.goodhue@pennichuck.com
mikeranaldi@yahoo.com
ocalitigation@oca.nh.gov
pradip.chattopadhyay@oca.nh.gov
robyn.descoteau@puc.nh.gov
rwh@rathlaw.com
steve.frink@puc.nh.gov

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.