

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-101

**PENNICHUCK EAST UTILITY, INC., PITTSFIELD AQUEDUCT COMPANY, INC. and
PENNICHUCK WATER WORKS, INC.**

**Joint Petition for the Approval of a Consolidation of Pennichuck East Utility,
Inc. and Pittsfield Aqueduct Company with Pennichuck Water Works, Inc.**

Prehearing Order and Order on Pending Motions

O R D E R N O. 26,985

March 29, 2024

Pursuant to RSA 541-A:31, V (d), this order shall serve as a prehearing order from the February 14, 2024 prehearing conference. Furthermore, this order GRANTS the City of Nashua's (Nashua) petition to intervene and GRANTS the Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc. (PAC) motion to amend petition, motion to waive notice, and motion for protective order.

I. PROCEDURAL HISTORY

Pennichuck Water Works, Inc. (PWW), Pennichuck East Utility, Inc. (PEU), and Pittsfield Aqueduct Company, Inc. (PAC) (together the Petitioners) are three separate public utilities that have a common owner, Pennichuck Corporation (Penn Corp). Pursuant to a 2011 settlement agreement in Docket No. DW 11-026, the Commission approved Nashua's purchase of Penn Corp while maintaining PWW, PEU and PAC as separate legal entities. *See* Order No. 25,292 (November 23, 2011).

On December 15, 2023, the Petitioners filed a merger petition in this docket. In a separate docket, Docket No. DW 23-088, filed on October 13, 2023, the Petitioners filed a notice of intent to file a single, consolidated rate case. *See* Docket No. DW 23-

088. The Petitioners request for a consolidated rate was dismissed on February 6, 2024 by Order No. 26,942 when the Commission granted the Department of Energy's (DOE) motion to dismiss. *See id.* at 6. The parties appeared at the February 14, 2024 prehearing conference to address the December 15, 2023 merger petition, the sequencing for an additional consolidated rate petition, and how the two requests could coexist and progress together in the interest of judicial economy and due process for all parties.

II. PREHEARING CONFERENCE

A. Sufficiency of Notice

The Petitioners, as ordered by the Commission on January 5, 2024, filed a timely affidavit of publication with the Commission on January 9, 2024 attesting to the fact that the Petitioners published the Commencement of Adjudicative Proceeding and Notice of prehearing conference ("Notice") on their website on January 5, 2024.

B. Requests to Intervene

As of the date of the prehearing conference, the Commission had granted the Town of Litchfield's, Town of Londonderry's, and Town of Bedford's petitions to intervene. *See* February 6, 2024 Procedural Order. After the prehearing conference, Nashua filed a petition to intervene. Nashua's petition is reviewed in Section III of this order.

C. Clarification of Issues Presented

At the commencement of the prehearing conference the Commission asked all parties to address the following six questions:

1. What is the proposed sequencing of the consolidation with the Pennichuck Board of Directors, the approval process by the City of Nashua, and the Commission approval?

2. Have the parties discussed how the Commission's order dismissing the Petitioners' Rate Case in Docket No. DW 23-088 without prejudice affected the proceeding in this docket?
3. How should rate-setting take place? Does it have to occur after the merger has been completed or can any work be done in parallel?
4. If the Settlement Agreement in Docket No. DW 11-026 set up three separate utilities, are these three separate utilities required to be separate in perpetuity?
5. Does the Commission have the legal authority to combine the three utilities? and
6. Whether notification of the parties in Docket No. DW 11-026 is needed or advisable?

See Transcript of February 14, 2024 prehearing conference (Tr. Feb. 14) at 7–8. In response to these questions, the Petitioners asserted that the merger petition could not proceed without contemporaneous review of the proposed consolidated rate. Given the Commission's order in Docket No. DW 23-088 to dismiss the consolidated rate petition without prejudice, the Petitioners proposed to amend the petition in this docket to include both the merger and establishment of the consolidated rate. See Tr. Feb. 14 at 14. The Petitioners acknowledged the concerns of the Commission surrounding approval of rates without an assurance that the merger will be approved by its singular shareholder, Nashua. In response to those concerns, the Petitioners agreed that Nashua is a necessary party to the proceedings. Having communicated with Nashua, the Petitioners anticipated that Nashua would file a petition to intervene. See Tr. Feb. 14 at 34.

The DOE renewed its concerns about proceeding with a review of the proposed consolidated rate prior to Nashua's approval of the proposed merger. See Tr. Feb. 14 at 25–27. The DOE agreed that Nashua was a necessary party in this proceeding.

Further the DOE indicated that notice should be provided to the parties in Docket No. DW 11-026. *See* Tr. Feb. 14 at 28. The DOE represented that if the petition in this case is amended to include a review of the consolidated rate, it will need the Petitioners to waive the 12-month statutory deadline for any rate case consideration. *See* Tr. Feb. 14 at 28.

The Office of the Consumer Advocate (OCA) stated that it was premature to opine on whether merger was in the ratepayers' best interests; however, it supported a two-track system to review both the merger petition and the proposed consolidated rate in a single proceeding. *See* Tr. Feb. 14 at 23. The intervenors did not have a position concerning the amendment of the petition or whether the rate case could exist concurrently with the merger petition.

At the conclusion of the prehearing conference, the Commission ordered the Petitioners to file their motion to amend the petition and the amended petition by February 28, 2024. In addition, the parties agreed to work together to propose a joint procedural schedule to the Commission by February 28, 2024. Subsequently, the motion to amend petition and the amended petition were filed on March 8, 2024.

D. Procedural Schedule

The parties proposed a joint procedural schedule on February 28, 2024. The Commission approved the procedural schedule on March 4, 2024. The procedural schedule has been subsequently amended by the parties and approved by the Commission in subsequent orders.

III. CITY OF NASHUA'S PETITION TO INTERVENE

On February 15, 2024, Nashua filed a petition to intervene in this docket. Nashua represented that it is the sole shareholder of Penn Corp, which in turn owns

the three regulated utility subsidiaries PWW, PEU and PAC. Furthermore, PWW provides water services to Nashua. Nashua asserts that its rights, duties, privileges, immunities, and substantial interest are at stake in this proceeding, both in its capacity as the local government authority, and in its unique capacity as the sole shareholder of Penn Corp.

IV. PENDING MOTIONS

A. Motion to Amend Petition

Pursuant to the representations made at the prehearing conference, the Petitioners filed a motion to amend the underlying petition. The motion was filed on March 8, 2024. No objections were filed. In addition to the approval of the merger of PEU and PAC with PWW, the Petitioners seek approval of a consolidated ratemaking structure designed to establish rates that balance their customers' interests with the needs of PWW— the remaining consolidated entity— to obtain sufficient cash flow to meet its debt service obligation to Penn Corp and Nashua. *See Amended Petition Filed on March 8, 2024 at 5-6.* If the motion to amend petition is granted, the Petitioners have agreed to publish the order on their websites, send customer notices consistent with N.H. Admin. Rule Puc 1203.02(c), publish the order in a newspaper of statewide circulation consistent with Puc 203.12, and send letters or notices by first class mail to the intervenors and parties in Docket No. DW 11-026. Upon completion of this publication and notification, the Petitioners will file an Affidavit of Compliance of publication. The Petitioners have also proposed to waive the 12-month statutory period for consideration of a rate case and will work with the Department, the OCA, and intervenors to investigate the merger and proposed rates in accordance with the proposed schedule, subject to approval by the Commission. *See Motion to Amend filed on March 8, 2024 at ¶ 20-23.*

B. Motion to Waive Notice

Pursuant to Puc 201.05, the Petitioners request that the Commission waive Puc 1604.05(a) because the timing for submission of the Amended Petition and Motion for Waiver makes pre-notice onerous or inapplicable under the circumstances. The Petitioners believe this waiver request, given the circumstances and subsequent notice of intent filing, is in the public interest consistent with Puc 201.05. The Petitioners argue that requiring the 30-day period between filing a Notice of Intent and filing the rate schedules could delay this proceeding and would disrupt the orderly and efficient prosecution of the petition. They maintain that allowing the waiver and approving the attached notice of intent for publication would allow the Petitioners to move forward with the consideration of Consolidated rate in Docket No. DW 23-101 while also ensuring that the necessary parties receive proper notice. See Motion for Waivers to Notice filed on March 8, 2024 at ¶6.

C. Motion for Confidential Treatment and Protective Order

The Petitioners requested protective orders concerning two categories of information. In support of these requests, the Petitioners identified a legal basis for confidential treatment of each category of information and identified what harm would result if the information were to be publicly disclosed.

The first category of information is employee compensation packages. The Petitioners represent that, besides the CEO and the COO compensation packages, remaining officer and director information is not publicly disclosed. The Petitioners argued that protective treatment is appropriate under RSA 91-A:5, IV, because the information relates to internal personnel practices and confidential financial information. The contends that disclosing this information would result in an unwarranted invasion of the personal privacy of the officers and directors involved.

The Petitioners assert that the public interest in disclosure of the incentive plan is small. See Motion for Confidential Treatment Filed on March 8, 2024 at ¶ 8.

The second category of information the Petitioners seek confidential treatment for is a live cost of service (COS) model that will assist in the analysis of the COS study. The Petitioners argued that protective treatment is appropriate under RSA 91-A:5, IV, because a regulated utility's consultant's interest in keeping its proprietary software and work product confidential outweighs the public's interest in disclosure of the same. See Motion for Confidential Treatment Filed on March 8, 2024 at ¶ 7.

V. COMMISSION ANALYSIS

A. City of Nashua's Petition to Intervene

Under Puc 203.17, motions to intervene are governed by RSA 541-A:32. RSA 541-A:32, II, states that the “presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” The Commission GRANTS the petitions to intervene. The Commission finds that Nashua's participation in this docket is in the interest of justice and would not impair the orderly and prompt conduct of the proceedings.

B. Motion to Amend Petition

Pursuant to Puc 203.10, the Commission may permit amendments if: (1) the party requesting the amendment gives notice of the request to all persons on the service list of the proceeding; and (2) the Commission determines that the amendment shall encourage the just resolution of the proceeding and will not cause undue delay. The Commission shall not allow any amendment that has the effect of broadening the scope of the proceeding unless it provides notice to those affected and an opportunity to comment prior to final Commission action. See *id.*

Having reviewed the Petitioners' motion and noting that no objections were filed, we find it reasonable to grant the Petitioners' motion to amend their petition to include a request for a consolidated rate. Having a single proceeding to determine the consolidated rate for the proposed merged entity is in the interest of administrative efficiency and provides all party's due process. The practice in approving utility consolidation agreements is not unknown to the Commission. As noted in Order No. 26,942 the Commission approved a multi-phase approach to allow for merger of Util companies followed by the separate phase for approval of new rates. *See* Docket No. DE 01-247, Order No. 23,935 (March 15, 2002).

After reviewing the amended petition, and the Notice of Adjudicatory Proceeding (NAP) issued on January 5, 2024, we conclude that a supplemental notice will need to be issued as the original NAP was limited to whether or not the transfer of PEU's and PAC's assets to PWW was for the public good and should be permitted under RSA 374:30, RSA 374:22, and RSA 374:26; whether the transfer of ownership of PEU and PAC to PWW is lawful, proper, and in the public interest pursuant to RSA 374:33; whether the transfer of PEU's and PAC's franchises, assets, and liabilities to PWW will result in PWW providing reasonably safe and adequate service at just and reasonable rates to customers in the transferred franchise areas in accordance with RSA 374:1, RSA 374:2, and RSA 378:7; and whether the transfer of PEU's and PAC's liabilities to PWW is consistent with the public good under RSA 369:1.

C. Motion to Waive Notice

Pursuant to Puc 201.05, the Commission shall waive provisions of its rules when the waiver serves the public interest and would not disrupt the orderly and efficient resolution of the matters before it. *See* Puc 201.05. A waiver serves the public interest if compliance with the rule would be onerous or inapplicable under the

circumstances, or the rule's purpose would be satisfied by a proposed alternative method. See Puc 201.05 (b)(1).

In this case, the Petitioners are requesting a waiver of the 30-day notice requirements for commencement of a rate case contained in Puc 1604.05 (a). The Petitioners seek to file the amended rate schedules contemporaneously with their petition. Having reviewed the motion and proposed draft notice, the Commission grants the motion. The Commission notes that the request to establish a consolidated rate for the merged entity is identical to the request contained in Docket No. DW 23-088. The interested parties in Docket No. DW 23-088 are identical to the interested parties in Docket No. DW 23-101. Given the February 6, 2024 dismissal order in Docket No. 23-088 and the February 14, 2024 pre-hearing conference in this matter, it is found that the Petitioners have constructively complied with the requirements of Puc 1604.05 (a) and further delay in proceeding with the rate case would be onerous under the circumstances.

D. Motion for Confidential Treatment and Protective Order

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental agencies such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5.

RSA 91-A:5, IV exempts several categories of information, including records pertaining to confidential, commercial, or financial information. The party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public's interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 707 (2010), and *N.H. Housing Fin. Auth.*, 142 NH 540 at 552, 555-59 (1997)). The New Hampshire Supreme

Court applies a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 NH 375, 382–83 (2008).

The Commission's rule on requests for confidential treatment reflects the three-step balancing test required by New Hampshire case law. *See* Puc 203.08; *see also*, *e.g.*, *Unitil Energy Systems, Inc.*, Order No. 25,214 (April 26, 2011) at 35. The rule requires the movant to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. *See* Puc 203.08(b). The Commission then balances those competing interests and decides whether disclosure is appropriate. *See id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *See id.*

In their March 8, 2024 motion, the Petitioners assert that information regarding their employee payroll and live COS models constitute confidential, commercial, or financial information under RSA 91-A:5, IV. The Commission has routinely protected as confidential similar detailed information regarding employee compensation. *See*, *e.g.*, *Pennichuck Water Works, Inc.*, Order No. 24,701 at 2 (November 22, 2006); *Pennichuck Water Works, Inc.*, Order No. 26,383 (July 24, 2020) at 19; and *Abenaki Water Company-Rosebrook*, Order No. 26,696 (October 5, 2022).

We agree with the Petitioners that the information contained within the applicable filings in this docket constitutes confidential and sensitive commercial or

financial information under RSA 91-A:5, IV, and that the Petitioners have a privacy interest in protecting the details of employee payroll and their COS model. We therefore conclude that the Petitioners' interest in nondisclosure of the information identified in its motions outweighs the public's interest in disclosure of that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by the Petitioners' privacy interests in information that, if disclosed, could pose legitimate financial harm to or privacy risk to the Petitioners or their personnel and consultants, including the Petitioners competitive position in hiring employees and retaining experts in aid of their regulatory filings.

Accordingly, pursuant to Puc 203.08(a), we grant the Petitioners' motion for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), 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 any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, the Petition to Intervene by the City of Nashua is GRANTED; and it is

FURTHER ORDERED, the Motion to Amend the 2023 Joint Petition filed on March 8, 2024 is GRANTED; and it is

FURTHER ORDERED, the Joint Motion for Protective Order and Confidential Treatment is GRANTED; and it is

FURTHER ORDERED, that the Motion to Waive Notice pursuant to N.H. Admin R. Puc 1604.05 (a) is GRANTED; and it is

FURTHER ORDERED, the Petitioners, shall publish this order on their websites, send customer notices consistent with 203.02(c), publish the order in a newspaper of statewide circulation consistent with Puc 203.12, and send letters or notices by first class mail to the intervenors and parties in Docket No. DW 11-026; and it is

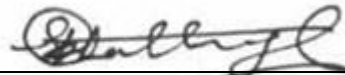
FURTHER ORDERED, the Petitioners shall file an affidavit of publication to be with this office on or before April 3, 2024; and it is

FURTHER ORDERED, the Petitioners shall file an explicit waiver of its rights to have the Commission resolve the Petitioners' request for a change in rates that is at issue in this docket within 12 months as defined by RSA 378:6, I (a) by April 8, 2024.

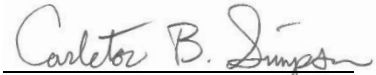
By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-101

Printed: 3/29/2024

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