

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 06-172

PENNICHUCK EAST UTILITY, INC.

Petition for Transfer of Assets and Franchise of Daniels Lake Water Works, Inc.

Order Approving Settlement Agreement

ORDER NO. 24,757

May 31, 2007

Pending before the Commission is a settlement agreement, entered into by our Staff and Pennichuck East Utility, Inc. (PEU), that would lead to the acquisition by PEU of the assets and franchise of Daniels Lake Water Works, Inc., a small water utility in Weare that has been operating in receivership pursuant to RSA 374:47-a since late 2000. This order approves the terms of the proposed settlement.

The circumstances that led to Daniels Lake Water Works being placed in receivership are fully laid out in Daniels Lake Water Works, Inc., 85 NH PUC 846 (2000). In brief, the small utility was then serving approximately 23 customers; it conceded through counsel at a December 7, 2000 hearing that it lacked the resources to continue to maintain its franchise. *Id.* at 847. The Commission therefore assumed control of the utility pursuant to RSA 374:47-a and engaged Water Systems Operators, Inc. (WSO) to operate the utility. WSO has continued to serve in that capacity.

We opened the instant docket upon the petition of PEU, which indicated that it had entered into an asset purchase agreement with Josef Fitzgerald, whom the petition described as the nominal owner of the Daniels Lake Water Works assets since the dissolution of the corporation by the Secretary of State in 2002. According to the petition, for a purchase price of

\$1,000, Mr. Fitzgerald had agreed to transfer his interest in the small utility's water supply and distribution system facilities, the associated real property (including certain easement rights), its storage tanks and the utility's franchise.

The Commission issued an order of notice on January 22, 2007, scheduling a pre-hearing conference for February 28, 2007 and establishing a deadline prior to that date for intervention requests. No such requests were filed. The prehearing conference took place as scheduled, the parties and Staff agreed upon a procedural schedule and the Commission approved the schedule by secretarial letter on March 2, 2007. A technical session took place as scheduled on May 17, 2007, leading to the submission of a settlement agreement on May 23, 2007 entered into by PEU and Staff. According to Staff's letter submitting the settlement for approval, WSO has been notified of the settlement and its principal has expressed his approval of the terms relating to sums owed to WSO for its services during the receivership.

As noted in the settlement, PEU currently provides water service to approximately 5,000 customers in southern New Hampshire. Staff agreed that PEU has the technical, managerial and financial capabilities required for the acquisition of a utility franchise, and that the Daniels Lake Water Works system meets the water suitability and availability requirements of the Department of Environmental Services (DES).

According to the settlement, there is an "urgent need for capital improvements" to the Daniels Lake Water Works system, given the length of time the small utility has been in receivership. Settlement at 3. PEU agreed to begin those improvements as soon as possible in 2007. Accordingly, the settlement calls for inclusion of the Daniels Lake system for ratemaking purposes in Docket No. DW 07-032, PEU's currently pending rate case. Under the terms of the

settlement, recovery of PEU's acquisition costs would take place in the PEU rate case – and Daniels Lake customers would be notified of the pendency of that proceeding.

The settlement recites that planned capital improvements to the Daniels Lake Water Works system include installation of meters, improvements to water supply including treatment for iron and manganese and the addition of chlorine for bacteriological control, evaluation of the existing well, pump station reconstruction, storage tank replacement, addition of booster pumps and associated generator, and other improvements to be determined upon a more detailed evaluation of the system by PEU. Staff recommended that the Commission approve PEU's request to continue to charge the flat rate previously approved for Daniels Lake customers pending the installation of meters at customer premises, at which time PEU would begin charging its Daniels Lake customers the metered rate currently authorized in the PEU tariff.

Staff and PEU further agreed that, upon the asset and franchise transfer, a surcharge currently assessed Daniels Lake customers to compensate WSO for its services be terminated. PEU agreed to pay WSO any balances owing for its services, treating that payment as a deferred asset on the PEU books with recovery of the associated costs determined in DW 07-032. Finally, the settlement terms require PEU to close on its purchase within 45 days of our order approving the agreement.

RSA 374:22, I requires PEU to obtain the approval of the Commission before assuming a new utility franchise such as the one at issue here. Paragraph II of the statute additionally requires a water company to satisfy any requirements of the DES "concerning the suitability and availability of water" provided in the franchise area. RSA 374:26 provides that the Commission shall, after due hearing, approve a proposed franchise transfer upon a determination that the

transfer is for the public good. Section 26 explicitly provides that we may grant such approval without hearing “when all interested parties are in agreement.”

We rely on the representations of Staff to the effect that the system to be operated by PEU meets the applicable DES suitability and availability requirements, and that PEU meets the relevant financial, managerial and technical standards. Daniels Lake Water Works has operated in receivership for more than six years, which has forestalled the kind of ongoing system improvements that a functioning water utility would undertake. It is a welcome development that an established utility such as PEU has agreed to assume responsibility for this franchise, and in the circumstances it is appropriate to defer the relevant ratemaking issues to PEU’s pending rate case in the manner contemplated by the parties and Staff. In our view, the settlement makes adequate provision for the compensation due to the former holder of the Daniels Lake Franchise as well as WSO. Since Staff has represented that all of the interested parties are in agreement, no hearing is necessary.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the settlement agreement entered into by Pennichuck East Utility, Inc. and the Staff of the Commission be adopted; and it is further

ORDERED, that the franchise, system and works of Daniels Lake Water Works, Inc. shall be transferred to Pennichuck East Utility, Inc. according to the terms of the settlement agreement.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of

May, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary