

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 13-126

PENNICHUCK EAST UTILITY, INC.

Permanent and Temporary Rate Increase Proceeding

Order on Temporary Rates

ORDER NO. 25,602

November 27, 2013

APPEARANCES: Devine, Millimet & Branch, PA, by Thomas Getz, Esq., for Pennichuck East Utility, Inc.; Mitchell Municipal Group, PA, by Laura Spector-Morgan, Esq., for the Town of Litchfield; Office of the Consumer Advocate on behalf of residential ratepayers, by Rorie Hollenberg, Esq.; and Marcia Brown, Esq. and Michael Sheehan, Esq., of the Staff of the Public Utilities Commission.

I. **PROCEDURAL HISTORY**

Pennichuck East Utility, Inc. (PEU) provides water service to about 7,000 customers in the following 19 towns: Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare, and Windham. On April 29, 2013, PEU filed with the New Hampshire Public Utilities Commission (Commission) a notice of intent to increase its annual revenues by \$591,485, a permanent rate increase of 9.97 percent, effective July 1, 2013, and for a step increase of \$133,431, or 2.25 percent. The total requested increase is \$724,916 per year, or 12.21 percent above current rates. *See* Exhibit 1 at 23-25, 34. PEU could not have filed this full rate case until after December 31, 2012 according to the Settlement Agreement in Docket No. DW 11-026. Order No. 25,292 (Nov. 23, 2011).¹ Tr. at 20-21.

¹ Order No. 25, 292 approved the City of Nashua's acquisition of Pennichuck Corporation, which is the parent company of three regulated water utilities including PEU. Paragraph III.B.5 of the Settlement Agreement required the three utilities to file their first post-acquisition full rate cases no later than June 1, 2013. Exhibit 1 at 17, 31.

On May 31, 2013 PEU filed proposed tariff pages, supporting testimony and schedules, and the petition addressed in this order for a 7 percent temporary rate increase to yield additional revenues of \$415,437 during the pendency of the full rate case. Exhibit 1 at 11; Transcript of October 23, 2013 Public Hearing (Tr.) at 8. PEU projected that the 7 percent temporary rate increase will cause the average residential customer's bill to increase from \$629.85 to \$673.68 per year, or \$3.65 per month. *See* Exhibit 1 at 20; Attachment B to the *Settlement Agreement – Temporary Rates* (Settlement Agreement), Exhibit 2.

The Office of Consumer Advocate (OCA) participated on behalf of PEU's residential ratepayers pursuant to RSA 363:28, II. The Town of Litchfield's motion to intervene was granted.

Staff filed the Settlement Agreement on October 9, 2013 which PEU and Staff presented for approval at the October 23 hearing. Tr. at 6. The Settlement Agreement contains the following operative paragraph:

The Company and Staff agree that the Company should be authorized, in accordance with RSA 378:27, to implement temporary rates sufficient to yield an increase of \$415,437, or 7%, in annual revenues, which will be spread uniformly across the various customer classes. [] The temporary rates contemplated by this Agreement shall be effective for service rendered on and after July 1, 2013. Any difference between the temporary rates agreed to herein and the permanent rates ultimately approved by the Commission is subject to reconciliation back to July 1, 2013 upon the implementation of new permanent rates.

Exhibit 2. The Settlement Agreement is conditioned on Commission approval. *Id.*

II. POSITIONS OF THE PARTIES AND STAFF

A. Staff and Pennichuck East Utility, Inc.

PEU and Staff ask us to approve the Settlement Agreement and its provision for a temporary 7 percent rate increase while the permanent rate case is pending. Tr. at 9, 18, 31.

PEU testified that the 7 percent increase is necessary to address a substantial revenue deficiency

resulting largely from increased property taxes, Exhibit 1 at 18-19, and to avoid short term borrowing costs to cover the deficiency, Exhibit 1 at 19-20. PEU testified that the permanent rates finally determined by the Commission will be reconciled with these temporary rates as of July 1, 2013. Exhibit 1 at 21; Tr. at 9.

Staff testified that it reviewed the rate case filing along with other books and records on file with the Commission, Tr. at 10-11, and concluded that setting temporary rates 7 percent above existing rates was appropriate because, first, PEU's last rate increase was granted in 2008 in Docket DW 07-032. Tr. at 11. Second, PEU has placed into service about \$5 to \$6 million in capital improvements on which PEU is not earning recovery. Tr. at 12. Third, PEU faces increased operating costs such as property taxes and insurance. *Id.* Fourth, Staff testified that over the past two years PEU is earning less than was authorized in Docket DW 07-032, has experienced net operating losses, and is now "substantially under-earning." *Id.* Finally, Staff testified that the proposed temporary rate increase of 7 percent will also mitigate rate shock in light of PEU's request for a 10 percent permanent rate increase and a 2.25 percent step adjustment. Tr. at 13. Staff thus supported approval of the temporary rates provided for in the Settlement Agreement as just and reasonable. Tr. at 18.

PEU presented evidence that customers received notice of the rate increase prior to the proposed effective date of July 1, 2013. On April 29, 2013 PEU filed its notice of intent to seek a rate increase effective July 1, 2013. PEU filed rate schedules and supporting documents on May 31, 2013. Exhibit 1. PEU published a notice of the proposed rate increase in the *Union Leader* and in the *Conway Daily Sun* on June 26, 2013, Tr. at 8-9, which notified the public of PEU's rate case filing, the effective date of the proposed increase, proposed tariffs, date of the Commission's prehearing conference, and the ability to intervene in this proceeding, *see*

Customer Notice, Exhibit 1 at 6. PEU also sent copies of the notice with customer bills mailed on June 6, June 13, June 20 and June 27, 2013. Tr. at 8.

B. OCA and Town of Litchfield

OCA and the Town of Litchfield did not object to the terms of the Settlement Agreement. Tr. at 30, 31.

III. COMMISSION ANALYSIS

PEU and Staff ask us to approve the Settlement Agreement regarding temporary rates, the material terms of which are quoted above. Exhibit 2. N.H. Code of Admin. Rules Puc 203.20(b) provides that 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.” *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, 91 NH PUC 416, 425-426 (2006) (citation omitted).

Pursuant to RSA 378:27, the Commission may approve temporary rates for the duration of the 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).

We have reviewed the evidence presented regarding temporary rates and the terms of the Settlement Agreement. The evidence supports the requested temporary rates because PEU is

now substantially under-earning due to the time since PEU's last full rate case, an increase in costs, and the addition of plant in service. The requested temporary rates will also mitigate rate shock should the Commission order permanent rates and a step adjustment at the levels requested. Accordingly, we find that the temporary increase of 7 percent to PEU's revenue requirement appropriately balances the interests of customers with the interests of shareholders and we will approve it. We also find that the resulting rates, which will reflect an overall 7 percent increase, are just and reasonable as required by RSA 378:7 and RSA 378:27.

We next consider the proposed effective date of July 1, 2013. RSA 378:27 allows the Commission to authorize effective dates as early as the date on which the petition for a permanent rate change is filed. *See Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980). The evidence demonstrates that customers and the public were notified through publication and billing notices prior to July 1, 2013. In light of this notice, we find that setting the above temporary rates for service on or after July 1, 2013 is just and reasonable and consistent with our statutory authority.

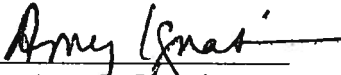
The remaining terms of the Settlement Agreement, that the rate increase will be spread among all customer classes and that any difference between temporary and permanent rates will be reconciled, are also approved as just and reasonable.

Based upon the foregoing, it is hereby


ORDERED, that the *Settlement Agreement – Temporary Rates*, Exhibit 2, is hereby APPROVED; and it is

FURTHER ORDERED, that that Pennichuck East Utility, Inc., shall submit tariff pages in compliance with this order within 15 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day
of November, 2013.



Amy E. Ignatius
Chairman




Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director