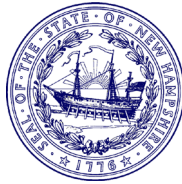


STATE OF NEW HAMPSHIRE

COMMISSIONER
Jared S. Chicoine

DEPUTY
COMMISSIONER
Christopher J. Ellms, Jr.



DEPARTMENT OF ENERGY
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay
NH
1-800-735-2964

Tel. (603) 271-3670

Website:
www.energy.nh.gov

January 24, 2024

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, New Hampshire 03301

Re: DW 23-101 Pennichuck East Utility, Inc., Pittsfield Aqueduct Company 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. – DOE Position Statement

Dear Chairman Goldner:

On December 15, 2023, Pennichuck East Utility, Inc. (PEU), Pittsfield Aqueduct Company, Inc. (PAC), and Pennichuck Water Works, Inc. (PWW) (collectively, the Joint Petitioners) filed a joint petition (Joint Petition) with the New Hampshire Public Utilities Commission (Commission) requesting approval of PWW's acquisition of PEU and PAC pursuant to certain agreements and plans of merger. The Joint Petitioners' filing was assigned Docket No. DW 23-101.

On January 5, 2024, the Commission issued a Commencement of Adjudicative Proceeding and Notice of Prehearing Conference in Docket No. DW 23-101. Specifically, the Commission scheduled a prehearing conference on February 6, 2024. In addition, the Commission ordered that the New Hampshire Department of Energy (DOE) file its position regarding the Joint Petition, including the reasons for this position, on or before January 24, 2024. In compliance with the Commission's directive in this regard, the DOE submits the following preliminary statement of position.

At this time, the DOE takes no position with respect to the Joint Petition. The DOE believes that, in order to develop its position on this matter, a substantial investigation should be conducted on all aspects of the Joint Petitioners' filing to determine whether or not the proposed consolidation described in the Joint Petition is necessary and justified, in all respects, for the provision of safe and adequate water service to the three utilities at rates that are just and reasonable for each of the presently distinct customer groups.

Of primary concern to the DOE is the potential impact this case may have on the previous Settlement Agreement approved by the Commission in Docket No. DW 11-026, which resulted in the acquisition of Pennichuck Corporation, the holding company of PWW, PEU, and PAC, by the City of

Nashua. *See* Commission Order No. 25,292 (November 23, 2011). Specifically, the approved Settlement Agreement in DW 11-026, which was executed by several diverse parties, envisioned the three utilities continuing to operate as distinct entities with separate rate structures. *See* Settlement Agreement in Docket No. DW 11-026 filed on October 24, 2011, at page 5, (“Upon completion of the merger, Pennichuck and its subsidiaries will continue their existence as separate legal entities . . .”); and page 7, (“The proposed Ratemaking Structure is intended to provide an appropriate method for determining the revenue requirements and rates of *each* utility in future rate cases to ensure that the utilities will have rates sufficient to enable *each* utility to meet their operating requirements . . .”) (emphasis added).

The proposed consolidation of the three utilities in the instant docket, which would result in the calculation of a unified revenue requirement and rate structure appears to be counter to the understanding of the parties that supported the approved Settlement Agreement in Docket No. DW 11-026. Consequently, the DOE is concerned whether the parties to the Settlement Agreement, and intervenors in Docket No. DW 11-026, should be notified of the Joint Petition to provide them with an opportunity to participate in this proceeding and to offer their input to the Commission.¹

The DOE is also concerned with the long-term impact of the proposed unified rate structure of the consolidated entity and whether it would continue to result in just and reasonable rates in the future for the diverse customer groups represented by the three utilities. The DOE is aware that there are a number of communities within certain service territories of the three utilities whose provision of service is presently, or has the potential to soon become affected by, regulations limiting certain contaminants, such as PFAS and arsenic, in drinking water supplies.² The probability that both federal and state agencies will adopt more stringent limits for these contaminants in drinking water increases the likelihood the affected communities will require substantial infrastructure improvements to assure safety of water supplies. At the same time, a number of communities within the service territories of the three utilities will probably be much less affected by this increased regulation, and will, therefore, require substantially fewer infrastructure improvements related to meet more stringent drinking water standards. That being the case, DOE believes that it should investigate whether a consolidated rate structure will provide for continued just and reasonable rates for those customers in unaffected systems if the rate structure would require customers in unaffected systems to share the costs, through rates, of infrastructure improvements required in a different system due to water contamination.

Similarly, the DOE is aware that there are several communities within the service territories of the three utilities which are more likely to experience growth and development than other communities within the three service areas. Such growth or development may require infrastructure additions and improvements to provide an appropriate level of safe and adequate water service for those communities. However, like the previous issue regarding potential infrastructure improvements related to contaminants, the DOE believes it needs to evaluate whether a consolidated rate structure will provide continued just and reasonable rates for those customers in unaffected systems who could be asked to subsidize, through

¹ *See* RSA 365:28, “At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it.”

² *See*, e.g., Docket No. DW 21-185, PWW Petition for Emergency Rates, Order No. 26,579 (March 25, 2023), approving emergency special contract to allow PWW to enter in an emergency contract to expire November, 2022, with Merrimack Village District (MVD) while MVD built additional plant to address PFAS contamination in its water supply; and Docket No. DW 22-085, PWW Special Contract with MVD, Order No. 26,848 (June 14, 2023) extending special contract to August, 2023 for building of PFAS treatment plant.

rates, the costs of infrastructure improvements that are needed in other systems due to growth and development.

The DOE further notes that the proposed consolidation of the three utilities will not become final until (1) approval by the Commission in this proceeding, followed by; (2) approval by Pennichuck Corporation's Board of Directors, and then; (3) a vote by the City of Nashua (City) approving the consolidation.³ Based on information presented within the initial filing by the joint petitioners, the proposed consolidation will affect approximately 30 communities and approximately 39,000 customers. At present, Bedford, Litchfield, and Londonderry, have filed petitions for intervention in this proceeding. However, given the breadth of the affected communities and customers, the DOE believes there may likely be even more requests for intervention filed in this docket by other parties with divergent concerns. The DOE welcomes increased participation but is mindful that the investigation into this docket with the involvement of numerous parties could result in modifications to certain aspects of the proposed merger as set out in the Joint Petition. Given that approval of the proposed consolidation by the Commission is only the first step in a multi-step process that concludes with a vote by the City of Nashua, the ultimate owner of the three utilities, the DOE is concerned that the City is not yet an active participant in this docket. Absent the participation of the City, the Commission and the parties will not be able to determine if the City would object to any proposed changes, thereby jeopardizing a possible resolution of all issues to this docket.

In summary, the DOE believes that substantial investigation through discovery is necessary over a reasonable and adequate period of time in order to evaluate the information contained in the Joint Petitioners' filing, address the issues posed above, and properly evaluate the merits of all aspects of the proposed consolidation. The DOE looks forward to working with the Joint Petitioners and the other parties in this case for the purpose of arriving at a just and reasonable result.

Consistent with current Commission practice, the DOE is making this filing solely in electronic form.

Sincerely



Matthew C. Young, Esq.

Hearings Examiner/Staff Attorney

cc: Service List (electronic only)

³ See *Direct Testimony of John Boisvert* at 31-32.

ClerksOffice@puc.nh.gov
anthony.j.leone@energy.nh.gov
chris.countie@pennichuck.com
david.n.goyette@energy.nh.gov
donald.ware@pennichuck.com
Energy-Litigation@energy.nh.gov
George.Torres@Pennichuck.com
jay.kerrigan@pennichuck.com
jayson.p.laflamme@energy.nh.gov
jjs@rathlaw.com
john.boisvert@pennichuck.com
julia.gagnon@pennichuck.com
karen.j.moran@energy.nh.gov
lori.douglas@pennichuck.com
mab@nhbrownlaw.com
Matthew.C.Young@energy.nh.gov
Michael.J.Crouse@oca.nh.gov
ocalitigation@oca.nh.gov
rlirette@sheehan.com
robyn.j.descoteau@energy.nh.gov
smw@rathlaw.com
Suzanne.G.Amidon1@energy.nh.gov
wfa@rathlaw.com