

DW 99-016
DW 99-189

WESCO UTILITIES, INC.

Joint Petition by Riverview Land Corporation
d/b/a WESCO Utilities, and Pennichuck East Utility, Inc.
for Approval of the Transfer of the
WESCO Water Utility Business, Properties and Franchise

And

Proceeding to Show Cause Why Fines or Penalties
Should Not Be Imposed or Authority to Operate
as a Public Utility be Reconsidered,
as a Result of Deficiencies in Company Operations
and Responsiveness

Order Nisi Approving Transfer of the WESCO Water Utility
Business, Properties and Franchise to Pennichuck East Utility,
Inc. and Closing Docket DW 99-016

O R D E R N O. 23,456

May 2, 2000

APPEARANCES: James L. Sullivan, Jr., Esq. of
Sullivan & Gregg, P.A. for Pennichuck East Utility, Inc.;
Frederick J. Coolbroth, Esq. of Devine, Millimet & Branch,
P.A. for Riverview Land Corporation, d/b/a WESCO Utilities;
David W. Hess, Esq. on his own behalf as a customer; Mark
Cloutier, pro se; and Larry S. Eckhaus, Esq. for the Staff of
the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

1. Docket DW 99-016

On February 1, 1999, the New Hampshire Public
Utilities Commission (Commission) issued Order No. 23,134
opening Docket DW 99-016 requiring WESCO Utilities (WESCO) to
appear before the Commission on March 5, 1999 to respond to
various alleged deficiencies, and to show cause why fines or

other penalties should not be imposed, or why its authority to operate its water system in the Town of Hooksett should not be a matter for reconsideration.

On March 9, 1999, a hearing was held before the Commission at which the Commission heard testimony from Marcel Croteau, the owner of WESCO, Stephen St.Cyr, who provides administrative services to WESCO and Mr. Douglas Brogan, Commission Water Engineer. The Commission also heard statements from several WESCO customers.

On March 31, 1999, WESCO filed a Motion to Defer Proceedings so that a process for transferring the system to the Hooksett Village Water Precinct (HVWP) could be developed. On April 12, 1999, the Commission, by Secretarial Letter approved the deferral until June 1, 1999.

On May 20, 1999, the Commission received a late filed petition to intervene from Mark A. Cloutier. On June 11, 1999, the Commission received a late filed Motion to Intervene from David W. Hess.

Subsequently, Commission Staff informed the Commission that Pennichuck East Utility, Inc. (PEU), a wholly owned subsidiary of Pennichuck Corporation, which currently provides water service in Hooksett and other communities in New Hampshire, has been negotiating for the acquisition of the

system and for a supply of water from HVWP with the water supply to flow through a main owned by the Department of Transportation (DOT) beneath Route 93. The Parties and Staff, therefore, requested a further deferral until further notice from Staff or any other Party, which request was granted on November 29, 1999 along with the approval of the late interventions of Messrs. Cloutier and Hess.

2. Docket DW 99-189

On December 1, 1999 Riverview Land Corporation, d/b/a WESCO and PEU, (together Joint Petitioners), filed a Joint Petition (Petition) requesting the Commission approve the transfer of the WESCO water utility business, properties and franchise to PEU.

On December 17, 1999, the Commission issued an Order of Notice establishing Docket DW 99-189, and scheduling a prehearing conference and technical session for January 6, 2000. On December 28, 1999, Mark A. Cloutier, a WESCO customer filed a Petition to Intervene. On December 29, 1999, David W. Hess, a WESCO customer, filed a Motion to Intervene. The Prehearing Conference and technical session were held on January 6, 2000 as scheduled. At the Prehearing Conference, David W. Hess was granted full intervener status, and Mark Cloutier was granted limited intervener status, as they

requested, there being no objections. On March 21, 2000, the Joint Petitioners, after discussions with Staff and Intervenors, filed an Amended Joint Petition (Amended Petition).

The Amended Petition provides for a transfer of the WESCO water utility business, properties and franchise, *Re WESCO Utilities* 74 NH PUC 155 (1989), to PEU, a wholly owned subsidiary of Pennichuck Corporation. WESCO will receive no compensation for this transfer, however, PEU expects to invest approximately \$39,160 in the system for improvements. WESCO's existing production well will be removed from service, and PEU will supply WESCO customers with water supply purchased from the HVWP in accordance with a ten year Water Supply Agreement which is renewable by PEU in two five-year increments, or a total of twenty years. Included in the Amended Petition is a letter dated January 14, 2000 from Harry T. Stewart, P.E. Director of the Department of Environmental Services Water Division, indicating that the proposed HVWP source of supply meets the suitability and availability requirements of RSA 374:22,III. The water supply will be transported from HVWP via a State controlled water main beneath Route 93 in accordance with a ten year Water Supply Agreement with the New

Hampshire Department of Transportation which is renewable in four ten-year increments, or a total of fifty years. In addition, as a precaution to ensure future water supply, WESCO will convey to PEU easement rights to permit the installation of supply wells on certain WESCO property in the event such wells should become necessary.

PEU proposes to serve the WESCO customers at PEU's Rate Group GM-A rate, which PEU estimates will meet the initial standalone revenue requirement of the franchise area. Service at such rates will result in a decrease in rates of approximately 26.4% to a customer using 1,000 cubic feet of water per month.

As a condition of the Amended Standard Agreement between PEU and WESCO, WESCO's agreement to transfer the system for no monetary consideration is dependent upon the termination, prior to closing, of Docket DW 99-016 with no fines, sanctions, forfeitures or other penalties or refund, reparation or restitution obligations being imposed on WESCO or any of its directors, officers, employees, affiliates or agents.

The Amended Petition also seeks approval from the Commission pursuant to RSA 374:22 and RSA 374:26 to expand the franchise area to include the premises of David W. Hess which

are served by the system but are outside the franchise boundaries previously approved.

II. COMMISSION ANALYSIS

Pursuant to RSA 374:30, a "public utility may transfer ... its franchise, works or system,... when the commission finds that it will be for the public good." Thus, the Commission's permission is required under this provision if the transfer involves a surrender of control of operation. *Re Great Bay Water Company, Inc.* 83 NH PUC 575 (1998). Further, RSA 374:22, states that "No person or business entity shall commence business as a public utility within this state, or shall engage in such business,...without first having obtained the permission and approval of the commission." This Commission may only allow an entity to engage in business as a public utility where it finds that the exercise of the right, privilege, or franchise is in the public good. See RSA 374:26. Under the public interest or public good standard to be applied by the Commission where an individual or entity seeks to acquire a jurisdictional utility, the Commission must determine that the proposed transaction will not harm ratepayers. *Id* at 577. Based on this standard we find that the acquisition of the WESCO system by

PEU will not only not harm ratepayers, but will be beneficial to them. WESCO customers will be served by a large, competent and reliable water utility and have access to a better quality and quantity of water at lower rates. Thus, we will approve the acquisition and we will also approve the expansion of the franchise area to include the premises of David W. Hess.

PEU, and its affiliate, Pennichuck Water Works, Inc. (PWW) serve over 20,000 customers in its Nashua core system and various stand-alone systems and have a history of competent and reliable service. This Commission has repeatedly found that PWW and PEU have the operational, managerial and technical expertise to operate water utilities. See e.g. *Id* at 577; *Re Pennichuck Corporation/Pittsfield Aqueduct Company, Inc.*, 83 NH PUC 44 (1998); *Re Consumers New Hampshire Water Company*, 83 NH PUC 191 (1998).

Moreover, we find the rates to be charged customers under the proposed transfer just and reasonable for the reasons set forth in *Re Pennichuck Water Works, Inc.* 83 NH PUC 197 (1998).

Although the testimony and exhibits presented at the March 9, 1999 hearing in Docket DW 99-016 provide ample evidence to support the imposition of fines or penalties or

the reconsideration of WESCO's authority to operate as a public utility, we find that the transfer of the WESCO system to PEU will result in safe and adequate service to WESCO customers at reduced rates. As the public interest will be served by the transfer of this system to PEU, we will close Docket DW 99-016 without a finding, on the condition that the transfer of the system to PEU proceeds expeditiously after the issuance of this Order.

Based upon the foregoing, it is hereby

ORDERED NISI, that the proposed transfer of the WESCO water supply and distribution system and its appurtenant easements and franchise rights from WESCO Utilities, Inc. to Pennichuck East Utility, Inc. is in the public good and is approved; and it is

FURTHER ORDERED, that the WESCO franchise area be expanded to include the premises of David W. Hess, Lot Nos. 114, 114-1 and 114-2, which are served by the system but are outside the franchise boundaries previously approved, as provided in *Re WESCO Utilities* 74 NH PUC 155 (1989); and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. is granted authority pursuant to RSA 378 to charge its Rate Group GM-A rates in the WESCO franchise area; and it is

FURTHER ORDERED, that WESCO Utilities, Inc. is granted permission to discontinue service in the franchise area pursuant to RSA 374:28; and it is

FURTHER ORDERED, that Docket DW 99-016 is closed without a finding, on the condition that the transfer of the WESCO system to PEU proceeds expeditiously after the issuance of this Order; and it is

FURTHER ORDERED, that pursuant to Puc 1605.03, PEU shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in the Hooksett area, and shall send a copy of same to the Hooksett Town Clerk and to each WESCO customer, by first class mail, such actions to be no later than May 9, 2000 and to be documented by affidavit filed with this office on or before May 18, 2000; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than May 18, 2000; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so

no later than May 23, 2000; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 1, 2000, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that PEU shall file a compliance tariff with the Commission on or before June 1, 2000, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this second day of May, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary