

DW 05-125

**PENNICHUCK EAST UTILITY, INC. AND NORTHERN SHORES WATER
COMPANY**

Joint Petition to Transfer Assets and Franchise Rights

Order *Nisi* Approving Transfer of Assets and Franchise Rights

ORDER NO. 24,601

March 17, 2006

I. BACKGROUND

Pennichuck East Utility, Inc. (PEU) is a regulated public water utility serving in excess of 4,600 customers in a number of municipalities in southern New Hampshire. Northern Shores Water Company (Northern Shores) is a public utility serving approximately 32 customers in a limited area of the Town of Tilton north of Ashuelot Drive. On August 1, 2005, PEU and Northern Shores filed a joint petition for approval to transfer the assets and franchise rights for the Northern Shores water system to Northern Shores. PEU and Northern Shores also request approval to charge PEU's current PEU-A rate to the Northern Shores customers, once water meters are installed. Until then, PEU would continue to impose the unmetered flat rate now in effect.

In support of their petition, PEU and Northern Shores provided testimony of Bernard J. Rousseau, Vice President of Pennichuck Water Service Corporation, an affiliate of PEU, as well as other agreements and schedules. On February 19, 2005, PEU and Northern Shores entered into an agreement, whereby Northern Shores agrees to sell and PEU agrees to purchase, for \$12,000, a parcel of land, related utility easement rights and the water supply and distribution system serving Northern Shores' customers.

PEU also requests Commission approval to convert Northern Shores' customers to its PEU-A metered rate, once water meters are installed for all service connections. Through an attachment to Mr. Rousseau's testimony, PEU provided estimates of the cost to operate the Northern Shores system as a basis for its request to charge the PEU-A rate.

On December 19, 2005, PEU and Northern Shores submitted an additional exhibit to supplement the testimony of Mr. Rousseau. The exhibit provided a basis for charging PEU's then applicable A rate.

On January 11, 2006, PEU and Northern Shores filed a Motion to Amend Joint Petition requesting that Northern Shores' temporary franchise, granted in Docket No. DE 90-055, *Northern Shores Water Company*, 75 NH PUC 545 (1990), be approved as a permanent franchise in the area currently served by Northern Shores. PEU and Northern Shores aver that they have sent correspondence, dated December 15, 2005, to Tilton-Northfield Aqueduct Company (TNAC), the Town of Tilton, and the Tilton Northfield Water District (TNWD) informing those entities of PEU's intent to acquire Northern Shores and PEU's request to convert the franchise to a permanent franchise. As of the date of the filing of the joint motion, according to PEU and Northern Shores, neither TNAC nor TNWD has expressed interest in participating in this proceeding or in acquiring the water system.

On March 3, 2006, Staff of the Commission (Staff) filed a letter recommending that the Commission approve PEU and Northern Shores' joint petition. Staff stated that it had reviewed the filing and served discovery requests on the petitioners. Staff stated it had also researched the issue of the temporary nature of the franchise, and recommended that the Northern Shores franchise be made a permanent franchise. In Docket No. DW 05-135, the Commission approved the transfer of the franchise consisting of the entirety of the Towns of Tilton and Northfield from TNAC to TNWD by Order No.

24,562 (December 9, 2005). Staff indicated that it had been in contact with the TNWD and that TNWD does not oppose the Northern Shores franchise becoming a permanent franchise.

Staff recommended that the Commission approve PEU's proposed rates for Northern Shores' customers. Staff noted that the Commission had recently approved new consolidated rates for PEU in Docket No. DW 05-072 and as a result of that rate case, the PEU-A rate now consists of a monthly fixed charge of \$15.58 and a consumption charge of \$4.75 per 100 cubic feet. Staff calculated that, under the new rate, a Northern Shores customer using on average 8,800 cubic feet of water annually, would see an annual water bill of just over \$600. The current unmetered annual flat rate to Northern Shores customers is \$232.60. Although this new rate would represent an increase of about 160%, Staff stated that, based on its review of Northern Shores' recent financial statements, the utility had not been charging a rate adequate to cover its full cost of service. Finally, Staff reported that the New Hampshire Department of Environmental Services (DES) had issued a letter indicating that Northern Shores currently satisfies the requirements of DES with respect to the availability and suitability of water in accordance with RSA 374:22, III. For these reasons, and for the technical, financial and managerial expertise that PEU brings to the operation of water systems, Staff concluded that approval of the joint petition is in the public interest. Staff recommended the Commission approve PEU and Northern Shores' request to transfer the system assets and charge metered rates.

II. COMMISSION ANALYSIS

The transfer of water utility assets and franchises is governed by RSA 374:22 and RSA 374:30. Pursuant to RSA 374:22, I, "[n]o person or business entity shall commence business as a public utility within this state ... without first having obtained the permission and approval of the commission." The Commission shall grant requests for franchise authority and

allow an entity to engage in the business of a public utility when it finds, after due hearing, the exercise of the right, privilege, or franchise is in the public good. *See* RSA 374:26. In determining whether a franchise is in the public good, the Commission assesses the managerial, technical, and financial expertise of the petitioner. *See Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000). Pursuant to RSA 374:30, “[a]ny public utility may transfer or lease its franchise, works or system, or any part of any such franchise, works, or system ... when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise.” *See* RSA 374:30. We apply these authorities to the case at hand.

We have reviewed the petition, Staff’s recommendation, and other filings in this docket and we will approve the transfer of Northern Shores to PEU. We will also grant PEU a permanent franchise for the Northern Shores franchise area.

With respect to the transfer of Northern Shores’ franchise, we have previously approved PEU’s acquisition of community water systems and we are familiar with its operations as a public utility. We have found that PEU possesses the requisite technical, managerial, and financial capability to operate community water systems in the past and find nothing in the record before us to conclude otherwise at this time. Evidence in the file confirms that the Northern Shores water system meets the suitability and availability requirements of DES as per RSA 374:22, III. The record also evidences that the TNWD, successor to the TNAC, has not objected to transfer of the franchise to PEU a permanent basis. We find, therefore, that PEU possesses the requisite technical, managerial and financial capability to own and operate the Northern Shores water system and we will approve the proposed transfer. We will also modify our decision in *Northern Shores Water Company*, 75 NH PUC 545 (1990) and approve the request for a permanent franchise for the area currently served by Northern Shores.

We next address the rates PEU seeks to impose. Presently, Northern Shores' customers pay a flat, unmetered charge. The Commission seeks, when and where possible, to move water systems from unmetered flat rates to a rate structure that involves metered volumetric charges, a policy codified at N.H. Code Admin. R. Puc 603.03. PEU requests approval to charge its PEU-A rate for the customers at Northern Shores once the installation of water meters is complete. We recently approved new rates for PEU in its general rate case, Docket No. DW 05-072. *Pennichuck East Utility, Inc.*, Order No. 24,591 (February 24, 2006). According to Staff's recommendation letter, a customer consuming 8,800 cubic feet of water annually will realize a water bill of \$604.96, compared to the current flat annual rate of \$232.60. The rate increase, in Staff's view, is significant but appropriate, as the utility has not been charging rates that are adequate to cover the cost of operating the water system. The result is a large percentage increase, though the resulting rates are within the range of rates approved elsewhere in the state. We are satisfied that PEU's calculation of the expected cost to operate Northern Shores justifies use of the PEU-A rate described above. PEU has also indicated that it will install water meters at each service connection, as required by Puc 603.03. Customers who previously had no incentive to conserve water with an unmetered flat rate will soon have the opportunity to mitigate the potential effective rate increase because they will be on a metered rate. For these reasons, we find the application of the PEU-A rate to service provided at Northern Shores, effective upon completion of meter installation to each service connection, is just and reasonable.

Accordingly, we approve the transfer of the Northern Shores water system and its associated franchise rights from Northern Shores to PEU. We approve the establishment of the franchise as a permanent franchise. We find the use of the PEU-A rate to be just and reasonable and we will approve its use for Northern Shores' customers once meters are installed. We will waive

application of Puc 603.03 to PEU for its Northern Shores' customers on a temporary basis until meters are installed, and allow PEU to charge the current unmetered annual flat rate of \$232.60 but in no case shall the waiver of meters and unmetered flat rate extend beyond 6 months from the date of this order.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed transfer of the Northern Shores water system and its associated franchise rights to Pennichuck East Utility, Inc. upon the terms and conditions as specified in the joint petition is **APPROVED**, subject to the effective date below; and it is

FURTHER ORDERED, that the franchise area within which Northern Shores currently serves is hereafter established as a permanent franchise; and it is

FURTHER ORDERED, that PEU is authorized to charge the current flat rate for water service to the Northern Shores' customers until such time as the water service of each customer is metered, but in no case later than 6 months from the date of this order; and it is

FURTHER ORDERED, that PEU is authorized to charge its currently authorized PEU-A rate for metered service once a water meter is installed at each service connection; and it is

FURTHER ORDERED, that the PEU shall cause a copy of this Order *Nisi* to be delivered to each current Northern Shores customer and published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than March 27, 2006 and to be documented by affidavit filed with this office on or before April 17, 2006; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which

states the reason and basis for a hearing no later than April 3, 2006 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 10, 2006; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 17, 2006, unless the PEU fails to satisfy the publication obligation set forth above or 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 April 17, 2006, in accordance with N.H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary