

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 07-032

PENNICHUCK EAST UTILITIES, INC.

Rate Proceeding

Order Approving Temporary Rates

ORDER NO. 24,784

August 24, 2007

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A. by Sarah B. Knowlton, Esq., for Pennichuck East Utility, Inc.; Upton & Hatfield, P.A. by Justin Richardson, Esq., for City of Nashua; Office of the Consumer Advocate by Kenneth E. Traum on behalf of residential ratepayers; and Marcia A. B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

Pennichuck East Utility, Inc. (PEU) provides water service to approximately 5,000 customers in parts of Atkinson, Bow, Chester, Derry, Exeter, Hooksett, Lee, Londonderry, Litchfield, Pelham, Plastow, Raymond, Sandown, and Windham.

On March 1, 2007, PEU filed a notice of intent to file rate schedules increasing its rates and, on April 20, 2007, PEU filed the proposed schedules with supporting testimony. PEU sought an overall permanent increase in annual revenues in the amount of \$864,285 or 20.92 percent. PEU also filed a petition for temporary rates, pursuant to RSA 378:27, with supporting testimony. Until permanent rates are set, PEU requested a temporary rate increase, pursuant to RSA 378:27, designed to increase revenues by \$536,099 or 12.82 percent. PEU asked that its temporary rates become effective for service rendered as of May 31, 2007, or at the time customers are notified of the pending increase, whichever was sooner.

According to PEU, its actual overall return on investment as of December 31, 2006 was 4.94 percent, or 336 basis points below its currently allowed rate of return of 8.30 percent. PEU attributed the decline in its overall rate of return primarily to increased operating costs over the past two years, increased union and non-union wages, additional employees and associated payroll benefits, and capital investments it has made to comply with the Safe Drinking Water Act. Lastly, PEU requested waiver of certain requirements for submission of information with rate filings: N.H. Code Admin. R. Puc 1604.01(a)(1) (internal financial reports), Puc 1604.01(a)(12) (recent management and depreciation studies), Puc 1604.01(a)(18) (balance sheets and income statements), and Puc 1604.01(a)(25) (information on its parent company, Pennichuck Corporation).

On May 3, 2007, Staff filed a letter supporting PEU's waiver request. Staff stated the subject documents were either on file with the Commission or would likely be produced during discovery. On May 18, 2007, the Commission issued Order No. 24,749 suspending the proposed tariffs and setting a prehearing conference and technical session for June 14, 2007.

On May 23, 2007, the Office of the Consumer Advocate (OCA) filed a letter notifying the Commission of its intent to participate in this docket on behalf of residential ratepayers and, on June 5, 2007, the City of Nashua filed a petition to intervene. On June 13, 2007, PEU filed a report on cost of service allocations and rate design and, on June 14, 2007, it filed the required affidavits of publication.

On June 14, 2007, the Commission held a duly noticed prehearing conference during which it granted the City of Nashua's petition to intervene. On June 15, 2007, Staff, on behalf of itself and the parties in this docket, filed a proposed procedural schedule to govern the remainder

of the proceeding. In a secretarial letter dated June 19, 2007, we approved the procedural schedule, which was later revised to postpone the hearing to August 7, 2007.

On July 16, 2007, PEU filed a motion seeking confidential treatment for material it submitted in discovery that reveals the compensation paid to some of the utility's employees.

On July 24, 2007, Staff filed direct testimony of Jayson P. Laflamme. Mr. Laflamme recommended a revenue requirement for temporary rates of \$4,681,337, an increase of \$501,033, or 11.99 percent, over PEU's test year operating water revenues of \$4,180,304. Staff's recommended revenue requirement was calculated using an average rate base of \$12,103,719 and an overall rate of return of 7.38 percent. This yielded a net operating income requirement of \$893,595. According to Mr. Laflamme, when tax effects are taken into account a revenue deficiency of \$302,574 becomes \$501,033.

On August 3, 2007, Staff filed a stipulation entered into by Staff, PEU, and OCA. The agreement represented Staff and the settling parties' position regarding temporary rates. Staff and the settling parties presented this agreement at the August 7, 2007 hearing.

On August 6, 2007, PEU recommended that the Commission issue a supplemental order of notice to include the towns of Bow, Raymond and Windham. The hearing took place on August 7, 2007 and a Supplemental Order of Notice was issued on August 9, 2007.

II. TERMS OF STIPULATION AGREEMENT

A. INCOME REQUIREMENT

Staff, PEU, and OCA recommend an 11.99 percent overall increase in PEU revenues, or \$501,033, to produce a total revenue requirement of \$4,681,337. Staff, PEU, and OCA state that this revenue requirement recommendation represents a compromise on issues relating to the

revenue requirement for temporary rate purposes, which include allowed overall rate of return, return on equity, capital structure, *pro forma* adjustments, capital additions to PEU's rate base, and operating expenses. Each party to the agreement may have its own rationale or basis for agreeing to this amount. Staff, PEU, and OCA agree that the recommended revenue requirement results in temporary rates for customers that are just and reasonable.

B. RATE IMPACT

Staff, PEU, and OCA recommend the proposed revenue increase be applied equally to all customer classes, including general metered customers and currently effective private and public fire protection. At hearing, PEU testified that temporary rates, if approved, would cause a bill for an average residential customer with a 5/8-inch meter and using 8,900 cubic feet of water per year, to be approximately \$683.67 annually. This would be an increase of approximately \$73.20 per year, or \$6.10 per month.

C. RATE DESIGN

For the purpose of temporary rates, Staff, PEU, and OCA recommend that we maintain PEU's present rate design pending application of the results of PEU's most recent cost of service study. Staff testified that it is unlikely to recommend using the same rate design for permanent rates as was used for temporary rates. PEU testified at hearing that its most recent cost of service study recommended an allocation of the revenue requirement different than what Staff, OCA, and PEU had agreed to for temporary rates.

D. EFFECTIVE DATE AND RECOUPMENT

Staff, PEU, and OCA recommend that the temporary rates be effective for service rendered on and after May 29, 2007. At hearing, PEU and Staff testified that temporary and permanent rates would be reconciled at the conclusion of the proceeding.

III. MOTION FOR CONFIDENTIAL TREATMENT

On July 16, 2007, PEU filed a motion seeking confidential treatment pursuant to RSA 91-A and N.H. Code Admin. R. Puc 203.08 for material it submitted in response to Staff data request 1-7 pertaining to the compensation paid to some of the utility's non-officer employees. In its submission to Staff, PEU provided the identity of each position by the job title and associated wages. Other parties received a redacted version.

In support of its request for confidential treatment, PEU stated that with the exception of PEU's officers, wages of employees are not generally known to the public, and that it is PEU's practice to maintain the salaries of its employees in confidence. PEU stated that if the information for which confidential treatment is sought were disclosed publicly, it would likely reveal the salary structure of a significant portion of employees of PEU and could undermine PEU's ability to hire and retain employees which would result in competitive harm to PEU. Release of the information could also result in the indirect identification of the employee and his or her wages.

IV. COMMISSION ANALYSIS

A. MOTION FOR CONFIDENTIAL TREATMENT

The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception,

RSA 91-A:5, IV, which covers “[r]ecords pertaining to internal personnel practices, confidential, commercial or financial information . . . whose disclosure would constitute invasion of privacy.” The New Hampshire Supreme Court provided an analytical framework for employing this exception in *Union Leader Corp. v. N. H. Housing Fin. Auth.*, 142 N.H. 540 (1997). There must be a determination of whether the information is confidential, commercial or financial information “and whether disclosure would constitute an invasion of privacy.” *Id.* at 552 (emphasis in original, citations omitted). “[T]he asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure.” *Id.* at 553 (citations omitted).

It is a longstanding practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers. In *Union Telephone Co.*, 81 NH PUC 525, 526 (1996) and *Pennichuck Water Works, Inc.*, 86 NH PUC 764, 765 (2001), the Commission noted that compensation information pertaining to corporate officers appears in the utility's annual report and, because it is thus publicly disclosed, is not subject to confidential treatment in a rate proceeding. As to non-officers, the Commission found persuasive the fact that the utility maintained the privacy of the information in its own files, as well as the utility's assertion that public disclosure of such information would cause harm by making it easier for other companies to recruit the employees away from the utility and potentially causing “discord among individuals within the company.” *Id.* at 764-65.

The same reasoning applies here. The competitive harm that could result from the public disclosure of otherwise-confidential employee salaries is significant for the reasons stated by PEU. At the other end of the scale, the public's interest in disclosure is relatively attenuated because the Commission does not directly regulate the salaries of individual utility employees but is focused instead on the extent to which personnel expenses are reasonable in the aggregate. We thus find PEU's interest in protecting this information outweighs the public's interest in disclosure and we will grant PEU's motion.

The PEU motion requests a protective order prohibiting the copying, duplication, dissemination, or disclosure in any form of the information contained in the response to Staff data request 1-7. The Company also asks that such a prohibition extend to the use of this information in discovery, testimony, argument, or written briefing, and that the parties be directed to return the documents to PEU at the conclusion of the proceeding. Such an order is unnecessary in these circumstances, inasmuch as the material granted confidential treatment under RSA 91-A:5, IV has not been disclosed to the parties. A determination that material is confidential pursuant to RSA 91-A:5, IV has the effect of precluding public disclosure by all employees of the Commission.

B. TEMPORARY RATES

Pursuant to RSA 378:27, the Commission may approve temporary rates for the duration of the proceeding if, in its opinion, the public interest so requires and the records of the public utility on file with the Commission indicate it is not earning a reasonable return on its property used and useful in the public service. The standard for approval of temporary rates is less

stringent than that for permanent rates. *Appeal of Office of Consumer Advocate*, 134 N.H. 651. 660 (1991).

We have reviewed the evidence presented regarding temporary rates and we find it reasonable to approve an 11.99 percent increase in PEU's rates, on a temporary basis. PEU demonstrated that based on its books and records on file with the Commission that it is under-earning and that this under-earning may ultimately disadvantage both PEU and its ratepayers. PEU, Staff, and the OCA agreed to an increase for temporary rates of 11.99 percent, a level representing approximately one-half of the total increase which PEU may be entitled to for permanent rates. We conclude that such an increase is reasonable in order to mitigate potential rate shock to customers and to reduce the significance of a recoupment between temporary rates and permanent rates at a later date. For these reasons, we find the proposed 11.99 percent temporary rate increase to be just and reasonable.

With respect to applying the rate increase equally to all customers, it is reasonable given that Staff and the parties have not had time to evaluate PEU's most recent cost of service study fully. In the meantime, the reconciliation mechanism found in RSA 378:29 will protect customers in the event we decide that permanent rates should be applied in a manner different from that applicable to the temporary rates.

With respect to the effective date of the temporary rate increase, we note that PEU originally requested that its temporary rate be effective on a service rendered basis as of May 31, 2007. At hearing, Staff and the settling parties requested that PEU be authorized to implement temporary rates effective May 29, 2007, the date PEU published a display ad informing customers of the proposed rate increase. We acknowledge that both of these proposed effective

dates precede the date of the temporary rate hearing; however, 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. *Se, Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980). In this case, PEU filed its notice of intent to file rate schedules on March 1, 2007. We issued Order No. 24,749 on May 18, 2007, notifying the public of PEU's rate case filing, suspending PEU's proposed tariffs, and scheduling a prehearing conference. In light of the notice contained in our Order, we find that implementing the temporary rate on a service-rendered basis, effective May 29, 2007, accords with established precedent.

Based upon the foregoing, it is hereby

ORDERED, that Pennichuck East Utility, Inc.'s request for a temporary rate increase of 11.99 percent is GRANTED, on a service rendered basis effective May 29, 2007, as detailed above; and it is

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

FURTHER ORDERED, that Pennichuck East Utility Inc.'s motion for confidential treatment to its response to Staff data request 1-7 is GRANTED with respect to information pertaining to employees not officers of the corporation; and it is

FURTHER ORDERED, that this order is subject to the ongoing right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By Order of the Public Utilities Commission of New Hampshire this twenty-fourth day of August, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

ChristiAne G. Mason
Assistant Executive Director & Secretary