

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 20-019

Pennichuck East Utility, Inc.

2020 Qualified Capital Project Adjustment Charge

MOTION FOR REHEARING, RECONSIDERATION OR MODIFICATION

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STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 20-19

Pennichuck East Utility, Inc.

2020 Qualified Capital Project Adjustment Charge

MOTION FOR REHEARING, RECONSIDERATION OR MODIFICATION

Pennichuck East Utility, Inc. (“PEU” or “Company”), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a public utility subject to the jurisdiction of the New Hampshire Public Utilities Commission (the “Commission”), hereby moves, pursuant to RSA 541:3, PUC 203.07, PUC 203.33, and RSA 365:28, for a rehearing, reconsideration or modification of Order No. 26,525 issued on September 23, 2021 (the “Order”) in the instant proceeding regarding the 2020 and 2021 Qualified Capital Project Adjustment (as originally established by the Commission in Order 26,179 in Docket DW 17-128) (“QCPAC”).

PEU respectfully requests the Commission grant this motion for rehearing, reconsideration or modification because the Order would render a material change to the QCPAC process that would, if left unmodified, undermine the fundamental basis of the QCPAC process and would place the Company in a potentially untenable and confiscatory financial position. Specifically, the Order (potentially inadvertently) incorrectly failed to make the following findings as required by the QCPAC process, as supported by the Company, the Department of Energy (“DOE”)Staff and the settlement agreement of all parties to this proceeding: (1) that the 2019 capital expenses presented in the proceeding are prudent, used and useful; and (2) that the 2020 capital expenses presented in the proceeding are appropriate for possible recovery in future proceedings. Instead, the Order dismisses as moot PEU’s petition, without making these necessary

findings that are supported by all parties to this proceeding.¹ Further, as described below, PEU contends that the Order's analysis supporting the Commission's dismissal is based on an erroneous and misconceived interpretation of facts and representations made by parties in the Amended Petition and during the May 10, 2021 hearing.

This motion first presents relevant background on the QCPAC process (Motion Section I, at page 2) and the procedural setting (Motion Section II, at page 4). It then provides legal authorities and analysis supporting the requested relief (Motion Section III, at page 6 and Motion Section IV, at page 7). Finally, PEU attaches to this motion a sample order with suggested revisions that would address the Company's important concerns and would be consistent with the relief requested by the Company through its Petition and its Amended Petition, and with Staff's recommendations.

In support of this motion, the Company states as follows:

I. Background on QCPAC Process and Purpose

1. On September 9, 2017, PEU filed a Request for Change in Rates and a Petition for Specific Modifications to Ratemaking Structure in Docket No. 17-128. Among the requests made in that Petition was the establishment of a QCPAC enhanced step increase program similar to the one approved for Pennichuck Water Works in Docket No. 16-806.

2. On October 4, 2018 (Order No. 26,179), the Commission issued Order No. 26,179 which authorized the QCPAC surcharge program as part of the Ratemaking Structure for PEU.

3. Order No. 26,179 confirms that the underlying purpose of the QCPAC process is to allow the Company to establish rates sufficient to recover expenses associated with The Company's capital improvements (1.1 x Principal and Interest and property taxes) on an annual basis, rather than to wait for recovery of such expenses as part of a general rate case conducted every three years. This purpose acknowledges that PEU, like PWW, is a highly unique public utility because it is ultimately owned entirely

¹ OCA took no position on the petition.

by the City of Nashua and must rely entirely on debt financing for its operations and capital expenditures. In contrast to PEU, other traditional investor-owned utilities have significant equity owners, and this equity position allows such utilities to carry the additional direct financial impact of capital expenses until the next general rate case. Because PEU, ultimately owned entirely by a municipality, does not have access to such equity capital in any manner, it must borrow all funds needed to finance necessary annual capital investments. The approved QCPAC mechanism allows PEU to establish a surcharge on its permanent rates on an annual basis sufficient to support the additional debt service obligations arising from the new capital expenditures, as well as the associated property tax expenses, incurred, funded and requiring the initiation of repayment each year.

4. PEU and its lenders rely on this regular, consistent and annual QCPAC process, approved by the Commission as part of its Ratemaking Structure, to provide the loan financing necessary to support the annual capital investments required by a water utility, in order to meet its core, prudent and fundamental needs as a regulated water utility. While such a process is unique, PEU and its management team have been able to explain the QCPAC mechanism to its lenders and have been successful in accessing new borrowings on an annual and ongoing basis. Without the clear and consistent application of the QCPAC process, lenders would question whether PEU would ultimately obtain, through the general ratemaking process, the rates necessary to repay the new loans. Because PEU does not have access to equity, these lenders would most likely feel so exposed that they would not extend the required credit to finance regular and recurring capital expenditures. The QCPAC process was intentionally designed to address this concern and to enable PEU (and PWW) to access debt capital between general rate cases.

5. Under Order No. 26,179, QCPAC eligible projects must meet the following criteria: (1) the capital project proposed by PEU must be completed, in service, and used and useful within the previous fiscal year for which the QCPAC filing is made; (2) the capital project must have been financed by debt that has been approved by the Commission in accordance with RSA 369; and (3) the capital projects must correspond with a capital budget which has been previously submitted by PEU, as

updated quarterly during the year and approved by the Commission. Order No. 26,179 at p. 11.

6. Order No. 26,179 describes what should be contained in PEU's annual QCPAC surcharge petition as follows:

Within its annual filing, PEU will provide: (1) its calculation of the QCPAC surcharge associated with capital investments from the previous year; (2) budget information regarding proposed capital projects for the current year; and (3) a detailed forecast of anticipated capital project expenditures for the subsequent two years, for informational purposes only. Customers will receive notice of the proposed surcharge within 30 days of the annual QCPAC filing.

Order No. 26,179 at 11.

7. The QCPAC surcharge consists of: (1) the annual principal and interest payments with respect to the applicable capital project debt, multiplied by 1.1; and (2) incremental property taxes associated with the specific capital projects, as determined in the year of the granting of the QCPAC surcharge for such projects. Order No. 26,179 at p. 11.

II. Procedural Background

8. On February 13, 2020, PEU filed its initial petition for 2020 QCPAC Surcharge in Docket DW 20-019. The purpose of the petition was three-fold. First, the petition sought final approval of a QCPAC surcharge based on eligible projects and amounts expended for capital projects in 2019. Second, the petition sought preliminary approval of the capital budget for eligible capital project expenditures set to occur in 2020. Third, the petition provided the Commission with information regarding the Company's forecast of capital project expenditures for 2021 and 2022 for which no Commission action is required at this time. See Petition for 2020 QCPAC Surcharge, Exhibit A at 2.

9. The Company had advertised on its website and sent notices to customers in December 2019 prior to filing the initial petition on February 13, 2020. See Petition for 2020 QCPAC Surcharge, Exhibit A at 3.

10. On February 26, 2020, the Office of Consumer Advocate (“OCA”) submitted a notification that it would participate in the docket. No other parties requested to intervene or otherwise participate.

11. On September 23, 2020, the Company filed a request for Change in Rates in Docket DW 20-156. On December 11, 2020, OCA submitted a notification that it would participate in that docket, and the Commission received a number of requests for intervention for other parties in that docket.

12. On March 11, 2021, PUC Staff filed a recommendation to the Commission regarding the PEU’s petition for the 2020 QCPAC Surcharge (referred to as the “Staff QCPAC Recommendation”). That document included a recommendation that the Commission find the 2019 capital projects were prudent, used and useful as of the end of 2019.² Staff also recommended the Commission approve preliminarily the 2020 capital improvement budget of \$4,951,552, but withholding any prudence determination of those projects pursuant to RSA 378:28. *See* Staff QCPAC Recommendation, Exhibit B at 12.

13. On April 27, 2021, within Docket No. DW 20-156, PEU, OCA, PUC Staff and six intervenors reached a settlement agreement whereby PEU agreed to forgo collection of the QCPAC surcharges with respect to 2019 and 2020 capital expenditures [for 2018 and 2019 capital improvement projects, respectively], to reset the current QCPAC at zero, and to establish a temporary rate based on the books and records on file with the Commission (referred to as the “Temporary Rate Settlement Agreement”). *See* Settlement Agreement on Temporary Rates, Docket DW 20-156, Exhibit C at 4-5.

14. After a hearing held by the Commission on May 10, 2021 in Docket No. DW 20-156, the Commission issued Order No. 26,508 on August 16, 2021, approving the Temporary Rate Settlement Agreement, and directed PEU to file an amended petition in the QCPAC Docket No. 20-019 eliminating its request for a rate surcharge. *See* Order No. 26,508, Docket DW 20-156, Exhibit D at 7.

² “In the Engineering Report, Mr. Brogan states that each project associated with the QCPAC, including the projects which incurred an increase in the Company’s property tax liability, but were not including in the debt service calculation of the QCPAC, were completed and in-service at the end of 2019, and were furthermore prudent, used and useful.” Staff Recommendation, Exhibit B at 10.

15. On August 17, 2021, pursuant to the Commission’s direction, the Company filed an Amended Petition in Docket No. 20-019. This Amended Petition removed the request for the QCPAC surcharge but continued the requests of the initial Petition that the Commission find the 2019 capital projects were prudent, used and useful, and that the Commission find that its budgeted 2020 projects are eligible for recovery through the QCPAC surcharge mechanism. See Amended Petition, Exhibit X at 3. These continued requests were consistent with the authorized QCPAC process, consistent with prior QCPAC proceedings, and consistent with the settlement in DW 20-156. As envisioned by the QCPAC program, the Amended Petition also submitted forecasts of its proposed 2021 and 2022 projects for informational purposes. See Amended Petition, Exhibit E at 3.

16. On September 23, 2021, the Commission issued Order 26,525, which dismissed as moot PEU’s entire Amended Petition (this Order is subsequently referred to as the “Dismissal Order”). See Order No. 26,525, Docket No. 20-019, Exhibit F. Although the Dismissal Order effectuated the Temporary Rate Settlement Agreement by bringing the current QCPAC surcharge back to zero, it unfortunately eliminated the very important and necessary continued requests of the Amended Petition that the Commission determine that PEU’s 2019 capital improvement projects are prudent, used and useful, and further that the Commission find that PEU’s 2020 capital projects are preliminarily approved as eligible for recovery through the QCPAC process. The Settlement Agreement did not call for abandoning or moving these findings to a separate docket.

III. Authorities for Rehearing or Reconsideration, and for Modification

17. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. See *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. A party seeking to set aside an order must show by a clear preponderance of the evidence, the order is unjust or unreasonable. See RSA 541:13, see also *Appeal of Lakes Region Water Company, Inc.*, 171 NH 515, 517 (2018). Even where an order or administrative decision is issued nisi or without a hearing, a party must file a motion for rehearing pursuant to RSA 541:4.

See *Appeal of Office of Consumer Advocate*, 148 N.H. 134, 136 (2002). Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the Commission. See *Public Service Company of New Hampshire*, Order 25,361 at 4-5, citing *O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977), and *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. See *Public Service Company of New Hampshire*, Order 25,361 at 5.

18. In the alternative to a rehearing or reconsidering of the Dismissal Order, the Commission is authorized pursuant to RSA 365:28 to suspend, set aside or modify any order. See RSA 365:28. RSA 365:28 provides:

At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend and set aside, or otherwise modify any order made by it. This hearing shall not be required when any prior order made by the commission was made under a provision of law that did not require a hearing and a hearing was, in fact, not held.

Here, the Dismissal Order was not the usual *nisi* order. Applying RSA 365:28, it would be appropriate in this matter for the Commission to suspend, set aside or otherwise modify the Dismissal Order pursuant to RSA 365:28 as it usually issues orders on QCPACs, that is, by order *nisi*. See RSA 365:28, see also, *Public Service Company of New Hampshire d/b/a Eversource Energy*, 2018 WL 6048264 (NH PUC Docket 17-160, Order 26,191 at 4).

19. PEU respectfully requests the Commission to reconsider or modify Order No. 26,525 for the reasons set forth in the following section.

IV. Analysis

20. The Dismissal Order should be reconsidered and/or modified for the following reasons.

21. First, the Dismissal Order is inconsistent with the Temporary Rate Settlement Agreement. The Dismissal Order states: “Petitioner no longer seeks to utilize the QCPAC surcharge mechanism to recover the costs of its 2019 and 2020 projects, *the Commission finds that the 20-019 docket is no longer the appropriate place to make a*

prudent, used, and useful finding for the 2019 projects.” Order 26,525, Exhibit F at 4 (emphasis added). This finding is inconsistent with the terms of the Temporary Rate Settlement Agreement which states:

“the Settling Parties agree that upon approval of temporary rates in this proceeding, PEU will cease the application on customer billings of the 2019 QCPAC of 2.98% approved in Commission Order No. 26,313 (December 6, 2019) in Docket DW 19-035. Additionally, PEU will forego collection Docket No. DW 20-156 Temporary Rate Settlement Page 5 of 8 of the 2020 QCPAC proposed at 1.22% that is currently pending before the Commission in Docket DW 20-019.” Exhibit C, Docket DW 20-156, Temporary Rate Settlement Agreement at 4-5.

These terms only propose a waiver of the collection of the QCPAC surcharges with respect to 2018 projects approved by Order 26,313 in Docket No. 19-035 and 2019 projects in this docket. *Id.* Collection of the subject surcharges were to only be subsumed into the rate case for this rate case only. The terms do not propose any other alteration to the QCPAC process, and therefore preserve the normal process of obtaining findings that the 2019 projects are prudent, used and useful. Accordingly, while the Dismissal Order implies that its findings are consistent with the Settlement Agreement on Temporary Rates, that implication is erroneous, and reconsideration, rehearing or modification is justified by this unforeseen error.

22. Second, the Dismissal Order is inconsistent with the recommendations of the Staff QCPAC Recommendation in at least two ways. First, the Dismissal Order appears to conclude that a prudent, used and useful finding in this docket would be inappropriate. This conclusion is not consistent with the Staff QCPAC Recommendation. Indeed, the Staff QCPAC Recommendation confirms that the 2019 projects have been fully investigated and audited by PUC Staff and expressly recommends that the Commission make the requested finding. See Staff QCPAC Recommendation, Exhibit B at 10. The Dismissal Order is in conflict with the Staff QCPAC Recommendation in this regard. Although prudence findings used to be made in general rate cases, since the implementation of the QCPAC program, it would be wasteful and harmful to the Company’s access to debt capital and relationships with lenders if the Commission were to delay the prudence finding or require a repetitive re-conduct of the prudent, used and useful evaluation of the 2019 projects in the general rate case.

Second, the Dismissal Order is inconsistent with the Staff QCPAC Recommendation when it finds: “Nor is it [this QCPAC docket] the appropriate place to opine as to whether the

2020 projects are hypothetically eligible for recoupment under QCPAC.” See Order 26,525, Exhibit F at 4. PUC Staff recommended that the Commission make a preliminary approval of 2020 capital improvement projects, withholding prudence review. See Staff QCPAC Recommendation, Exhibit B at 12. Such a finding of eligibility is consistent with the general QCPAC process and does not require any prudence review for such projects at this time. Under the general QCPAC process, the formal prudence review of such projects is reserved for a future QCPAC docket (in this case, Docket No. DW 21-022). The Staff QCPAC Recommendation confirms and supports this regular eligibility finding.

To the extent that the Dismissal Order implies that the Staff QCPAC Recommendation does not support a prudent, used and useful finding with respect to the 2019 project costs in this docket, or that the Staff QCPAC Recommendation does not support an eligibility finding with respect to 2020 projects in this docket, those implications are erroneous, and reconsideration, rehearing or modification is justified by this error.

23. Third, the Dismissal Order mistakenly conceives statements made by Attorney Brown during the May 10, 2021 hearing by implying they support the deferral of the regular and customary treatment and findings that the 2019 capital projects are prudent, used and useful and that the 2020 capital projects are eligible for treatment under the QCPAC process. The Dismissal Order erroneously interpreted Attorney Brown’s statements, because she did not state that the Commission could defer a prudent, used and useful findings for the 2019 *and* 2020 projects. [*emphasis added*]. See May 10, 2021 Hearing Transcript, Exhibit G at 106-107. Rather, Attorney Brown’s statements only pertained to the 2019 capital projects. The remarks did not pertain to the 2020 capital projects pending review in Docket 21-022. Her statements were to move the rate impact portion of the QCPAC to the rate case. Hearing Transcript at 107, lines 1-3. To the extent that Attorney Brown’s statements in response to questions from the bench could be reasonably construed to propose the deferral of the prudent, used and useful finding with respect to the 2019 project costs, PEU notes that Attorney Brown requested the Commission approve the temporary rate settlement and the terms contained therein as did the remaining settling parties. See May 10, 2021 Hearing Transcript, Exhibit G at 104. Further, subsequent to the hearing, PEU amended its petition, to effectuate the settlement entered into between DOE Staff, the Office of the Consumer Advocate, Towns of

Londonderry, Litchfield, Pelham, and Hookset, and intervenors Robert Corcoran and Richard M. Husband which, importantly, kept the prudency consideration of the 2019 capital projects in the QCPAC program. None of these parties have objected to the amendments to the petition.

Further, the Dismissal Order stated Attorney Brown explained that the Petitioner intended to recover the costs of its 2019 and 2020 projects through “the rate case mechanism, rather than the QCPAC surcharge rate mechanism.” See Dismissal Order 26,525, Exhibit H at 3. Attorney Brown’s statements at 107, however, do not support that finding. See *Id.* at 107. Attorney Brown stated: “[t]hat could be an appropriate descriptive term [responding to “defer collection”]. I mean, ultimately the Company wants to recover the revenues for those assets [referring only to 20-019 docket referenced on page 106]. And it’s not picky on which mechanism it’s using.” See *Id.* at 106-107. Attorney Brown later responded to Chairwoman’s question that the Company is not foregoing the surcharges forever, “Right. Or they’re just being...It’s being absorbed, by this Temporary Rate Settlement, its being absorbed into the rate mechanism, rather than the QCPAC surcharge rate mechanism.” See *Id.* at 107. The Company asserts the Commission, in its Dismissal Order, overlooked or mistakenly conceived Attorney Brown’s statement because she did not state the Company would be abandoning recovery of costs of the 2020 projects. Those capital projects are the subject of Docket DW 21-022.

Finally, the Dismissal Order stated, “Because Petitioner no longer seeks to utilize the QCPAC surcharge mechanism to recover the costs of its 2019 and 2020 projects, the Commission finds that the 20-019 docket is no longer the appropriate place to make a prudent, used, and useful finding for the 2019 projects.” See Dismissal Order 26,525, Exhibit H at 4. The Company asserts this conclusion is also erroneous because nowhere in the temporary rate settlement agreement in Docket DW 20-156 or in Attorney Brown’s statements did the Company abandon recovery of the 2020 projects through the QCPAC surcharge mechanism. As noted above, the Company and parties only sought to “*absorb*” collection of the 2020 surcharge (which would have covered the 2019 and 2018 capital projects) into the rate case. [*emphasis added*] See *Id.* at 107.

24. Fourth, the Dismissal Order erroneously concludes that the Amended Petition requested the deferral of the regular and customary treatment and findings that the 2019 capital projects are prudent, used and useful and that the 2020 capital projects

are eligible for treatment under the QCPAC process. The Commission specifically directed the Company to file an amended petition consistent with the terms of the Temporary Rate Settlement. See Order No. 26,508, Docket DW 20-156, Exhibit D at 7. One day after the issuance of Order 26,508, the Company filed the Amended Petition that removed the request for the QCPAC surcharge but continued the requests of the initial Petition that the Commission find the 2019 capital projects were prudent, used and useful, and that the Commission find that its 2020 projects are preliminarily eligible for recovery through the QCPAC surcharge mechanism. See Amended Petition, Exhibit E at 3. These requests were consistent with the authorized QCPAC process, and consistent with prior QCPAC proceedings. In contrast to these requests in the Amended Petition, the Dismissal Order states: “Because Petitioner no longer seeks to utilize the QCPAC surcharge mechanism to recover the costs of its 2019 and 2020 projects, the Commission finds that the 20-019 docket is no longer the appropriate place to make a prudent, used and useful finding for the 2019 projects. Nor is it the appropriate place to opine as to whether the 2020 projects are hypothetically eligible for recoupment under QCPAC.” See Dismissal Order 26,525, Exhibit F at 4. To the extent that the Dismissal Order implies that the Amended Petition does not request a prudent, used and useful finding with respect to the 2019 project costs in this docket, or that the Amended Petition does not support an eligibility finding with respect to 2020 projects in this docket, those implications are erroneous, and reconsideration, rehearing or modification is justified by this error.

The Amended Petition also submitted forecasts of its proposed 2021 and 2022 projects for informational purposes. See Amended Petition, Exhibit E at 3. Nowhere in the Amended Petition did the Company request deferral of the prudent, used and useful finding for the 2019 capital projects or seek to defer preliminary approval of the 2020 capital projects as eligible for recovery using the QCPAC mechanism. The effect of the conclusions in the Dismissal Order impact the pending QCPAC surcharge petition pending in DW 21-022.

25. Fifth, the Dismissal Order contravenes prior Commission orders establishing and affirming the QCPAC process. These prior orders support the findings requested in PEU’s Amended Petition. As noted above, the QCPAC program arose out

of PEU's 2017 rate case. See Order 26,179, Docket 17-128 (October 4, 2018) at 12. The Commission approved a "one-time annual recoupment charge covering the period between the approved effective date of the QCPAC surcharge ... and the date of the Commission's order approving the surcharge." See Order No. 26,179 at 12. "The annual recoupment charge is necessary because the financing associated with the prior year's capital projects begins accruing interest as of the date of issuance of such debt." See *Id.* The importance of this annual recovery is that absent the ability to timely recoup the funds necessary to pay both the accrued interest and principal payments on the debt for the period between the effective date and the date of the Commission's order, the Company will experience a cash shortage which it will not be able to recover. See *Id.* at 12, see also Order No. 26,313, Docket 19-035 at 5. Therefore, it is vital that PEU's recovery of the QCPAC surcharge coincide with the initial issuance of the debt and accrual of the associated interest. See *Id.* at 12. Delaying recovery, as contemplated in the Dismissal Order, adversely affects this critical timing.

Each year since establishing the program, the Commission has approved the proposed surcharge so that PEU may recover the debt service and associated projects completed during the prior year. See Order 26,313, Docket 19-035 (December 6, 2019) at 7. In Docket DW 19-035 the Commission found that the 2018 capital projects were prudent, used and useful and eligible for recovery through the QCPAC surcharge mechanism. See Order 26,313 at 8. The Commission also preliminarily approved the 2019 capital projects. See Order 26,313 at 9. The Commission's interim order also confirms the QCPAC process, in the Commission issued interim order Order 26,228 (March 21, 2019) provided the Company with preliminary approval of the 2018 projects for inclusion in the current year budget: "...because the costs of eligible projects may not be included in the QCPAC unless specifically correspond with a capital budget that has received preliminary approval...." See Order 26,228, Docket 18-174 (March 21, 2019). This process of preliminary approval is also consistent with Commission findings in additional QCPAC orders for Pennichuck Water Works, Inc. including: (1) Order 26,813 (PWW Docket DW 18-022, October 29, 2018) and (2) Order 26,298 (PWW Docket DW 19-029, October 9, 2019).

26. Sixth, and most importantly, if the Dismissal Order is not reconsidered or modified, the result will undermine the entire purpose and intent for the QCPAC process, which in turn will undermine the ability of PEU, and potentially PWW, to access debt capital to finance necessary capital improvements. As stated above, the underlying purpose of the QCPAC process is to allow the Company to establish rates sufficient to recover [capital expenses] on an annual basis, rather than to wait for recovery of such expenses as part of a general rate case conducted every three years. This is due to the highly unique status of the Company, like Pennichuck Water Works, Inc., because it is ultimately owned entirely by the City of Nashua and must rely entirely on debt financing for its operations and capital expenditures.

The Company and its lenders rely on this regular, consistent, and annual QCPAC process, approved by the Commission as part of its Ratemaking Structure, to provide the loan financing necessary to support the annual capital investments required by a water utility. The Company and its management team have been able to explain the QCPAC mechanism to its lenders and have been successful in accessing new borrowings which is necessary given the Company lack of access to traditional equity. Without the clear and consistent application of the QCPAC process, lenders would question whether PEU would ultimately obtain, through the general ratemaking process, the rates necessary to repay the new loans and might feel so exposed that they would not extend the required credit to finance regular and recurring capital expenditures. The QCPAC process was intentionally designed to address this concern and to enable PEU (and PWW) to access debt capital between general rate cases.

By deferring or re-opening the prudent, used and useful finding for the 2019 projects and failing to preliminarily approve the 2020 projects, the Commission is creating uncertainty for the Company and its lenders that could impact not only its ability to access necessary debt, finance current and future obligations, but also impact its ability to recover future surcharges utilizing the QCPAC mechanism in Docket 21-022. This could also impact future QCPAC dockets preventing the Company for securing revenues necessary to finance and make timely capital improvements to ensure clean and safe water to its customers.

27. PEU would also like to address the statement in the Dismissal Order that “[p]etitioner, the OCA, and numerous intervenors have participated actively in Docket 20-156. Dozens more have submitted comments. To the extent that a prudent, used, and useful finding will have consequences for the base rate, the parties to Docket DW 20-156 should have an opportunity to be heard before the Commission makes such a finding.” See Order 26,525, Exhibit F at 4. This conclusion implies that due process in DW 20-019 was insufficient. DOE Staff has completed an investigation and audit of such costs in this docket, which was properly noticed for consideration of the capital projects. A notice regarding the 2020 QCPAC surcharge was sent to all of the Company’s customers in December 2019, and the notice was posted on the Company’s website. On February 25, 2020, the Office of the Consumer Advocate filed its notice of participation. In addition, the Petition and Amended Petition were both available for public review and participation in the PUC docket. See 2020 PEU QCPAC Petition, Exhibit A at 3, 27. Since the Company provided notice and extensively advertised the proposed 2020 QCPAC surcharge on eligible 2019 projects, all potential intervening parties and commentors in the rate case had an opportunity to participate in DW 20-019. While no hearing has been held, the Company, Commission and DOE Staff have also held pre-hearing conferences and technical sessions. The Commission posted the approved Procedural Schedule (including a June 10, 2020 date for a Technical Session) on the docket on March 12, 2020, which was available to the public. Substantively modifying the QCPAC program and moving the prudence consideration to the rate case would be inconsistent with all of the above notice and participation in this docket. Further, it would contravene the QCPAC program, the temporary rate settlement, the Staff recommendation in this case, and the Amended Petition.

Finally, the Commission may issue an Order without a hearing and filing a motion for rehearing or reconsideration, despite the lack of a hearing, is appropriate and necessary for the Company to preserve its appeals. See *Appeal of Office of Consumer Advocate*, 148 N.H. at 136 (2002). Accordingly, to the extent that the Dismissal Order concludes that the current Docket did not provide members of the public with adequate notice or opportunity to participate in this well-established QCPAC process, that conclusion is erroneous, and reconsideration, rehearing or modification is justified by this error.

IV. Conclusion

28. For the reasons described above, PEU respectfully requests rehearing, reconsideration or modification of the Dismissal Order to include the finding that the 2019 capital project costs are prudent, used and useful, and a preliminary approval of the 2020 capital improvement projects, withholding a prudence determination pursuant to RSA 378:38 subject to the normal QCPAC process now underway in Docket No. 21-022.

29. To assist the Commission with its review of this motion, PEU respectfully attaches as a draft order nisi that illustrates edits to the Dismissal Order that would address the issues raised in this motion. This draft order nisi is provided in two forms: one that is clean (see Exhibit H), and one that is marked (See Exhibit I) to so the proposed changes from the current terms of the Dismissal Order.

30. PEU conferred with DOE Staff prior to filing this motion and the DOE takes no position on the motion at this time.

WHEREFORE, Pennichuck East Utility, Inc. respectfully requests:

- (1) that the Commission grant, pursuant to RSA 541:3 and RSA 365:28, its motion for reconsideration, rehearing or modification of Order No. 26,525, for the reasons set forth in this motion;
- (2) that the Commission issue an order *nisi* making the requisite finding that the 2019 capital project costs are prudent, used and useful, and give preliminary approval of the 2020 capital improvement projects; and,
- (3) that the Commission grant such further relief as may be just and equitable.

Respectfully submitted,

PENNICHUCK EAST UTILITY, INC.

By Its Attorneys

RATH, YOUNG AND PIGNATELLI, P.C.

Dated: October 20, 2021

By: _____



James J. Steinkrauss

One Capital Plaza

Concord, NH 03302-1500

603-410-4314

jjs@rathlaw.com

Certificate of Service

I hereby certify that a copy of this Motion for Reconsideration and Rehearing have this day been forwarded to the Office of Consumer Advocate via electronic mail at ocalitigation@oca.nh.gov.

Dated: October 20, 2021



James J. Steinkrauss