TAB 11

Petition for Further Modification of Ratemaking Structure

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DW 20-153

PITTSFIELD AQUEDUCT COMPANY, INC.

Permanent Rate Proceeding

PETITION FOR FURTHER MODIFICATION TO RATEMAKING STRUCTURE

Pittsfield Aqueduct Company, Inc. (PAC), in accordance with N.H. Admin. Rule Puc 203.06 (relative to petitions) and N.H. Rev. Stat. Ann. 378:28 (relative to permanent rates), and N.H. Rev. Stat. Ann. 365:28 (relative to modification of orders) hereby requests that the New Hampshire Public Utilities Commission (Commission) grant further modifications to PAC's ratemaking methodology, as described below. In support of its petition, PAC states:

Background

1. On September 17, 2020 PAC filed its notice of intent to file rate schedules, pursuant to N.H. Code Admin. R. PART Puc 1604.05. Pursuant to Puc 1604.05, utilities must give the Commission 30-days notice of its rate changes and must file any full rate case within sixty days of filing the notice of intent. The thirty-day filing window commenced October 17, 2020, however, because that date fell on a day that the Commission is not open for business, pursuant to Puc 202.03 (computation of time), the next business day for the thirty-day filing window to commence was October 19, 2020. Sixty days from the filing of the notice of intent is Monday, November 16, 2020.

2. Contemporaneous with this petition and pursuant to PART Puc 1604, PAC is filing its supportive testimony, filing requirement schedules, rate of return schedules, full rate case schedules, tariffs, and rate case expense summary prior to the November 16, 2020 deadline. Pursuant to RSA 378:1 and RSA 378:3, the rate filing sets in motion PAC's increase in its

permanent rates after the thirty day's notice. Those rates are based on PAC's calculation of its revenue requirement.

History of Evolution of Ratemaking Methodology for Pennichuck Utilities

3. In Order No. 25,292 (November 23, 2011), in Docket No. DW 11-026, the Commission approved the acquisition of PAC's parent company, Pennichuck Corporation, by the City of Nashua (City). That acquisition was completed on January 25, 2012, whereby Pennichuck Corporation ceased to be a publicly traded company. The City became Pennichuck Corporation's sole shareholder with a "limitation on Nashua's ability to draw dividends or other distributions from Pennichuck Corporation" (Order No. 25,292 at page 45). That limitation means there is no ability to sell stock and Pennichuck Corporation and its affiliates no longer have access to the equity markets for financing; they only have access to debt.

4. As part of the acquisition, the Commission approved a modified ratemaking structure for PAC, Pennichuck East Utility, Inc. (PEU), and Pennichuck Water Works, Inc. (PWW). That modification enabled those regulated utilities to earn a reasonable return on invested assets through a ratemaking methodology that produced just and reasonable customer rates, as required under *FPC v. Hope Natural Gas*, 320 U.S. 591, 602-603 (1944). That ratemaking structure included a City Bond Fixed Revenue Requirement (CBFRR) component which allowed the utilities to repay the City's acquisition bonds and Municipal Acquisition Regulatory Asset (MARA)[1]. The latter was an equity-related item approved in the revenue requirement and represented the excess of the City's purchase price over the book value of the assets of Pennichuck Corporation. The purchase price was equal to the price the City paid for the shares including all transaction and debt financing cost plus all of the existing liabilities assumed. This

[1] It is relevant to note that once the City bond is fully repaid, the CBFRR will be reduced to zero. This is estimated to occur in the year ---.

aggregate MARA is allocated among the Pennichuck Corporation subsidiaries, including the regulated utilities PAC, PEU, and PWW. In addition, the ratemaking structure included a $5,000,000.00 Rate Stabilization Fund (RSF) designed to provide assurance to creditors that Pennichuck Corporation's regulated utilities would meet the City's bond repayment requirements. *See Joint Petition of Nashua, Pennichuck Corporation, et al*, Order No. 25,292 at 30 (November 23, 2011) ("the fund is intended to provide holders of the City Acquisition Bonds with reasonable assurances of the available cash to be used to pay debt service on the City Acquisition Bonds, similar to a debt service reserve fund, and will hence facilitate Nashua's ability to borrow funds at reasonable interest rates, which will directly benefit customers in the form of a lower cost of capital").

5. In Docket Nos. DW 13-128, DW 13-126, and DW 13-130, the Commission modified this unique ratemaking structure in PAC, PEU, and PWW's rate cases. In those proceedings, the Commission established, among other things, the value of equity-related items and determined how the return on equity would be calculated. See Order No. 25,695 for PAC dated July 22, 2014; Order No. 25,696 for PEU dated July 25, 2014; and Order No. 25,693 for PWW dated July 15, 2014. The Commission also approved other fine tunings of the revenue requirement by approving the settling parties' resolution of what constituted non-revenue producing assets, the amount of eminent domain costs, and final actual total of the MARA. *Id.*

6. In Docket Nos. DW 16-806 for PWW's general rate proceeding and DW 17-128 for PEU's general rate proceeding, and with the aid of additional years of experience with the unique ratemaking structure, the Commission again approved further modifications. In particular, the Commission approved operating expense revenue requirement components: (a) Material Operating Expense Revenue Requirement (MOERR); and (b) Non-material Operating Expense

Revenue Requirement (NOERR)[2]. The Commission approved debt service revenue requirement components: (a) Debt Service Revenue Requirement-1.0 (DSRR-1.0), and (b) Debt Service Revenue Requirement-0.1 (DSRR-0.1)[3]. Similar to the rate stabilization fund for the CBFRR, the Commission approved rate stabilization funds for the MOERR (MOERR-RSF) and DSRR-1.0 (DSRR-1.0-RSF). It is relevant to note that the creation of these additional RSFs involved reallocating the original $5,000,000.00 imprest value of the CBFRR RSF among PAC, PEU, and PWW as well as allocating to the newly-created RSFs.[4] See Order No. 26,070 for PWW dated November 7, 2017 and Order No. 26,179 for PEU dated October 4, 2018. The Commission also approved a five-year average test year period for PEU and PWW. *Id.* The ratemaking modifications were designed to provide: 1) stability to customer rates, 2) assurance to creditors of PEU and PWW's ability to effectively meet cash obligations, 3) sufficient cash-flow coverage for PEU and PWW's operating needs, and 4) enhancement to PWW's credit rating. All of which were anticipated to increase the ability to access the credit markets and obtain lower-cost debt financing.

7. In Docket No. DW 19-084, the Commission approved additional changes to the ratemaking structure. This time, it approved a Material Operating Expense Factor (MOEF) to

[2] The MOERR consists of all of the operating expenses included in an Operating Expense Revenue Requirement (OERR) with the exception of those expenses specified as Non-Material Operating Expense Revenue Requirement items.

[3] The DSRR-0.1 is intended to provide a 10% over-cover for annual debt service obligations in order to satisfy debt lending requirements.

[4] Initially, $1.08 million of the original $5 million RSF was allocated to PEU and PAC ($980,000 of which was subsequently allocated to PEU in Docket No. DW 17-128) to assist those utilities in meeting their cash needs. The remaining $3.92 million of the original RSF retained by PWW was then apportioned among three reserve funds to provide additional coverage for the specific cash flow needs in its modified revenue requirement: (1) CBFRR-RSF (PWW's obligation relative to the City's acquisition bond) – $680,000; (2) MOERR-RSF (PWW's material operating expenses) – $2,850,000; and (3) DSRR-1.0-RSF (PWW's debt service requirements) – $390,000. The re-apportionment of PWW's RSF funds was specifically designed to provide stability to customer rates even under adverse conditions, as it could draw on those funds to meet its cash obligations under such conditions.

the MOERR[5]. See Order No. 26,383 for PWW dated July 24, 2020. As is discussed more fully in the testimony of Mr. Larry Goodhue, the MOEF was necessary to signal to rating agencies that PWW will have the necessary cash coverage to meet its operating expenses. The Commission also approved other changes to the ratemaking structure. They included: (1) modification to the calculation of the 5-year average for revenues[6]; (2) inclusion of actual NHBET cash payment in revenue requirement[7]; (3) re-prioritization of usage of available DSRR-0.1 funds; (4) recovery of State Revolvoing Loan Fund and Drinking Water Groundwater Trust Fund debt issuance costs; and (5) re-establishment of imprest levels of RSF accounts retention of a previously approved reconciliation mechanism.

8. Finally, because PAC's revenues largely met its expenses, PAC did not seek a rate increase in 2016/2017 as PWW and PEU did. It has not had a full general rate case since the 2013 docket. Therefore, the modifications to PWW and PEU's ratemaking structure in Docket Nos. DW 16-806 and DW 17-128, as well as the latest modifications in Docket No. DW 19-084, have not yet flowed to PAC. PAC seeks to adopt these modifications in the instant rate filing.

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[5] The intended purpose of the MOEF is to sufficiently enhance the MOERR portion of allowed revenues to better enable adequate cash flow coverage between rate cases for increases in material operating expenses. The MOEF helps maintain the MOERR-RSF at its established imprest level. Thus, in each rate proceeding, the MOEF would be re-established in conjunction with the MOERR-RSF. It is anticipated that doing so would enable the MOERR-RSF to become a more effective buffer against unanticipated revenue fluctuations due to weather as well as the impact of regulatory lag experienced by the Company, which, for PWW, is exacerbated by the fact that it is a debt-only financed utility.

[6] In this modification, an Atypical Year is defined as one in which that year's water consumption either exceeds or falls short of the calculated trailing 5-year average of water consumption by more than 15%. When an Atypical Year occurs in the 5-year average, the Atypical Year's data is replaced with data from the next most recent preceding typical operating year's data. The underlying trailing 5-year average, however, is calculated with the Atypical Year before assessing whether there is an Atypical Year.

[7] This modification addresses recent Federal tax law changes that result in a more rapid exhaustion of available Net Operating Loss (NOL) carryforwards that offset current taxable income. Additionally, the regulated utilities incur actual cash payments relative to both the corporate NH Business Profits Tax (BPT) and NH Business Enterprise Tax (BET), regardless of NOL carryforwards. The modification allowed PWW to include in the MOERR the actual cash cost of taxes for the NHBET.

Why the Ratemaking Changes are Necessary for PAC

9. The reasons for the modifications to PAC's ratemaking structure are detailed in the testimonies of Mr. Larry Goodhue and Mr. Donald Ware and mirror concerns expressed by PWW and PEU in their above-noted rate cases. As the Commission is aware, the Pennichuck Corporation's regulated utilities are heavily debt-weighted in their capital structure. Although this form of capital is cheaper than equity and, ultimately, benefits ratepayers, the major credit rating agencies have been cautious as the regulated utilites navigate the new capital structure and ratemaking methodologies. In discussions with the Company's investment bankers about these modifications to the ratemaking structure, the Company concluded that the modifications would increase access to the credit markets, and most likely at an enhanced credit ratings, as well as expand access to lower cost debt, which in turn benefits customers. In general, if lenders have reasonable expectations that future rates will be more directly related to the Company's long-term, post-acquisition debt-based capital requirements and create sustainable cash coverage, then they will lend to the Company and its Parent on more beneficial terms. Because PAC obtains much of its financing as inter-company loans, the benefit of the lower credit rating PAC's affiliates obtain also flows through to PAC and its customers. Therefore, the same arguments the companies made for PWW and PEU's adoption of the modifications to the ratemaking structure also apply to PAC.

10. The need for the requested ratemaking structure modifications is readily illustrated in PAC's debt schedules. See Puc 1604.08(c) schedules at rate filing Tab 13 (Schedule 5 and Schedule 6). PAC has $1.1 million in outstanding intercompany loans. As explained by Messrs. Goodhue and Ware, PAC presently lacks a revenue mechanism to enable it to repay this intercompany debt. This lack of cash flow is analogous to PWW's situation explained in Docket

No. DW 19-084 where PWW experienced a significant draw-down of its operating expense rate stabilization fund. Although PAC does not have a MOERR and associated RSF, its large intercompany loan balance reflects the same cash flow connundrum.

11. To address the cash coverage concerns and the intercompany loan issue, as well as to bring uniformity as to how the revenue requirements are calculated for all Pennichuck Corporation regulated utilities (as was originally envisioned in the acquisition docket, DW 11-026, and in the 2013 rate cases), PAC requests that the Commission modify PAC's present ratemaking structure to include:

(1) a MOERR, MOEF, and associated RSF;
(2) a NOERR;
(3) a DSRR-1.0 and associated RSF;
(4) a DSRR-0.1;
(5) a five-year average test period;
(6) actual NH Business Enterprise Tax cash payments in the revenue requirement;
(7) prioritization of usage of available DSRR-0.1 funds;
(8) recovery of State Revolvoing Loan Fund and Drinking Water Groundwater Trust Fund debt issuance costs; and
(9) re-establishment of imprest levels of RSF accounts retention of a previously approved reconciliation mechanism.

Conclusion

12. In light of PAC's revenue deficiency, its need for adequate and sustainable cash flow, PAC respectfully requests the Commission allow it to modify its ratemaking structure with the above-described targeted changes and charge rates based on that ratemaking structure.

WHEREFORE, Pittsfield Aqueduct Company, Inc. respectfully requests the Commission:

A. Grant this petition for further modification of PAC's ratemaking structure; and

B. Grant such other relief as is just and equitable.

Respectfully submitted,

PITTSFIELD AQUEDUCT COMPANY, INC.

By its Attorneys,

N.H. Brown Law, PLLC

Date: November 16, 2020 By: Marcia A Brown

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Certificate of Service

I hereby certify that on this day, a copy of this petition has been emailed to the Docket-Related Service List for this proceeding.

Date: November 16, 2020 Marcia A Brown

Marcia A. Brown, Esq.