

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Pittsfield Aqueduct Company, Inc.

Docket DW 20-153

Request for Change in Rates

Permanent Rate Proceeding

SETTLEMENT AGREEMENT

August 11, 2021

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SETTLEMENT AGREEMENT

SUMMARY: This Settlement Agreement (Agreement) is entered into by and among Pittsfield Aqueduct Company, Inc. (PAC, or the Company) and the New Hampshire Department of Energy (DOE) (together, the Settling Parties), with the intent of establishing a modified ratemaking mechanism as requested in PAC's petition for modification, as discussed below. The proposed modifications include those that have been previously approved by the New Hampshire Public Utilities Commission (Commission) for PAC's affiliates, Pennichuck Water Works, Inc. (PWW) and Pennichuck East Utility, Inc. (PEU). The modifications are intended to ensure that PAC has sufficient earnings between general rate proceedings to cover its debt obligations and operating expenses.

A. BACKGROUND AND PROCEDURAL HISTORY

1. PAC is a regulated public utility that provides water service to approximately 640 customers in the Town of Pittsfield, New Hampshire. PAC is wholly-owned by Pennichuck Corporation, which, in turn, is wholly-owned by the City of Nashua, New Hampshire (City). Pennichuck Corporation also owns PAC's regulated affiliates: PWW and PEU. The City acquired its ownership of Pennichuck Corporation on January 25, 2012, pursuant to Commission approval granted to the City and Pennichuck Corporation in Joint Petition of City of Nashua,

Pennichuck Corporation et al., for Approval to Acquire Stock in Pennichuck Corporation,
Docket DW 11-026, Order No. 25,292 (November 23, 2011).

2. The City's ownership of Pennichuck Corporation resulted in a "limitation on Nashua's ability to draw dividends or other distributions from Pennichuck Corporation" (Order No. 25,292 at 45). With that limitation in place, there is no ability to sell stock. As such, Pennichuck Corporation ceased being a publicly traded company and, therefore, Pennichuck Corporation and its subsidiaries ceased having access to the equity markets for financing and are required to utilize debt to finance capital investments and all other financing requirements. In recognition of this unique capital structure and reliance on debt financing, the Commission also approved a modified ratemaking structure for the three regulated utilities: PWW, PEU, and PAC. That modification enabled those regulated utilities to earn a reasonable return on asset investments through a ratemaking methodology that would result in just and reasonable customer rates, as required under *FPC v. Hope Natural Gas*, 320 U.S. 591, 602-603 (1944). The approved rate structure also included a \$5,000,000 Rate Stabilization Fund (RSF), which was originally designed to provide assurance to creditors that the three regulated utilities would meet the repayment requirements relative to the City's acquisition bond. Order No. 25,292 at 30 ("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").

The rate structure approved by the Commission was further refined in each of the respective regulated utilities' initial post-acquisition general rate proceedings: Dockets DW 13-126 (PEU), DW 13-128 (PAC), and DW 13-130 (PWW). 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. 25,693 for PWW dated July 15, 2014; Order No. 25,695 for PAC dated July 22, 2014; and Order No. 25,696 for PEU dated July 25, 2014. The Commission approved a definition of what constituted non-revenue producing assets, the amount of eminent domain costs, and the final actual total of the Municipal Acquisition Regulatory Asset (MARA) component of the respective ratemaking structures.

3. In order to satisfy new bank/lender coverage requirements associated with certain refinanced debt and to attract new debt under favorable loan terms for on-going capital needs, it was determined that the PWW and PEU ratemaking structures should be based exclusively on each company's respective overall cash flow needs so as to provide creditors further assurance of the companies' solvency and liquidity. Therefore, in Docket DW 16-806, PWW's subsequent general rate proceeding, and Docket DW 17-128, PEU's subsequent general rate proceeding, the Commission approved further modifications to the respective ratemaking structures of these utilities. Specifically, PWW's and PEU's ratemaking structures are now designed to recover the aggregate of their respective: (1) promissory notes to the City relative to their portions of the repayment on the acquisition debt (City Bond Fixed Revenue Requirement (CBFRR)), (2) utility operating expenses (Operating Expense Revenue Requirement (OERR)), and (3) debt service expenses (Debt Service Revenue Requirement (DSRR)). Additionally, the Commission determined that the respective OERR should consist of the following sub-components: (a) Material Operating Expense Revenue Requirement (MOERR); and (b) Non-material Operating Expense Revenue Requirement (NOERR).¹ The Commission also approved the following debt

¹ 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.

service revenue requirement (DSRR) sub-components: (a) Debt Service Revenue Requirement-1.0 (DSRR-1.0), and (b) Debt Service Revenue Requirement-0.1 (DSRR-0.1)².

Similar to the rate stabilization fund for the CBFRR, the Commission also approved rate stabilization funds for PWW and PEU relative to their respective MOERRs (MOERR-RSF) and DSRR-1.0s (DSRR-1.0-RSF). It is relevant to note that the creation of these additional RSFs involved reallocating the original \$5,000,000 imprest value of the CBFRR RSF among PEU, PAC, and PWW as well as further allocating those amounts to the newly-created RSFs in each utility.³ See Order No. 26,070 for PWW dated November 7, 2017 and Order No. 26,179 for PEU dated October 4, 2018.

Finally, the Commission also approved a five-year average test year period for PWW and PEU. *Id.* The purpose for this was to develop pro forma test year data relative to revenues and certain expenses that are less likely to reflect unusual or abnormal events, such as a uniquely dry or wet summer that might occur during a test year.

4. These ratemaking modifications were specifically designed to provide: 1) stability to customer rates, 2) assurance to creditors of PWW's and PEU's ability to effectively meet their respective cash obligations, 3) sufficient cash-flow coverage for PWW and PEU operating needs, and 4) an enhancement to PWW's credit rating. All of these modifications were anticipated to

² The DSRR-0.1 is intended to provide a 10% over-cover for annual debt service obligations in order to satisfy debt lending requirements.

³ 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 DW 17-128) to assist those utilities in meeting their cash needs. The \$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 \$980,000 of the original RSF allocated to PEU was apportioned among its three reserve funds as follows: (1) CBFRR-RSF (PEU's obligation relative to the City's acquisition bond) – \$31,000; (2) MOERR-RSF (PEU's material operating expenses) – \$898,000; and (3) DSRR-1.0-RSF (PEU's debt service requirements) – \$51,000. The respective re-apportionments of the 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.

increase the regulated affiliates' abilities to access credit markets and obtain lower-cost debt financing.

5. In Docket DW 19-084, the Commission approved further modifications to PWW's ratemaking structure. Specifically, the Commission approved a Material Operating Expense Factor (MOEF) for inclusion in PWW's MOERR.⁴ See Order No. 26,383 in DW19-084 and DW 20-055, dated July 24, 2020, approving a maximum revenue requirement, ratemaking mechanism modifications, and financing for PWW. The Commission also approved: (1) a modification to the calculation of the 5-year average for revenues;⁵ (2) the inclusion of actual NHBET cash payments in revenue requirements;⁶ (3) a re-prioritization of usage of available DSRR-0.1 funds; (4) recovery of State Revolving Loan Fund and Drinking Water Groundwater Trust Fund debt issuance costs; and (5) re-establishment of the imprest levels of PWW's RSF accounts and retention of a previously approved reconciliation mechanism for these funds.

6. Since its last rate proceeding in DW 13-128, PAC's revenues were largely able to cover its expenses. Therefore, PAC did not seek rate increases in 2016 and 2017 as had PWW

⁴ 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 PWW, which is exacerbated by the fact that it is a debt-only financed utility.

⁵ 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 inclusion of the Atypical Year before assessing whether there is an Atypical Year.

⁶ 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.

and PEU. Thus, the instant rate case docket is PAC's first request for approval of similar ratemaking modifications previously authorized for PWW and PEU.

7. On September 17, 2020, PAC filed with the Commission a Notice of Intent to File Rate Schedules. On September 21, 2020, the Commission acknowledged the rate case filing and opened the instant docket. On November 16, 2020, within the filing window prescribed by N.H. Admin. R. Puc 1604.05, PAC filed its full rate case submission as well as a petition for temporary rates in the event the Commission suspended the taking effect of its rate schedules. PAC also filed a petition for modification of its ratemaking structure.

8. PAC's rate filing was intended to increase its revenue requirement by \$86,784, or 11.18%. The Company proposed customer rates to effectuate this increase effective December 17, 2020.

9. On December 16, 2020, the Commission issued Order No. 26,435 suspending PAC's proposed tariff schedules for eighteen months and scheduling a prehearing conference for January 20, 2021. The prehearing conference was duly noticed and held on January 20, 2021. On January 22, 2021, the then Staff of the Public Utilities Commission filed a proposed procedural schedule that included multiple rounds of data requests, technical sessions, and hearing dates for temporary and permanent rates. On January 26, 2021, the Commission issued a secretarial letter approving that schedule.

10. On February 17, 2021, the Company filed a settlement agreement on temporary rates, which the Commission considered at a hearing held on March 10, 2021. On April 8, 2021, the Commission approved PAC's existing rates as temporary rates, effective on a service-rendered basis December 17, 2020. *See* Order No. 26,466.

B. TERMS OF THIS SETTLEMENT AGREEMENT

1. Reasons for Ratemaking Structure Modifications

The Settling Parties agree that, for the reasons detailed in the testimonies of Mr. Larry Goodhue and Mr. Donald Ware and in data responses obtained during discovery, modifications to PAC's ratemaking structure are necessary and will improve PAC's ability to meet its expenses and maintain cash flow and liquidity. Pennichuck Corporation's regulated utilities' capital structures are almost exclusively weighted towards debt. Although debt capital is less expensive than equity capital and, ultimately, benefits ratepayers; the major credit rating agencies have previously expressed concerns about Pennichuck Corporation's subsidiaries' ratemaking structures and their respective abilities to meet their financial obligations. The ratemaking structure modifications for PWW and PEU were approved to address these concerns and to improve PWW and PEU's ability to access credit markets with enhanced credit ratings. This, in turn, would expand their abilities to obtain lower cost debt, to the benefit of their customers. In general, if lenders have reasonable expectations that future rates will be more directly related to the regulated utilities' long-term, post-acquisition, debt-based capital requirements, and an ability to create sustainable cash coverage, then they will lend to Pennichuck Corporation and its subsidiaries on more beneficial terms. Because PAC obtains much of its financing as inter-company loans,⁷ the benefit of the higher credit ratings Pennichuck Corporation and its affiliates obtain also flows through to PAC and its customers. Therefore, the same arguments in support of PWW and PEU's adoption of the modifications to their respective ratemaking structures also apply to PAC.

⁷ As illustrated on PAC's Puc 1604.08(c) schedule, entitled Schedule 5 and Schedule 6, PAC has \$1.1 million in outstanding inter-company loans but presently lacks a revenue mechanism to repay this debt.

2. Specific Revenue Requirement Components and Modifications

The Settling Parties agree that PEU' s overall revenue requirement shall consist of the following existing and new components for this and future rate cases unless and until such time as the Commission orders otherwise:

a. City Bond Fixed Revenue Requirement (CBFRR)

The Settling Parties agree that the purpose of the CBFRR shall remain unchanged from that originally defined within the original rate structure approved in DW 11-026; that is, to include within PAC's overall revenue requirement a fixed rate level that is sufficient to enable PAC to contribute its apportioned share towards the repayment of the debt service arising from the City's acquisition bonds. (See, Docket DW 11-026, Exhibit 1, Settlement Agreement at 8.)

The Settling Parties further agree that PAC's ratable share (based on PAC's approved revenue requirement in its last full rate proceeding, DW 13-128) of the \$5,000,000 RSF, or \$100,000, has been added to PAC's previously apportioned share of the City's acquisition bonds in order to derive a new annual CBFRR amount for PAC of \$147,539. The detailed calculation of the revised CBFRR is contained in Attachment A, Schedule 1 to this Agreement.

b. Operating Expense Revenue Requirement (OERR)

The Settling Parties agree that PAC shall include in its overall revenue requirement an Operating Expense Revenue Requirement (OERR), which shall be equal to the sum of PAC's pro forma test year Operation and Maintenance Expenses, Property Tax Expense, Amortization Expense, actual NH Business Enterprise Tax (BET) cash payments, and Material Operating Expense Factor (MOEF).

The Settling Parties agree that the overall OERR revenue component shall be further segregated between the following:

i. Material Operating Expense Revenue Requirement (MOERR)

This component shall include all expense items included in the OERR, less those specific expenses that have been designated as Non-Material Operating Expenses, as described below.

ii. Non-Material Operating Expense Revenue Requirement (NOERR)

The Settling Parties agree that certain operating expenses should be designated as Non-Material Operating Expenses due to the potential susceptibility of such expenses to be found completely or partially imprudent within the context of a rate proceeding. That portion of PAC's revenue requirement associated with these expenses is designated the Non-material Operating Expense Revenue Requirement (NOERR). The NOERR associated expenses currently consist of the following:

<u>Account</u>	<u>Description</u>
923000	Outside Services
930200	Public Relations
930300	Meals
930410	Charitable Contributions

The Settling Parties further agree that the categorization of an expense item in the NOERR does not preclude PAC's recovery of such in rates, as long as that expense item is found to be prudently incurred within the pro forma test year. Rather, those expenses which are designated as NOERR items shall not be included in any use of or replenishment from the Material Operating Expense Revenue Requirement-Rate Stabilization Fund described below.

c. Debt Service Revenue Requirement (DSRR)

The Settling Parties agree that PAC shall include in its overall revenue requirement a Debt Service Revenue Requirement (DSRR) amount, the total of which shall be equal to 1.1 times the pro forma annual principal and interest payments on PAC's outstanding long-term debt

as of the end of the pro forma test year. The Settling Parties agree that the proposed DSRR replaces both the return on rate base as well as depreciation expense, which are traditionally key components of utility rate-making before the Commission. However, the Settling Parties agree that, given PAC's current complete reliance on debt capital, as stated above, a rate structure based on debt service (i.e., total annual principal and interest payments) is critical to enabling PAC to access the lowest cost debt obtainable, in order to provide safe and reliable service to its customers at the lowest possible rates. The Settling Parties agree that the DSRR shall be segregated into two further revenue components, as follows:

i. Debt Service Revenue Requirement-1.0 (DSRR-1.0)

The Settling Parties agree that the DSRR-1.0 shall be equal to 100% of the pro forma debt service payments for the test year. The establishment of the DSRR-1.0 relates to the use and replenishment of the DSRR-1.0 RSF, which is explained below.

ii. Debt Service Revenue Requirement-0.1 (DSRR-0.1)

The DSRR-0.1 shall be equal to 10% of the pro forma debt service payments for the test year. The intended purposes for the establishment of the DSRR-0.1 are: 1) to allow for the collection of revenues sufficient to satisfy the debt service coverage ratio requirements of PAC's debt financings and Pennichuck Corporation's covenant requirements for its working capital line of credit, which is used by Pennichuck Corporation and its subsidiaries as a 'back stop' for short-term capital needs; and 2) to allow PAC to collect revenues over-and-above its actual debt service in order to comply with cash flow coverage requirements which are typical for such financings, as well as to meet obligations on new debt incurred between rate filings.

Notwithstanding these purposes, the Settling Parties agree and recommend the Commission authorize PAC usage of funds available in its DSRR-0.1 account per the following priority: 1)

fund the cost of PAC's deferred assets (i.e., studies, engineering design work completed in advance of construction bids and construction, and other intangible assets) that do not qualify for debt financing; 2) replenish PAC's RSF fund balances to their fully approved imprest values; and 3) fund PAC's capital improvement projects.

The Settling Parties further agree that, once approved by the Commission within the context of a given rate proceeding, PAC's DSRR-1.0 and DSRR-0.1 amounts shall remain in effect until a subsequent rate proceeding, at which time new DSRR values shall be computed.

d. Rate Stabilization Funds

In Docket No. DW 11-026, the Commission authorized the creation of a Rate Stabilization Fund (RSF) that was initially funded at \$5,000,000 and maintained in its entirety by PWW. Under the terms of the approved settlement agreement in PWW's 2016 rate case proceeding, Docket No. DW 16-806, the \$5,000,000 RSF maintained by PWW was re-allocated amongst the three Pennichuck Corporation regulated utilities. PWW's allocated share of the RSF was amended to \$3,920,000 and deposited amongst PWW's rate stabilization funds as outlined in the DW 16-806 Settlement Agreement. With regard to the remaining \$1,080,000 of the original \$5,000,000 amount, the DW 16-806 Settlement Agreement stated this was to be allocated between PEU and PAC. See, Docket No. DW16-806, Exhibit 3, Settlement Agreement at 14-15. In PEU's subsequent rate proceeding, DW 17-128, its allocated share of the remaining RSF was determined to be \$980,000 to be deposited amongst PEU's rate stabilization funds as outlined in the DW 17-128 Settlement Agreement. See, Docket DW 17-128, Exhibit 3, Settlement Agreement at 17-18. This being PAC's first rate case since those reallocations, the Settling Parties agree that the remaining \$100,000 of the original \$5,000,000 amount shall be allocated to PAC and further apportioned between the Rate Stabilization Funds (RSFs) created

herein for PAC. The purpose of the RSFs is to better ensure that customer rates remain stable, even under adverse conditions, as well as to enable PAC to meet all of its cash obligations under such conditions. The Settling Parties agree that PAC's apportioned share of the RSF in the amount of \$100,000 should be allocated as follows:

i. City Bond Fixed Revenue Requirement Rate Stabilization Fund (CBFRR-RSF) - \$13,000

The Settling Parties agree that the purpose of this reserve fund will be the same as described relative to PWW in the original rate structure approved in DW 11-026; that is, it will enable PAC to maintain stable water rates, even under adverse conditions, by providing a mechanism to ensure that PAC will meet its obligations relative to the City's acquisition bond. (See, Docket DW 11-026, Exhibit 1, Settlement Agreement at 13.) The CBFRR-RSF shall be established and maintained in accordance with the existing guidelines for the RSF approved in the DW 11-026 acquisition order. The Settling Parties agree that the CBFRR-RSF should be initially established at an imprest level of \$13,000 via a transfer of funds in such amount from PWW's CBFRR RSF.

ii. Material Operating Expense Revenue Requirement Rate Stabilization Fund (MOERR-RSF) - \$81,000

The Settling Parties agree that this fund will be used to ensure stable rates by enabling PAC to meet its material operating expense obligations in the event of adverse revenue developments such as lower than expected consumption patterns due to wet weather and/or increases in material operating expenses above anticipated levels which may occur between test years. The MOERR-RSF will be established and maintained in accordance with the procedures set forth in Attachment C to this Agreement. The Settling Parties agree that the MOERR-RSF

should be initially established at an imprest level of \$81,000 via a transfer of funds in such amount from PWW's CBFRR-RSF.

iii. Debt Service Revenue Requirement-1.0 Rate Stabilization Fund (DSRR-1.0-RSF) - \$6,000

The Settling Parties agree that this fund will be used to ensure that, even in adverse revenue conditions such as wet weather, there will be sufficient cash reserves available to enable PAC to pay the debt service obligations on its long-term debt. The Settling Parties agree that the intended purpose for the establishment of the DSRR-1.0 RSF is to provide PAC's lenders as well as its affiliates' lenders with reasonable assurances that PAC will have sufficient cash available to pay its debt service obligations. The DSRR-1.0-RSF will be established and maintained in accordance with the procedures set forth in Attachment C to this Agreement. The Settling Parties agree that the DSRR-1.0-RSF should be initially established at an imprest level of \$6,000 via a transfer of funds in such amount from PWW's CBFRR-RSF.

iv. Reconciliation and Over-Funding of RSFs

In Docket DW 11-026, an RSF reconciliation mechanism was established wherein the Commission required PWW to maintain the target amount for the original \$5,000,000 rate stabilization fund through adjustments, i.e. charges or credits, to PWW's revenue requirement in connection with its full rate proceedings. Subsequently, with the reallocation of the original rate stabilization fund amongst PWW's, PEU's and now PAC's CBRFF-RSFs, MOERR-RSFs, and DSRR-1.0-RSFs, the Settling Parties recommend the original RSF reconciliation feature in Docket DW 11-026 be retained and applied to the established targets of PAC's three RSF accounts. The Settling Parties further agree that the addition of the MOEF will not alter that reconciliation mechanism. See Attachment C.

The Settling Parties agree PAC should be required to file a full rate case in certain situations when the total amount of funds held in the CBFRR-RSF, the DSRR-1.0-RSF, and the MOERR-RSF as maintained for the benefit of PAC (Combined PAC Rate Stabilization Funds) grow to be materially greater than the target of such funds most recently established by the Commission. As such, the Settling Parties agree and recommend that the Commission require PAC to file a full rate case at any time that the average of the amounts of cash held in the Combined PAC Rate Stabilization Funds as of the last day of each month for the 13-month period ending on December 31 of each year is greater than 200% of the combined target amount for such funds as most recently established by the Commission. When the monthly reports filed by PAC indicate that this excess amount has occurred, then PAC shall file a full rate case within 6 months following the filing of such monthly report.

In the next rate case, PAC understands that the parties may issue data requests seeking a comparison of the revenue requirements under the instant Agreement, and those that would have been required under the rate-making structure established in Docket DW 11-026. If a party makes such a request, PAC agrees to furnish such data to the best of its ability.

e. Five-Year Average Test Year Period

PAC proposes adoption of a five-year historical test period in place of its current historical test year. The purpose for this proposal is to develop pro forma test year data relative to revenues and certain expenses that is less likely to reflect unusual or abnormal events, such as a uniquely dry or wet summer that may occur during a given test year. The Settling Parties agree that PAC shall compute test year revenues using the trailing five-year average consumption at the most recently approved volumetric rates and fixed charges. The Settling Parties also agree that the five-year trailing average consumption determination shall be based on the four calendar

years immediately preceding the designated test year for which the rate case is filed as well as the test year itself. Additionally, all direct test year expenses which are affected by differences in consumption, including but not limited to purchased water expense, electricity expense, and chemical treatment expense, shall also include pro forma adjustments to reflect the pro forma difference in consumption between the five-year average and the test year. PAC shall also include pertinent pro forma adjustments with respect to the financial data of each year that is included in the determination of the five-year average in accordance with current ratemaking principles. Further, the Settling Parties agree that PAC's use of a five-year average test period in computing its revenue deficiency in no way precludes either the DOE or other parties from making an alternative recommendation in place of such with respect to the determination of PAC's revenue deficiency.

The Settling Parties agree and recommend the Commission approve that in rate proceedings where an "atypical" year would be included in the calculation of PAC's five-year trailing average for revenues, the "atypical" year's data would be substituted for data from the next most recent preceding typical operating year's data. The Settling Parties further agree that an "atypical" year should be defined as one in which that year's water consumption either exceeds or falls short of the calculated trailing five-year average of water consumption by more than 15%. The underlying trailing five-year average, however, will be calculated with the inclusion of the data from the atypical year before assessing whether there is an atypical year.

f. Material Operating Expense Factor (MOEF)

The Settling Parties agree and recommend that the Commission approve the establishment of a Material Operating Expense Factor, or MOEF. The Settling Parties further

recommend that the MOEF should become a component of the revenue requirement structure utilized by PAC in the calculation of its permanent rates in this and subsequent rate proceedings.

The Settling Parties agree that the MOEF would work in similar manner to the Debt Service Revenue Requirement-0.1 (DSRR-0.1) that provides a 10% over-cover for PAC's annual debt service obligations in order to satisfy debt lending requirements. In similar fashion, the MOEF would be a percentage factor applied to PAC's Material Operating Expense Revenue Requirement (MOERR) as established in each rate proceeding.⁸ The result of which would be included in the Operating Expense Revenue Requirement (OERR) component of PAC's overall revenue requirement. Unlike the DSRR-0.1 revenue component, which remains fixed at 10%, the MOEF would be re-evaluated and revised, as necessary, in future rate proceedings.

The intended purpose of the MOEF is to sufficiently enhance the MOERR portion of PAC's allowed revenues to better enable adequate cash flow coverage between rate cases for increases in material operating expenses experienced by the Company. The MOEF is proposed to enable PAC to adequately 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, which has a direct impact on the funding or reimbursement of the MOERR-RSF during any given year, as well as the impact of regulatory lag experienced by the Company, which, for PAC, is exacerbated by the fact that it is a debt-only financed utility.

⁸ The approved DW 16-806 Settlement Agreement, Commission Order No. 26,070 (November 7, 2017), at 12 defines the Material Operating Expense Revenue Requirement (MOERR) component as that consisting of all of the operating expenses included in PWW's overall Operating Expense Revenue Requirement (OERR) with the exception of those expenses specified as Non-Material Operating Expense Revenue Requirement (NOERR) items.

For purposes of the instant rate proceeding, the Settling Parties agree and recommend that the Commission approve an MOEF of 6.0%. The Settling Parties agree that such would enable PAC to adequately maintain the MOERR-RSF at the recommended imprest level of \$81,000 through the Company's next rate proceeding, which is currently anticipated to be approved in 2024. The financial model in support of the adequacy of the recommended 6.0% MOEF is attached to this Agreement as Attachment B (Exhibit DLW-1).

The Settling Parties recognize that the MOEF will increase the revenues of the Company for the purpose of shoring up its material operating expense reserve fund (MOERR-RSF) and facilitating the Company's ability to annually recover its operating expenses. However, ratepayers are protected from this additional revenue requirement, because the order approving the settlement agreement in DW 11-026 places limitations on the dividends paid by Pennichuck Corporation to its sole shareholder. Commission Order No. 25,292 at 45. The Settling Parties agree that these limitations are an underlying principle to this and previous ratemaking structure changes and agree that, under PAC's current ratemaking structure, once the City Bond has been paid in full and the CBFRR is reduced to zero, the dividend payments by Pennichuck Corporation will effectively be reduced to zero.

g. Inclusion of Actual NHBET Cash Payment in Revenue Requirement

The Settling Parties recognize that recent changes in Federal tax laws will result in a more rapid than anticipated exhaustion of available Net Operating Loss (NOL) carry-forwards that are used to offset current taxable income. As a result, PAC may be subject to actual cash costs related to Federal income taxes prior to its next fully promulgated rate proceeding. Additionally, PAC currently incurs actual cash payments relative to both the corporate Business Profits Tax (BPT) and Business Enterprise Tax (BET) assessed by the State of New Hampshire

(NH), regardless of its NOL carryforward position. The Company's pro forma test year in this proceeding proposes inclusion of PAC's actual cash payment relative to the NH BET in the amount of \$1,740 but does not include cash payments relative to either the NH BPT or Federal income taxes, as no payments are currently due on those corporate taxes due to existing Net Operating Loss carryforwards and NH BET Credits available to offset current tax liabilities requiring cash payment.

As such, the Settling Parties agree and recommend the Commission approve the inclusion of PAC's actual cash expenditures for the NH BET in the MOERR component of its overall revenue requirement in this and future rate proceedings. The Settling Parties further agree to defer consideration of the inclusion of any actual cash outlays associated with the NH BPT and Federal income taxes in PAC's revenue requirement until the Company's next rate proceeding.

h. Recovery of SRF and DWGTF Debt Issuance Costs

Prior to the ratemaking modifications proposed in this Agreement, the debt issuance costs incurred by PAC to obtain loans through such programs as the State of New Hampshire's Drinking Water State Revolving Loan Fund (DWSRF) or Drinking Water and Groundwater Trust Fund (DWGTF) were recovered as part of its cost of debt via the annual amortization of these costs over the life of the loan. However, under PAC's proposed ratemaking structure, the amortization of debt acquisition expenses associated with DWSRF and DWGTF loans are no longer recoverable as they are not included in the OERR component of PAC's overall revenue requirement. Although, on average, these costs might be considered *de minimis* during a given year, such might represent an expense to the Company for which it has no cash coverage.

As a remedy to the cash coverage shortfall that PAC may experience relative to its debt acquisition costs incurred to procure DWSRF and DWGTF loans, the Settling Parties agree and

recommend the Commission authorize PAC, commencing as of January 1, 2022 and thereafter, to record such costs in its Outside Services Expense account to be recovered through the OERR revenue component of its overall revenue requirement. It should be noted that per the proposed ratemaking modifications proposed in this Agreement, Outside Services Expense is classified as a Non-Material Operating Revenue Requirement (NOERR) account. As such, there would be no cash over-cover for these expenses through PAC's proposed MOERR-RSF.

3. Revenue Requirement

The Settling Parties agree to a total revenue requirement for PAC in the amount of \$820,848 as calculated based on the proposed modified rate structure described above. This increase represents an overall 5.43% increase in overall pro forma test year revenues of \$778,598. Further, this revenue requirement includes proposed revenues from water sales of \$818,185, which represents a 5.45% increase in PAC's pro forma test year revenues from water sales of \$775,935, or an increase of \$42,250. The calculation of the revenue requirement proposed for PAC is contained in Attachment A to this Agreement.

The Settling Parties agree that this represents a reasonable compromise of all issues relating to the revenue requirement pending before the Commission for the purposes of permanent rates, including, but not limited to, debt service, pro forma adjustments, capital additions, and operating expenses. As the sums expressed above are the result of compromise and settlement, they are liquidations of all revenue requirement issues and do not constitute precedent regarding any particular principle or issue. The Settling Parties agree that the revenue requirement recommended to the Commission results in rates for PAC's customers that are just and reasonable.

4. Permanent Customer Rates

The Settling Parties agree that the proposed increase in annual water revenues should be applied equally, at 5.45%, to all customer classes. This increase to customer rates is illustrated on Attachment A, Schedule 4, Report of Proposed Rate Changes, attached to this Agreement. The Settling Parties agree that for an average single-family residential customer using 5.19 hundred cubic feet (ccf) of water per month and currently charged \$58.12 per month, the proposed rate increase will result in an approximate billing increase of \$3.15 to \$61.27. On an annual basis this is an increase of \$37.80.

5. Effective Date for Permanent Rates

The Settling Parties agree and recommend that the effective date for permanent rates shall be on a service-rendered basis effective December 17, 2020, pursuant to Commission Order No. 26,466 (April 8, 2021). The Settling Parties agree that PAC shall file, within fifteen (15) days of the Commission's order approving permanent rates, annotated tariff pages effectuating the approved permanent rates.

6. Temporary-Permanent Rate Recoupment

Pursuant to RSA 378:29, in order to reconcile the difference between temporary rates and permanent rates, the Settling Parties agree and recommend the Commission authorize PAC to charge customers an amount equal to the difference between the revenues PAC would have collected had the agreed upon level of permanent rates been in effect for service rendered on and after December 17, 2020 through the issuance date of the Commission's order approving permanent rates (Recoupment Period) and the actual revenues collected by PAC during that Recoupment Period.

Upon the issuance of the Commission's order approving permanent rates in this proceeding, PAC agrees to file, within thirty (30) days of that order, and for Commission review and approval, a calculation of the temporary-permanent rate recoupment and a recommendation on a surcharge to be applied to customer bills. PAC agrees to calculate the surcharges based on each customer's actual usage during the Recoupment Period.

The Settling Parties agree that the DOE and any other parties will have an opportunity to review PAC's proposal and provide recommendations to the Commission for its consideration prior to the issuance of an order approving such recoupment.

The resulting surcharge shall be reflected as a separate item on all customers' bills.

Upon receipt of the Commission's order approving a temporary-permanent rate recoupment, PAC agrees to file, within fifteen (15) days of that order, a compliance tariff supplement including the approved surcharge relating to the total recoupment of the difference between the level of temporary rates and permanent rates, as well as the average monthly surcharge for each customer class based on customers' individual usage.

7. Rate Case Expense Surcharge

The Settling Parties agree and recommend the Commission approve PAC's recovery of its reasonable rate case expenses for this proceeding. PAC's rate case expenses may include, but are not limited to, legal and consultant expenses, incremental administrative expenses such as copying and delivery charges, and other expenses allowed under PART Puc 1900. PAC agrees to file its final rate case expense request, pursuant to Puc 1905.02, and supporting documentation, no later than thirty (30) days from the date of the Commission's approval of PAC's revenue requirement and resulting customer rates.

The Settling Parties agree that the DOE and any other parties will have an opportunity to review the rate case expenses and provide recommendations to the Commission for its consideration prior to the issuance of an order approving such recovery.

The resulting surcharge shall be reflected as a separate item on all customers' bills.

Upon receipt of a Commission order approving rate case expense recovery, PAC agrees to file, within fifteen (15) days of that order, a compliance tariff supplement including the approved surcharge relating to rate case expense recovery.

8. Monthly, Semi-Annual, and Annual Reporting

The Settling Parties agree and recommend the Commission approve that in addition to other Commission reports required from PAC by rule and by statute that, commencing with the fiscal year beginning January 1, 2022, PAC shall file the following additional reports with the Commission:

a. Monthly Reporting

The Settling Parties agree and recommend the Commission approve a requirement that PAC shall submit monthly reports to the Commission and the DOE regarding the status of its CBFRR-RSF, the DSRR-1.0-RSF, and the MOERR-RSF. These reports shall be filed concurrently with PAC's monthly statement of operations report to the Commission.

The Settling Parties agree and jointly recommend that PAC file these additional monthly reports with the Commission and the DOE within forty-five (45) days after the last day of the reported month:

i. Income Statement showing monthly and year-to-date activity.

ii. Balance Sheet by month and to date including the GAAP basis cash balances of the CBFRR-RSF, MOERR-RSF, DSRR-1.0-RSF, and DSRR-0.1 accounts.

The Settling Parties agree and recommend that with respect to the reports for the months of December and January, the Commission allow until March 31st, instead of forty-five (45) days after the last day of the reported month for filing of these reports.

b. Semi-Annual Reporting

The Settling Parties agree and recommend the Commission approve a requirement that PAC file the following semi-annual reports with the Commission and the DOE within forty-five (45) days after June 30 and within ninety (90) days after December 31:

i. Detailed Debt Service Schedule showing the actual principal and interest cash payments made by the Company on each of its outstanding debt issuances.

ii. NHBET and NHBPT actual cash payments made or refunds received.

iii. Federal Income Tax actual cash payments made or refunds received.

iv. MOERR Variance Report: The Company will provide a written narrative for year-to-date amounts as of June 30 and December 31, substantiating and explaining the major items that comprise the difference between actual current year MOERR expenses versus the allowed MOERR expenses as authorized from the most recently completed permanent rate case. This report will provide the basis and explanation for up to 80% of the MOERR expense differential, as it relates to the overall aggregate dollar difference.

c. Annual Reporting

In addition to the annual report filing required from PAC in accordance with N.H. Admin. R., Puc 609.04 and 609.14, the Settling Parties agree and recommend the Commission approve a requirement for the following additional reports to be provided by PAC concurrently with that filing:

- i. Reconciliation of Net Income/Loss with Calculated Revenue Surplus/Deficit:** An annual reconciliation of PAC's actual Net Income/Loss as reported on Schedule F-2 of its Annual Report with its recognized Revenue Surplus/Deficit as calculated based on the ratemaking structure approved in the instant rate proceeding.
- ii. Reconciliation of Cash and Regulatory RSF Account Balances:** A reconciliation of the year-end cash balances of the CBFRR-RSF, MOERR-RSF, and DSRR-1.0-RSF accounts with the respective year-end regulatory balances of the CBFRR-RSF, MOERR-RSF, and DSRR-1.0-RSF. (Regulatory Balance is defined as that relating to the revenue and expenditure general ledger activity relative to the respective RSF accounts. This is not the same as the GAAP basis cash balances of the respective RSF accounts.)

9. Resolution of Repeat Audit Issues

During the DOE Audit Staff (Audit) review of PAC's financial information relative to this rate proceeding, it made certain audit findings contained in its Final Audit Report dated January 19, 2021, to which PAC expressed disagreement. In an effort to resolve these audit disputes between PAC and the DOE, and for purposes of achieving administrative efficiency in future rate proceedings, the Settling Parties present for the Commission's approval the following proposed resolutions of the outstanding audit issues cited by Audit in its report.

a. Audit Issue #1: Allocation of Supplemental Executive Retirement Plan Costs

Audit included a finding in its January 19, 2021 audit report that the calculation of certain allocation determinants amongst the Pennichuck Corporation regulated and non-regulated entities included, as a component, Deferred Supplemental Executive Retirement Plan (SERP) costs.⁹ Audit took the position that this supplemental expense along with any related deferrals and accruals should not be included as a component with respect to the determination of the respective affiliate allocations. PAC respectfully disagreed with Audit's conclusion, stating that

⁹ The total SERP costs allocated amongst all Pennichuck Corporation affiliates during the test year was \$38,030. PAC's allocated share of these costs was \$570.

this allocated expense is a contractual obligation of the affiliates that has been included in PAC's books and records, as an allocated expense in the Management Fee Allocation, since the Company's inception and, therefore, has consistently been a component of its overall allocable costs of compensation and benefits.

In light of the contractual obligation aspect of these costs as well as their inclusion on PAC's books and records since its inception as part of the overall costs of compensation and benefits of PAC, the Settling Parties agree and recommend that the Commission find that the inclusion of these costs as a component of the affiliate allocation calculations is just and reasonable.

b. Audit Issue #5: ARRA Loan Forgiveness should be CIAC

Audit included a finding in its January 19, 2021 audit report pertaining to a loan that PAC received through the American Recovery and Reinvestment Act (ARRA) relative to its Catamount Road project that included a principal forgiveness component. Audit found that \$1,430 in principal forgiveness provided to PAC during 2019 was recognized by PAC as a 'Gain From Forgiveness of SRF Debt' rather than as Contributions in Aid of Construction (CIAC). Audit disagreed with PAC's accounting for the loan forgiveness in this manner. In response, PAC argued that since the principal forgiveness provision associated with this particular loan is not necessarily guaranteed, it has no choice but to account for it in the manner it does. Further, it is PAC's assertion that "any current and previously forgiven principal amount cannot be classified as CIAC, if the benefit is revocable at a future point in time." The DOE notes that under the ratemaking structure proposed in this Agreement, neither PAC's CIAC account nor its 'Gain' account will have any impact on the calculation of the Company's revenue requirement.

As such, the Settling Parties agree and recommend the Commission find that PAC's current methodology for accounting for principal forgiveness on its ARRA loan is acceptable.

C. CONDITIONS

1. The Settling Parties expressly condition their support of this Agreement upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept the provisions in their entirety, without change or condition, any party hereto, at its sole option exercised within 15 days of such Commission order, may withdraw from this Agreement, in which event it shall be deemed to be null and void and without effect and shall not be relied upon by any Settling Party to this proceeding or by the Commission for any purpose.

2. The Commission's acceptance of this Agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the adjustments and provisions set forth herein in their totality are just and reasonable and consistent with the public interest. In its order addressing the approvals recommended in this Agreement, the Commission should expressly find that the approvals recommended herein are unique to this case and should not be viewed as having precedential impact with respect to any particular principle or issue in this proceeding for any other case or situation for reasons.

3. The discussions that produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

4. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be duly signed by their respective fully-authorized representatives.

Pittsfield Aqueduct Company, Inc.

Date: August 11, 2021

Marcia A Brown
By its Attorney, Marcia A. Brown

New Hampshire Department of Energy

Dated: August 11, 2021

Lynn Fabrizio
By its Attorney, Lynn Fabrizio