STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 20-153

PITTSFIELD AQUEDUCT COMPANY, INC.

Request for Change in Rates

Order on Permanent Rates

O R D E R N O. 26,544

November 9, 2021

In this order, the Commission approves a permanent rate increase for Pittsfield Aqueduct Company, Inc., that is expected to increase its overall revenue from water sales by $42,250 or 5.45 percent. As a result, the monthly bill of a typical residential customer, using 5.19 hundred cubic feet of water per month, will increase by $3.15, from $58.12 to $61.27.

I. PROCEDURAL HISTORY

On September 17, 2020, Pittsfield Aqueduct Company, Inc. (PAC), a public water utility serving approximately 650 customers in the town of Pittsfield, submitted a notice of intent to file rate schedules, noticing its intention to seek an increase in temporary and permanent rates. PAC is a wholly-owned by Pennichuck Corporation, which, in turn, is wholly owned by the City of Nashua.

On November 16, 2020, PAC petitioned for temporary rates pursuant to RSA 378:27, and for a permanent rate increase pursuant to RSAs 378:3, 378:27, and 378:28. PAC requested temporary rates be set at current levels and a permanent increase to its annual gross operating revenues of approximately $86,783, or 11.18 percent, for effect December 17, 2020. PAC also sought modifications to its ratemaking structure. PAC's ratemaking structure was established in *Joint Petition of*

City of Nashua, Order No. 25,292 (November 23, 2011) in Docket DW 11-026. PAC requested authorization to implement a ratemaking structure that includes an operating expense revenue requirement (OERR); a debt service revenue requirement (DSRR); a five-year test period to replace a single test year; recovery and inclusion of State Revolving Fund or Drinking Water and Groundwater Trust Fund debt issuance costs in the Company's revenue; and the re-establishment of interest funding levels in PAC's existing revenue stabilization funds (RSF). These mechanisms are similar to the ratemaking structures already approved for Pennichuck Corporation's other regulated utilities, Pennichuck Water Works (PWW) and Pennichuck East Utility (PEU).

On December 16, 2020, the Commission issued Order No. 26,435, which suspended PAC's proposed tariff and scheduled a prehearing conference for January 20, 2021.

On February 17, 2021, PAC filed a settlement agreement on temporary rates entered into by then Staff of the Commission, now the Department of Energy (Energy). A hearing was held on March 10, 2021. On April 8, 2021, the Commission issued Order No. 26,466 approving the settlement agreement on temporary rates and establishing temporary rates at current levels, effective for service rendered on and after December 17, 2020.

On August 11, 2021, PAC filed a settlement agreement on permanent rates (Settlement Agreement), which was also entered into by Energy. The Commission held a hearing on permanent rates on August 18, 2021.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-153.html.

II. SUMMARY OF SETTLEMENT AGREEMENT

PAC and the Department of Energy (Energy) support the rates and methodologies contained in the Settlement Agreement. The proposed methodologies are similar to those described in PWW and PEU's most recent rate cases. *See* Pennichuck Water Works, Inc., Order No. 26,070 (November 7, 2017); Pennichuck East Utility, Inc., Order No. 26,179 (October 4, 2018).

A. Revenue Requirement, Permanent Rates, Recoupment, and Rate Case Expenses

The Settlement Agreement provides for a total revenue requirement for PAC in the amount of $820,848, representing an increase of 5.43 percent over the pro forma test year revenues of $778,598. The Settlement Agreement provides for revenues from water sales in the amount of $818,185, representing an increase of 5.45 percent over the pro forma test year revenues from water sales of $775,935. The Settlement Agreement allocates the proposed revenue increase equally, at 5.45 percent, across all customer classes, effective on a service-rendered basis as of December 17, 2020.

Under the terms of the Settlement Agreement, PAC agrees to file for Commission review and approval a calculation of the temporary-permanent rate recoupment, and a recommendation of an appropriate surcharge to be applied to customer bills within 30 days of the issuance of a Commission order authorizing permanent rates in this proceeding. The settling parties agreed that PAC should recover reasonable rate case expenses. Under the terms of the Settlement Agreement, PAC agrees to file its request for recovery of rate case expenses consistent with the requirements of NH Code Admin. R. Puc Ch. 1900 within 30 days of the issuance of a Commission order authorizing permanent rates in this proceeding.

B. Ratemaking Structure

1. Background

Order No. 25,292 (November 23, 2011) approved a unique ratemaking structure for PAC and the other Pennichuck Corporation operating utilities. That structure was explained in detail in the Settlement Agreement approved in Docket No. DW 11-026. Clarifications to this ratemaking structure were later approved. *See Pennichuck East Utility, Inc.,* Order No. 25,696 (July 25, 2014).

As a municipally owned utility, PAC is restricted from paying dividends to its sole shareholder and instead finances its operations entirely based on debt issuances. Because of its inability to access the equity markets, PAC cannot seek traditional equity-based rates of return. Therefore, modifications to the traditional rate-setting method were required and PAC's rate structure is intended to ensure it will charge rates sufficient to meet its operating requirements, to satisfy its apportioned share of debt service responsibility from City Acquisition Bonds, and to pay its debt service obligations from borrowings to finance their capital needs.

2. Five-Year Average Test Period

The Settlement Agreement allows PAC to calculate a five-year historical test period in place of the current single historical test year. That will allow the Company to develop pro forma annual revenues and expenses which are less likely to be distorted by unusual events during a single test year, such as an extremely dry or wet summer. PAC shall compute "test year" revenues using the trailing five-year average consumption at the most recently approved volumetric rates and fixed charges. The five-year trailing average consumption determination will be based on the test year coupled with the four calendar years immediately preceding the designated test year used for the rate case.

All direct test year expenses that are affected by consumption differences, 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. Further, PAC's use of a five-year average test period does not preclude Energy or other parties from making an alternative determination of PAC's revenue deficiency. The Settlement Agreement also contains a provision allowing PAC to exclude "atypical" years from the calculation of its five-year trailing averages.

3. Revenue Requirement Components

Under the Settlement Agreement, PAC's overall revenue requirement would consist of three components: (1) a City Bond Fixed Revenue Requirement (CBFRR); (2) an Operating Expense Revenue Requirement (OERR), which includes a Material Operating Expense Revenue Requirement (MOERR) and a Non-material Operating Expense Revenue Requirement (NOERR); and (3) a Debt Service Revenue Requirement (DSRR). As explained in the Settlement Agreement, each of the three distinct revenue components will provide a relatively fixed level of revenue which serves three objectives: (1) enables PAC to contribute its apportioned share of the debt service from City acquisition bonds; (2) provides PAC with a method to meet its other debt service requirements; and (3) enables PAC to provide safe and reliable service at the lowest possible rates by improving its ability to access credit markets.

The establishment of the DSRR will also allow PAC to collect sufficient revenue to satisfy the debt service coverage ratio requirements of its debt financings and the covenant requirements of Pennichuck Corporation. Those covenant requirements relate to a line of credit that Pennichuck Corporation and its subsidiaries use as a backstop for short-term capital needs. The debt service revenue requirement will also satisfy cash flow coverage requirements and meet obligations on new debt incurred between rate filings. Any surplus funds collected can be used to comply with cash flow coverage requirements for financings and fund costs of deferred assets.

4. Allocation of PAC's Rate Stabilization Fund

Order No. 25,292 (November 23, 2011) created a Rate Stabilization Fund (RSF) that was initially funded at $5,000,000, and maintained entirely by PWW. Under the terms of the settlement agreement in PWW's most recent rate proceeding, in Docket No. DW 16-806, the $5,000,000 RSF was re-allocated among the Pennichuck Corporation's regulated utilities. PAC's share of the RSF was determined to be $100,000. *See* Staff Filing Settlement Agreement-Permanent Rates, July 19, 2017 (Docket No. 16-806), at 14-15.

Under the Settlement Agreement, three distinct RSF accounts are to be established, similar to those previously established by PWW and PEU. According to the Settlement Agreement, distinct RSF accounts will better ensure customer rate stability, even under adverse conditions, and enable PAC to meet its cash obligations under such conditions. Specifically, the settling parties recommend that the $100,000 should be allocated among three RSF accounts: (1) City Bond Fixed Revenue Requirement (CBFRR) $13,000; (2) Material Operating Expense Revenue Requirement (MOERR) $81,000; and (3) Debt Service Revenue Requirement 1.0 (DSRR-1.0) $6,000. The settling parties agree and recommend that the Commission require PAC to file a rate case if the total amount of RSF funds exceed 200% of the combined target amount for such funds, as established by the Commission.

5. Reporting Requirements

The settling parties agree and recommended that the Commission approve a requirement that PAC submit monthly, semi-annual, and annual reports, in addition to the reporting otherwise required by statute, rule, or order, beginning January 1, 2022. Monthly reporting would include an income statement, as well as balance sheet showing the balances of the CBFRR-RSF, MOERR-RSF, DSRR-1.0-RSF, and DSRR-0.1 accounts. Semi-annual reporting would include a detailed debt service schedule, identified state and federal tax payments and refunds, and a MOERR variance report. Annual reporting would include a reconciliation of net income/loss with calculated revenue surplus/deficits and a reconciliation of cash and regulatory RSF account balances.

III. COMMISSION ANALYSIS

Unless precluded by law, informal disposition by stipulation may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation "if it determines that the result is just and reasonable and serves the public interest." The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Pennichuck Water Works*, Order No. 26,070 at 14-15 (November 7, 2017). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.* at 14.

Pursuant to RSAs 374:2, 378:7, and 378:28, the Commission may approve permanent rates if it finds they are just and reasonable, and reflect capital improvements that are found to be prudent, used, and useful. In determining whether rates are just and reasonable, the Commission acts as arbiter between the interests of customers and the regulated utility. RSA 363:17-a. The utility bears the burden of proving the necessity of increased rates. RSA 378:8.

The rationale to modify PAC's ratemaking methodology is that the Company, with no access to equity markets, finances its operational and infrastructure needs solely through debt. Jayson Laflamme, the Assistant Director of the Water Group within the Regulatory Support Division of the Department of Energy, testified in support of the proposed change in ratemaking methodology, stating that the ratemaking modifications contained in the Settlement Agreement will provide adequate assurance to the creditors of the Company and its affiliates in terms of cash flow liquidity and solvency. Hearing Transcript of August 18, 2021, at 127-128.

We have reviewed the evidence presented regarding permanent rates and the terms of the Settlement Agreement. We find that the revised ratemaking methodology addresses PAC's specific needs and is a result of the knowledge gained as the Company has transitioned from an investor-owned to a municipally-owned utility. This methodology is unique to municipally-owned utilities with dividend restrictions and no profit making motive.

The Settlement Agreement provides a modified rate structure with a total revenue requirement for PAC of $820,848. In deriving this revenue requirement, the Settling Parties agreed to a permanent increase to revenues from water sales of $42,250, or 5.45 percent, based on pro forma test year of 2019. As there is no return to investors to consider, we find the proposed revenue requirement will produce rates necessary to maintain safe and adequate service and that are just and reasonable. We will therefore approve the rates pursuant to RSA 378:28 and Puc 203.20(b).

Accordingly, we find the Settlement Agreement just and reasonable and approve it, adopting all recommendations made by the settling parties.

We note two observations in approving this settlement: First, for a company with approximately 650 customers, the reporting requirements appear to be onerous. We encourage PAC and interested parties to explore ways to streamline and reduce reporting requirements while maintaining accountability and transparency, and present any recommendations to the Commission. Second, with respect to the DSRR accounts, and specifically the DSRR-0.1 account's priority funding of certain deferred assets, we note that RSA 378:30-a, specifically the second sentence of RSA 378:30-a ("At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed") restricts this Commission's authority to authorize any rates or charges for construction work that is not complete. We acknowledge PAC's argument that because its unique rate structure does not contemplate a return earned on rate base that RSA 378:30-a is inapplicable, *see* Hearing Transcript of August 18, 2021, at 148-152, however we do not read the statute so narrowly. We caution PAC to utilize deferral methods and debt, not funds derived directly from ratepayers through rate mechanisms, to fund construction work until it has been determined by the Commission to be prudently incurred, used, and useful. RSA 378:28.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement on permanent rates as submitted in this docket is APPROVED; and it is

FURTHER ORDERED, that PAC shall submit properly annotated revised tariff pages consistent with the terms of the Settlement Agreement within 15 days of the date of this order; and it is

FURTHER ORDERED, that PAC shall file, within 30 days of the date of this order, documentation of the difference between temporary rates pursuant to Order No. 26,466 and permanent rates as finally determined herein, and file for Commission approval a proposed surcharge for recovering the difference from customers; and it is

FURTHER ORDERED, that PAC shall file its final rate case expense request pursuant to Puc 1905.02 no later than 30 days from the date of this order.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 2021.

Dianne Martin Chairwoman	Daniel C. Goldner Commissioner

Service List - Docket Related

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