

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-156

PENNICHUCK EAST UTILITY, INC.

Request for Change in Rates

Order on Permanent Rates

O R D E R N O. 26,586

February 18, 2022

In this order, the Commission approves a permanent rate increase for Pennichuck East Utility, Inc. that is expected to increase overall revenue from base rates to \$10,130,530, which represents an average yearly increase of approximately 6.2 percent over the revenue requirement established in its prior rate case. As a result, the monthly bill of a typical residential customer, using 6.50 hundred cubic feet of water per month, will increase \$12.72 per month, from \$71.59 to \$84.31. These rates will be subject of future increases based on Pennichuck East Utility Inc.'s qualified capital project adjustment charge, that allows for annual adjustments to rates related to necessary capital improvements between rate cases.

I. PROCEDURAL HISTORY

On September 23, 2020, Pennichuck East Utility, Inc. (PEU), submitted a notice of intent to file rate schedules, noticing its intention to seek an increase in temporary and permanent rates.

On November 23, 2020, PEU 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. PEU requested a temporary rate increase of 15% over the rates approved in its last rate case in Docket DW 17-128. PEU requested a permanent increase to its

annual gross operating revenues of approximately \$1,896,331, or 21.05 percent, for effect December 24, 2020. PEU also sought modifications to its ratemaking structure.

On December 17, 2020, the Commission issued Order No. 26,436, which suspended PEU's proposed tariff and scheduled a prehearing conference for January 27, 2021.

On April 27, 2021, PEU 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 May 10, 2021. On August 16, 2021, the Commission issued Order No. 26,508 approving the settlement agreement on temporary rates and establishing temporary rates 14.03 percent above existing rates for all PEU customers, net of its existing QCPAC surcharge and conditioned on the withdrawal of its requested QCPAC surcharge increase requested in Docket DW 20-019, resulting in an effective increase of 11.05 percent increase effective for service rendered on and after December 24, 2020. In addition, the NCCRS rates were also reduced under the terms of the temporary rates settlement agreement.

On October 27, 2021, the Towns of Litchfield and Londonderry pre-filed the direct testimony of David F. Russell, addressing PEU's rate design and cost-of-service study, and recommending changes to PEU's rate design to reduce cross subsidization between fire protection and other water service customers.

On December 9, 2021, PEU filed a settlement agreement on permanent rates (Settlement Agreement), which was entered into by PEU, the New Hampshire Department of Energy (Energy), the Town of Litchfield, the Town of Londonderry, Richard M. Husband, the Office of the Consumer Advocate (OCA), and Andrew D. Myers (together, the "Settling Parties"). The Commission held a hearing on permanent rates on December 15, 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/2020/20-156.html>.

II. BACKGROUND

PEU is a public water utility serving approximately 8,250 customers over a diverse geographic region, including the municipalities of Atkinson, Barnstead, Bow, Chester, Conway, Derry Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare, and Windham.

PEU is wholly owned by Pennichuck Corporation, which, in turn, is wholly owned by the City of Nashua. As a municipally owned public utility, PEU 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, PEU cannot seek traditional equity-based rates of return. Therefore, modifications to the traditional rate-setting method were required and PEU'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.

PEU's ratemaking structure was established in *Joint Petition of City of Nashua*, Order No. 25,292 (November 23, 2011), and subsequently refined in *Pennichuck East Utility, Inc.*, Order No. 25,696 (July 25, 2014) and *Pennichuck East Utility, Inc.*, Order No. 26,179 (October 4, 2018). PEU's ratemaking structure includes a city bond fixed revenue requirement (CBFRR); an operating expense revenue requirement (OERR), consisting of material and non-material sub-components (MOERR and NOERR); a debt service revenue requirement (DSRR), consisting of debt service and over-cover for debt service sub-components (DSRR-1.0 and DSRR-0.1); rate stabilization funds (RSF); a

qualified capital project adjustment charge (QCPAC), that is subject to annual increases; north country capital recovery surcharges (NCCRS), applicable to a subset of customers receiving service from certain water systems Barnstead, Middleton, and North Conway; and a revenue requirement calculation based on five years of data to limit the influence of abnormal weather impacts. These mechanisms are similar to the ratemaking structures approved for Pennichuck Corporation's other regulated utilities, Pennichuck Water Works (PWW) and Pittsfield Aqueduct Company (PAC), and are designed to: (1) enable PEU to contribute its apportioned share of the debt service from city acquisition bonds; (2) provide PEU with a method to meet its other debt service requirements; and (3) enable PEU to provide safe and reliable service at the lowest possible rates by improving its ability to access credit markets.

III. SUMMARY OF SETTLEMENT AGREEMENT

The Settling Parties support the rates and methodologies contained in the Settlement Agreement. The proposed methodologies are similar to those described in PWW and PAC's most recent rate cases. *See Pennichuck Water Works, Inc.*, Order No. 26,070 (November 7, 2017); *Pittsfield Aqueduct Company, Inc.*, Order No. 26,544 (November 9, 2021).

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

The Settlement Agreement provides for a total revenue requirement for PEU in the amount of \$10,339,633, including \$10,130,530 from base rates, \$178,915 in NCCRS revenues, and \$30,188 in Other Operating Revenues. This revenue requirement represents a 16.79 percent increase in PEU's pro forma test year revenues from water sales of \$8,674,186, or an increase of \$1,456,344. The Settlement Agreement allocates the proposed revenue increase based on an updated Cost-of-Service Study (Exh. 13), with changes to allocation of the revenue requirement

ranging from a decrease of 9.73 percent to an increase of 24.42 percent for certain fire hydrant rates. For average residential customers using 6.50 hundred cubic feet of water each month, the average bill will increase by \$12.72 per month, from \$71.59 to \$84.31. For residential customers subject to the NCCRS using 3.45 ccf of water each month will, the average bill will increase by between \$6.96 and \$7.22 per month. This increase will be effective on a service-rendered basis as of December 24, 2020.

In addition, the Settlement Agreement¹ contains a provision recommending that, based on Energy's recommendation in Docket DW 20-019, that the Commission find PEU's 2019 QCPAC qualifying capital projects to be prudent, used and useful.

Under the terms of the Settlement Agreement, PEU 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 PEU should recover reasonable rate case expenses. Under the terms of the Settlement Agreement, PEU 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. The Settling Parties agreed that each settling party would have the opportunity to review and make recommendations to the Commission on the Company's recommended recoupment and rate case expenses surcharges.

¹ With reference to the PEU's 2019 QCPAC qualifying capital projects, the Settling Parties do not include the Town of Litchfield, the Town of Londonderry, or Mr. Husband; these parties neither supported nor objected to the Settlement Agreement's provision on that issue.

B. Modifications to Ratemaking Structure

The Settlement Agreement allows PEU to establish a material operating expense factor (MOEF) of 4 percent that shall work in a similar manner to the DSRR-0.1 factor, providing percentage factor to over-cover PEU's MOERR less amortization expense, included in the OERR.

The Settlement Agreement also contains a provision allowing PEU to exclude "atypical" years from the calculation of its 5-year trailing averages for test year revenues.

The Settlement Agreement contains a provision allowing actual cash expenditures associated with the New Hampshire Business Enterprise Tax to be included in the MOERR component of PEU's revenue requirement.

The Settlement Agreement contains a provision re-prioritizing the use of the DSRR-0.1 account to fund the cost of PEU's deferred assets that do not qualify for debt financing, replenish PEU's RSF fund balances to their fully approved imprest values, and fund PEU's capital improvements as previously authorized in DW 17-128.

The Settlement Agreement contains a provision allowing PEU to recover debt issuance costs from identified government low interest loan programs through the NOERR account.

Under the terms of the Settlement Agreement, the imprest values of the CBFRR-RSF, MOERR-RSF, and DSRR-1.0-RSF accounts will be re-established at as authorized in DW 17-128 through proceeds from the financing authorized by the Commission in Order No. 26,538 (October 29, 2021).

C. Reporting Requirements

The settling parties agree and recommend that PEU shall file 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.

D. Other Matters

The Settlement Agreement² proposed a resolution to two recurring audit issues. First, the Settling Parties agreed that ongoing allocation of supplemental executive retirement plan costs as a component of affiliate allocation calculations is just and reasonable. Second, the Settling Parties agreed that PEU's current treatment of loan forgiveness pertaining to an identified American Recovery and Reinvestment Act loan and State Revolving Fund loans as Gains from Forgiveness, as opposed to Contributions in Aid of Construction, is acceptable.

The Settling Parties agreed that PEU shall make rate case filings on a regular basis, employing a three-year full rate case cycle as a matter of normal course. This provision of the Settlement Agreement would not nullify or supersede any existing requirements triggering a rate case filing established in Docket DW 17-128, or PEU's ability to file a rate case if it determines rate relief or emergency rates are warranted.

The Settlement Agreement also contains a provision relating to any prospective renewal, modification or termination of an existing water supply agreement with the Town of Hudson. PEU agreed to participate in joint discussions with the Town of

² With reference to the resolution of audit issues, the Settling Parties do not include the Town of Litchfield, the Town of Londonderry, or Mr. Husband; these parties neither supported nor objected to the Settlement Agreement's treatment of these issues.

Litchfield and Mr. Husband in advance of a November 2024 notice deadline relating to that agreement.

IV. POSITIONS OF THE PARTIES

PEU, the New Hampshire Department of Energy (Energy), the Town of Litchfield, the Town of Londonderry, Richard M. Husband, the Office of the Consumer Advocate (OCA), and Andrew D. Myers supported the Settlement Agreement as just and reasonable, and serving the public interest.

Petitions for intervention were granted to the following individuals: Richard Lascelles, Ralph Boehm, Mark Vandendyke, Robert Corcoran, Christopher Burns, Thomas Boutilier. These individuals did not appear at the hearing on permanent rates or make filings subsequently to being granted intervention, therefore their positions on the Settlement Agreement are not known.

V. 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 PEU'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 changes to PEU's revenue and 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 regarding the sufficiency of PEU's cash flow, liquidity and solvency, and that the rate increase proposed represents an equitable balancing of the interests of PEU and its ratepayers. Hearing Transcript of December 15, 2021, a.m. session at 109-110.

We have reviewed the evidence presented regarding permanent rates and the terms of the Settlement Agreement. We find that the revised ratemaking methodology addresses PEU'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 PEU of \$10,339,633. In deriving this revenue requirement, the Settling Parties agreed to a permanent increase to base revenues from water sales

of \$10,130,530, 16.79 percent, based on pro forma test year of 2019. Based on PEU's debt service and cash flow requirements, 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). Furthermore, we find PEU's 2019 QCPAC qualifying capital projects, as identified in Exh. 7, to be prudent, used and useful pursuant to RSA 378:28.

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

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 the PEU's 2019 QCPAC qualifying projects are found to be prudent, used and useful as discussed herein; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 1603, PEU 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 PEU shall file, within 30 days of the date of this order, documentation of the difference between temporary rates pursuant to Order No. 26,508 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 PEU 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 eighteenth day of February, 2022.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket# : 20-156

Printed: 2/18/2022

Email Addresses

ClerksOffice@puc.nh.gov
Suzanne.G.Amidon1@energy.nh.gov
rgboehm@comcast.net
thomasboutilier@yahoo.com
douglas.brogan@gmail.com
mab@nhbrownlaw.com
burnsync80@hotmail.com
profilelaw@gmail.com
ccole@sheehan.com
bobcorcoran153@gmail.com
chris.countie@pennichuck.com
robyn.j.descoteau@energy.nh.gov
josie.gage@oca.nh.gov
larry.goodhue@pennichuck.com
david.n.goyette@energy.nh.gov
carolann.howe@pennichuck.com
rmhusband@gmail.com
jay.kerrigan@pennichuck.com
donald.m.kreis@oca.nh.gov
jayson.p.laflamme@energy.nh.gov
rlascelleshome@prodigy.net
anthony.j.leone@energy.nh.gov
rlirette@sheehan.com
karen.j.moran@energy.nh.gov
andrew@attorney-myers.com
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
mramsdell@sheehan.com
davidrussell015@comcast.net
George.Torres@Pennichuck.com
christopher.r.tuomala@energy.nh.gov
mvandendyke@gmail.com
donald.ware@pennichuck.com