

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

Pennichuck Water Works, Inc.

Docket No. DW 22-032

Permanent Rate Proceeding

**SETTLEMENT AGREEMENT ON PERMANENT RATES**

May 10, 2023

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Pennichuck Water Works, Inc.  
Permanent Rate Proceeding

**SETTLEMENT AGREEMENT ON PERMANENT RATES**

**1. INTRODUCTION**

1.1 This settlement agreement on permanent rates (Agreement) is entered into by and among Pennichuck Water Works, Inc. (PWW or Company); the New Hampshire Department of Energy (DOE); and the Office of the Consumer Advocate (OCA) (together, Settling Parties). For the reasons explained below, in the opinion of the Settling Parties, this Agreement is just and reasonable and in the public interest. See RSA 378:7, :8, :28. The Settling Parties recommend that the Commission approve this Agreement.

**2. PROCEDURAL BACKGROUND**

2.1 On May 19, 2022, PWW filed its Notice of Intent to File Rate Schedules with the New Hampshire Public Utilities Commission (Commission). The Commission acknowledged this filing and opened the instant docket on May 24, 2022.

2.2 On June 2, 2022, the DOE filed a notice of appearance. On June 27, 2022, the OCA filed its letter of participation. Also on June 27, 2022, PWW made its rate case filing, including tariff schedules proposed for effect August 1, 2022. See, PWW June 27, 2022 filing, Bates Pages 92-97 (temporary rates) Bates Pages 206-16 (general service, metered, and non-metered). These tariff schedules would have increased PWW's revenues from base rates by an overall 13.06 percent to bring PWW's allowed revenues from base rates to \$40,883,431. See, PWW June 27,

2022 filing at 87 (temporary rate petition); and Schedule A at 113 and 114. The proposed rate increases for the individual customer classes varied between 12.97 percent to 16.46 percent. PWW Petition Schedule 9, Bates Page 17. By way of illustration, in its filing PWW indicated that the monthly bill of a single-family residential customer using approximately 7.76 hundred cubic feet (CCF) of water would increase from a base rate of \$55.46 per month, based on the permanent rates last approved in Docket No. DW 19-084, to \$62.77, or 13.18 percent. See PWW Petition Bates Page 18; Testimony of Donald Ware at Bates Page 81. PWW's Puc 1604.06 schedules are attached as Attachment D and PWW's Puc 1604.08 schedules are attached as Attachment E to this Agreement.

2.3 PWW averred that a rate increase was necessary to cover PWW's current operating expenses and to meet the costs of servicing PWW's debt and its share of the City Bond Fixed Revenue Requirement (CBFRR). PWW's permanent rate filing also included a proposed adjustment to its Material Operating Expense Factor (MOEF) from 9.5 percent to 9 percent and a proposed reconciliation of its Rate Stabilization Fund (RSF) accounts, which are non-interest-bearing restricted cash accounts. PWW filed testimony and supporting materials in accordance with New Hampshire Code of Administrative Rules PART Puc 1604, as well as a petition for temporary rates in the event the Commission suspended the taking effect of PWW's proposed tariff rates and opened an investigation instead.

2.4 On July 26, 2022, the Commission issued Order No. 26,652 suspending PWW's proposed tariffs, commencing an adjudicative proceeding, and scheduling a prehearing conference and technical conference for August 24, 2022.

2.5 On July 27, 2022, PWW filed a motion to reschedule the prehearing conference. On July 28, 2022, the Commission granted PWW's motion and rescheduled the prehearing

conference and technical session to September 7, 2022. On August 12, 2022, PWW filed its affidavit of publication with the Commission.

2.6 On September 7, 2022, the Commission held the scheduled prehearing conference. Thereafter, PWW, the DOE, and the OCA met in a technical session. On September 8, 2022, the DOE filed its report of the technical session wherein the parties proposed to meet in an additional technical session on September 22, 2022, for the purpose of filing a more substantive proposed procedural schedule by no later than September 26, 2022.

2.7 On September 15, 2022, the Commission issued a record request for PWW's live Excel version of PWW's most recent cost-of-service study schedules, inclusive of all work papers that informed the analyses.

2.8 On September 21, 2022, PWW filed its response to the record request as well as a motion for confidential treatment of certain information contained in PWW's response to Commission Record Request 1 in order to, *inter alia*, protect the formulas contained within the live Excel version of its most recent cost-of-service study schedules.

2.9 On September 26, 2022, the DOE filed the parties' proposed procedural schedule that included dates for discovery, testimony, technical sessions (inclusive of settlement discussions), and hearings. On September 30, 2022, the Commission approved the proposed procedural schedule and scheduled a hearing on temporary rates on November 30, 2022.

2.10 On October 24, 2022, in Order No. 26,711 the Commission approved PWW's two pending motions for protective orders and treatment of certain proprietary information.

2.11 On October 26, 2022, PWW, on behalf of itself, the DOE, and the OCA, filed a settlement agreement on temporary rates. In that agreement, the Settling Parties proposed that no temporary rates be set, and that PWW continue to charge an aggregate Qualified Capital Projects

Adjustment Charge (QCPAC) of 7.25 percent, as approved by Order No. 26,697, through the remainder of the proceeding, until such time as the Commission issues an order approving final permanent rates.

2.12 On November 23, 2022, given that the Settling Parties agreed that no temporary rates be set in this proceeding, the Commission issued a procedural order cancelling the hearing on temporary rates.

2.13 On November 29, 2022, PWW filed an assented-to request to modify certain discovery dates in the procedural schedule, which the Commission approved on December 1, 2022. Certain discovery conducted by the parties and in support of the settlement is attached to this Agreement as Attachment B

2.14 On April 21, 2023, the Commission issued a procedural order extending the filing deadline for the settlement to May 10, 2023

### **3. SCOPE**

3.1 This Settlement Agreement on Permanent Rates (Agreement) is entered into by the Settling Parties, as identified above: PWW, the DOE, and the OCA

3.2 This Agreement constitutes the Settling Parties' recommendation to the Commission with respect to permanent rates in this docket.

3.3 The Settling Parties agree that this Agreement constitutes resolution of the issues specified herein only.

3.4 This Agreement shall not be deemed an admission by any of the Settling Parties that any allegation or contention in this proceeding by any Settling Party, other than those specifically agreed to herein, is true and valid. This Agreement shall not be construed to represent any concession by any Settling Party hereto regarding positions taken, nor shall this

Agreement be deemed to foreclose any Settling Party from taking any position in any future proceedings. The conditions agreed to in this Agreement are settlement positions that reflect a compromise.

3.5 The pre-filed testimony and supporting documentation previously relied upon in this proceeding by the Settling Parties are not expected to be the subject of cross-examination by the Settling Parties, which would normally occur in a litigated case. The Settling Parties agree that all such pre-filed testimony and supporting documentation, including Settling Parties' data responses or responses to Commission record requests should be admitted as full exhibits for the purpose of consideration of this Agreement and be given the weight the Commission deems appropriate. Consent by the Settling Parties to admit all such pre-filed testimony without challenge does not constitute agreement by any of the Settling Parties that the content of the pre-filed testimony (or other documentation) is accurate or that the views of the witnesses should be assigned any particular weight by the Commission.

3.6 The resolution of any specific issues in this Agreement does not indicate the Settling Parties' agreement to such resolution for purposes of any future proceedings, nor does the reference to any other document bind the Settling Parties to the contents of, or recommendations in, that other document for purposes of any future proceeding. Admissions into evidence of any witnesses' testimony or supporting documentation shall not be deemed in any respect to constitute an admission by any party to this Agreement that any allegation or contention in this proceeding is true or false, except that the sworn testimony of any witness shall constitute an admission by such witness.

## 4. TERMS

### 4.1. Adjustment of Material Operating Expense Factor

4.1.1 In Commission Order No. 26,383 dated July 24, 2020, the Commission approved a settlement agreement in PWW's last rate case, Docket No. DW 19-084, wherein the Settling Parties agreed to a modification to PWW's ratemaking structure to include an imbedded Material Operating Expense Factor (MOEF) within PWW's overall revenue requirement. Specifically, the MOEF is a percentage factor, like the Debt Service Revenue Requirement – 0.1 (DSRR-0.1), applied to the Material Operating Expense Revenue Requirement (MOERR) component of PWW's overall revenue requirement for the purpose of sufficiently enhancing PWW's allowed revenues to better enable adequate cash flow coverage to allow for increases in material operating expenses experienced by the Company between rate cases. The settlement agreement approved by Order No. 26,383 (July 24, 2020, Docket No. DW 19-084) expressly stated that: “[u]nlike the DSRR-0.1 revenue component, however, which remains fixed during each succeeding rate proceeding, the MOEF would be an adjustable factor, the sufficiency of which would be re-evaluated and revised, as necessary, in succeeding rate cases.” See, Exhibit 9 in DW 19-084, Settlement Agreement at pages 29-30.

4.1.2 The Settling Parties recommend that the Commission approve an adjustment of PWW's MOEF from 9.5 percent to 9.45 percent. As noted in Attachment C, DLW Exhibit 1, which contains an analysis of PWW's allowed revenue components and projected annual Rate Stabilization Fund (RSF) balances, a MOEF factor of 9.45 percent is currently projected to satisfactorily maintain PWW's cumulative RSF balance at or near the currently authorized level of \$3,920,000 leading into the Company's next filed 2025 rate case for test year 2024.<sup>1</sup>

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<sup>1</sup> The Company may be required to file a rate case sooner than 2025. For clarity, however, the Agreement shall reference the next rate case as the “2025 rate case.” Implicit in that phrase are the requirements of Order No. 26,383



## 4.2. Reconciliation of Rate Stabilization Fund (RSF) Accounts

4.2.1 The Settling Parties agree and recommend that the Commission approve the reestablishment of the imprest values of PWW's RSFs at the respective levels previously provided for and approved by the Commission. See Order No. 26,090 at 19-20 (November 7, 2017, in Docket No. DW 16-806) and Orders No. 26,383 (July 24, 2020) and No. 26,425 (November 24, 2020) in Docket No. DW 19-084. Specifically, the City Bond Fixed Revenue Requirement (CBFRR)-RSF at \$680,000; the Material Operating Expense Revenue Requirement (MOERR)-RSF at \$2,850,000; and the Debt Service Revenue Requirement-1.0 (DSRR-1.0)-RSF at \$390,000. See Exhibit 9 in Docket No. 19-084, Settlement Agreement at 14-15 (dated June 24, 2020) approved in Orders No. 26,383 and 26,425.

4.2.2 In Docket No. DW 11-026, an RSF reconciliation mechanism was established wherein the Commission required PWW to maintain the target amount of the original \$5 million rate stabilization fund through adjustments, i.e., charges or credits, to PWW's revenue requirement in connection with its full rate proceedings. See Order No. 25,292 at 44-45 (November 23, 2011, Docket No. DW 11-026) (approving Acquisition and Settlement Agreement). With the reallocation of \$3.92 million of the original rate stabilization fund amongst PWW's CBFRR-RSF, MOERR-RSF, and DSRR-1.0- RSF in Docket No. DW 16-806, the original RSF reconciliation feature in Docket No. DW 11-026 was retained and applied to the re-

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at 10-11. In that order, the Commission has directed PWW to "maintain a three-year cycle for filing general rate cases." Order No. 26,383 at 10-11 (July 24,2020). However, the Commission simultaneously held that the three-year schedule "does not supersede the previously approved settlement agreement in [Docket No.] DW 16-806, which requires the Company to file a full rate case when the average amounts of cash held in its RSF accounts, as of the last day of each month for the 13-month period ending December 31, is greater than 150 percent of the combined imprest amount of those accounts." *Id.* The agreed-upon schedule does not limit PWW's ability to file a rate case sooner in the event emergency rates or other rate relief is required. *Id.*; but see RSA 378:7 ("The commission shall be under no obligation to investigate any rate matter which it has investigated within a period of 2 years but may do so within said period at its discretion"); See RSA 378:28.

established targets of the three RSF accounts. See Order No. 26,070 at 3, 8, 18-19 (approving Settlement Agreement). In Docket Nos. DW 16-806 and DW 19-084, the Settling Parties agreed on the continuation of the RSF reconciliation mechanism in PWW's subsequent rate proceedings, whereby the target RSF balances would be maintained via charge or credit adjustments to PWW's established revenue requirements in those proceedings. *Id.* See also Order No. 26,383 (in Docket No. 19-084) and Order No. 26,425 (in Docket No. 19-084). Further, in Docket No. DW 19-084, the Settling Parties also agreed that the addition of the MOEF would not alter that reconciliation mechanism. See Order No. 26,383 at 5, 17-19.

4.2.3 In the instant docket, Docket. No. DW 22-032, the Settling Parties agree that as of December 31, 2022, the cumulative balance of PWW's RSFs was \$5,188,612, which is \$1,268,612 greater than the agreed upon cumulative imprest amount of \$3,920,000. See Attachment D, Puc 1604.06 Schedule 1, Attachment A, Page 3.<sup>2</sup> Therefore, the Settling Parties further agree and recommend that the Commission approve a reconciliation of this excess amount in the form of an annual refund to customers of \$422,871 ( $\$1,268,612 \div 3$ ) to be applied against PWW's overall revenue requirement over a three-year period leading up to the 2025 rate case<sup>3</sup> to be filed by the Company as noted in Attachment C, DLW Exhibit 1.

### **4.3. Revenue Requirement**

4.3.1 The Settling Parties agree and recommend the Commission approve an increase to PWW's overall revenue requirement to \$40,736,437. The components of the overall revenue requirement include a City Bond Fixed Revenue Requirement (CBFRR) of \$7,729,032; an Operating Expense Revenue Requirement (OERR) totaling \$25,249,661, inclusive of the proposed 9.45 percent MOEF; a Debt Service Revenue Requirement (DSRR) of \$8,180,615, see

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<sup>2</sup> Updated Schedule 1, Attachment A, Page 3 is attached as Attachment H.

<sup>3</sup> See footnote 1.

also Attachment E; and an annual Rate Stabilization Fund (RSF) credit to customers of \$422,871. The overall proposed revenue requirement of \$40,736,437 is inclusive of proposed revenues from base rates of \$40,143,045 and pro forma other operating revenues of \$593,392. A computation of the proposed revenue requirement is contained in Attachment A, Summary Schedule. When compared to the Company's pro forma test year water revenues derived from base rates of \$36,428,745, the proposed revenue requirement from base rates of \$40,143,045 in this case represents an increase of \$3,714,300, or 10.20 percent.

4.3.2 The recommended revenue requirement also includes capital projects previously approved in PWW's Qualified Capital Projects Adjustment Charge (QCPAC) program since PWW's last rate case which is inclusive of the QCPAC's approved in Docket Nos. DW 20-020, DW 21-023, and DW 22-006 for capital improvements that were completed and used and useful by PWW in 2019, 2020, and 2021. See Order No. 26,555 (December 9, 2021) (*nisi* approval of 2020 QCPAC); Order No. 26,598 (March 29, 2022) (approving 2021 QCPAC); Order No. 26,697 (October 11, 2022) (*nisi* order approving settlement for 2022 QCPAC). By subtracting PWW's previously approved QCPAC revenues, the increase in non-QCPAC attributable revenues is 2.95 percent, as this Agreement anticipates that the current QCPAC revenue requirement shall be subsumed into the proposed revenues from base rates. See Attachment A, Summary Schedule.

#### **4.4. Rate Impact**

4.4.1 The Settling Parties agree and recommend the Commission approve the customer rates, including the affected changes to PWW's special contracts, identified on Attachment A, Schedule 4.

4.4.2 To illustrate the impact of this rate change on the monthly bill of a single-family residential customer using approximately 7.76 hundred cubic feet (CCF) of water, this rate change would increase the current \$55.46 monthly base rate charge, which is based on the permanent rates approved in Order No.26,425 (November 24, 2020, in Docket No. DW 19-084), to \$61.27. This illustration appears on the Customer Impact schedule of the Puc 1604.06 schedules (Attachment D at Tab 1 of the Excel version or page 1 of the PDF).

4.4.3 The Settling Parties agree and recommend that the Commission find that Attachment A, Schedule 4, which includes the proposed percentage increases, is just and reasonable and in the public interest. See RSA 378:7, :8 and :28.

#### **4.5. No Additional Rate Design Changes**

4.5.1 The Settling Parties do not propose any changes to the allocation of PWW's revenue requirement to its customer classes. In PWW's last rate case, Docket No. DW 19-084, PWW provided a full cost-of-service study to the Commission whereupon the Commission approved, in Order Nos. 26,383 (July 24, 2020) and 26,425 (November 24, 2020), a recommended reallocation of revenues to the private and municipal fire protection customer classes. This reallocation was the result of the cost-of-service study findings that the Private Fire Protection and Municipal Fire Protection customer classes were not generating sufficient revenues to cover the costs incurred by those services. In the settlement approved by Order Nos. 26,383 and 26,425 in Docket No. DW 19-084, Municipal Fire Protection rates were established to increase by 3.00 percent each year over six years with a corresponding decrease to general metered (GM) volumetric and meter charges so as to result in the equivalent overall revenues approved in those orders, Order Nos. 26,383 and 26,425 (in Docket No. DW 19-084). The respective rate adjustments have occurred annually on each successive November 24<sup>th</sup>, with the

annual 3 percent increase to Municipal Fire Protection charges and the associated decrease in volumetric and meter charges noted above last occurring on November 24, 2022. See PWW NHPUC No. 6 Tariff, Eighth Revised Tariff Page 47.

4.5.2 The next annual 3 percent increase to the Municipal Fire Protection charges and associated decrease in volumetric and meter charges is scheduled to occur again on November 24, 2023, pursuant to the tariff. If this Agreement is approved, however, the next annual rate adjustments will be based on the permanent rates approved in this Agreement, and (new) tariff pages, and will maintain the previously approved 3 percent increase to the Municipal Fire Protection charges and associated decrease in volumetric and meter charges. See Settlement Agreement at 43(e) (Exhibit 9 in Docket No. 19-084) (approved in Order No. 26,383 (July 24, 2020, Docket No. DW 19-084)).

4.5.3 A full migration of the cost-of-service study (COSS) reallocation recommendations is expected to be completed for the 2028 rate case<sup>4</sup> with a 2027 test year. See Settlement Agreement at 42-43, 43(g) (Exhibit 9 in Docket No. 19-084) (approved in Order No. 26,383 (July 24, 2020, Docket No. DW 19-084)) (Commission approved cost-of-service study to occur following test year 2027 for the 2028 rate case).

#### **4.6. Effective Date for Permanent Rates**

4.6.1 Considering the Settling Parties' agreement to forego temporary rates under RSA 378:27, the Settling Parties agree that there is no reconciliation of permanent rates back to an existing effective date. See RSA 378:29. Therefore, the Settling Parties propose that the effective date for permanent rates be the effective date of the Commission's order establishing permanent rates on a service-rendered basis pursuant to N.H. Code Admin. R. Puc 1203.05(b).

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<sup>4</sup> See footnote 1.

#### **4.7. Rate Case Expense Surcharge**

4.7.1 The Settling Parties agree and recommend the Commission approve PWW's recovery of its reasonable and prudently incurred rate case expenses for this proceeding on permanent rates through a surcharge. PWW'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 Puc 1906.01. PWW agrees to file its final rate case expense request, pursuant to Puc 1905.02, no later than thirty (30) days from the date of the Commission's order in this proceeding approving PWW's revenue requirement and resulting customer rates. The other Settling Parties, i.e., DOE and OCA, agree that they will have an opportunity to review the rate case expenses and provide recommendations to the Commission for approval.

#### **4.8. Resolution of Audit Issues**

4.8.1 The DOE Audit Staff issued its Final Audit Report regarding PWW's rate filing on February 3, 2023. See Attachment F. In its report, the DOE Audit Staff identified various issues resulting from its investigation. To the extent that these issues impact the revenue requirement proposed in this Agreement, the Settling Parties agree that the issues identified by the DOE Audit Staff have been fully resolved, as follows, see also Attachment B (PWW responses to certain DOE data requests):

Various Outstanding Audit Staff Information Requests Identified on Pages 4, 31, 35, 64, and 87 of Final Audit Report – Resolved per PWW's Response to DOE 5-10;

Audit Issue # 1: Documented Agreements – Resolved per Final Audit Report;

Audit Issue # 2: Incorrect Account Numbers – No Impact on Proposed Revenue Requirement;

Audit Issue # 3: Regarding Land Transfer – Resolved per PWW's Response to DOE 5-11;

Audit Issue # 4: Deferred Expenses and Related Amortization – Resolved per PWW’s Responses to DOE 2-35, 2-36, and 3-10;

Audit Issue # 5: Supporting Filing Schedules – No Impact on Proposed Revenue Requirement;

Audit Issue # 6: Clearing Account – No Impact on Proposed Revenue Requirement;

Audit Issue # 7: Paycheck Protection Program Interest – Resolved per PWW’s Response to DOE 2-66;

Audit Issue # 8: Fixed Asset Line of Credit: Resolved per Commission Order No. 26,555 (December 9, 2021) in Docket No. DW 20-020;

Audit Issue # 9: Long-term Debt Interest – Resolved per PWW’s Response to DOE 5-12;

Audit Issue # 10: Lack of Clearing Entry – No Impact on Proposed Revenue Requirement;

Audit Issue # 11: Miscellaneous Fees – Resolved per PWW’s Miscellaneous Fees Schedule, attached as Attachment G;

Audit Issue # 12: Property Tax Expense – Resolved per PWW’s Response to DOE 5-6;

Audit Issue # 13: Accrued Property Taxes – Resolved per PWW’s Response to DOE 5-6; and

Audit Issue # 14: Expenses – Resolved per PWW’s Response to DOE 5-13.

## **5. CONDITIONS**

5.1 This Agreement is expressly conditioned upon the Commission’s acceptance of all its provisions, without change or condition. If the Commission does not accept the Agreement in its entirety, without change or condition, or if the Commission makes any findings that go beyond the scope of this Agreement, and any of the Settling Parties notify the Commission within five business days of their disagreement with any such changes, conditions, or findings, the Agreement shall be deemed to be withdrawn, in which event it shall be deemed to be null and void and without effect, and shall not constitute any part of the record in this proceeding and shall not be used for any other purpose.

5.2 The Commission's approval of this Agreement shall not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such approval does constitute a determination that the terms of this Agreement are consistent with RSA 378:7, :8, and :28.

5.3 The rights conferred and the obligations imposed on the Settling Parties by this Agreement shall be binding on or inure to the benefit of any successors in interest or assignees as if such successor or assignee was itself a signatory party. The Settling Parties agree to cooperate in advocating that this Agreement be approved by the Commission in its entirety and without modification.

5.4 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.

5.5 This Agreement may be signed electronically, by facsimile, and in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one agreement binding on all Settling Parties.

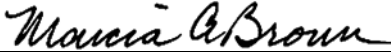
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IN WITNESS WHEREOF, the Settling Parties to this Agreement have caused the Agreement to be duly signed in their respective names by their fully authorized agents.

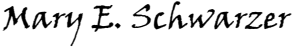
PENNICHUCK WATER WORKS, INC.  
By its Attorney,

Dated: May 10, 2023

  
\_\_\_\_\_  
Marcia A. Brown, Esq.


NEW HAMPSHIRE DEPARTMENT OF  
ENERGY  
By its Attorney,

Dated: May 10, 2023

  
\_\_\_\_\_  
Mary E. Schwarzer, Esq.

OFFICE OF THE CONSUMER ADVOCATE  
By its Attorney,

Dated: May 10, 2023

  
\_\_\_\_\_  
Michael J. Crouse, Esq.