

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 23-015

Pennichuck Water Works, Inc.
2023 Qualified Capital Project Adjustment Charge (“QCPAC”)

SETTLEMENT AGREEMENT

August 2023

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into this 1st day of August 2023, by and between Pennichuck Water Works, Inc. (“PWW” or “Company”) (a subsidiary of Pennichuck Corporation) and the New Hampshire Department of Energy (“DOE”) with the intent of resolving all issues in the above-captioned docket. (PWW and the DOE are referred to collectively in this Agreement as the “Settling Parties.”)

PROCEDURAL BACKGROUND

1. On June 27, 2022, PWW filed a general rate case with the New Hampshire Public Utilities Commission (“Commission”) in Docket No. DW 22-032 that established new base rates for the Company approved by Commission Order No. 26,862, dated July 27, 2023. The Commission’s order also had the effect of essentially resetting PWW’s aggregate Qualified Capital Project Adjustment Charge from 7.25% to 0.00% until the conclusion of the instant proceeding. Regarding presenting the estimated rate impact on residential customers of the proposals contained herein, this Agreement uses the base rates approved by the Commission in Order No. 26,862.

2. On February 14, 2023, PWW filed its petition for a 2023 Qualified Capital Project Adjustment Charge (“QCPAC”) with the Commission in the instant docket. The purpose of the petition

was three-fold. First, the petition sought final approval of a 2023 QCPAC based on eligible projects and amounts expended for capital projects that were used and useful in 2022. Second, the petition sought preliminary approval of the capital budget for eligible capital project expenditures set to occur in 2023. Third, the petition provided the Commission with information regarding the Company's forecast of capital project expenditures slated for completion in 2024 and 2025. On February 15, 2023, the Commission issued a Letter of Acknowledgment in receipt of the Company's petition.

3. PWW originally sought a 2023 QCPAC that was estimated, based upon the Company's pending DW 22-032 rate filing, at 1.37%, to be recouped on a service rendered basis from the closing date of PWW's annual bond issuance on April 26, 2023. The Company also projected that the then estimated base rate charge for an average monthly single-family residential customer of \$62.25, would increase by \$0.86 per month, when the 2023 QCPAC of 1.37% was applied, resulting in a total projected average monthly single-family residential bill of \$63.11. In addition, the Company's petition presented a proposed 2023 Qualified Capital Project (QCP) budget of \$13,414,775 along with estimated budgets for 2024 and 2025 of \$21,604,535 and \$11,799,975, respectively. Finally, PWW's petition proposed a further modification to the schedule of budget update reports required of the Company.

4. On February 23, 2023, the DOE filed a notice of appearance and request for service list change.

5. On March 6, 2023, the DOE filed an assented-to proposed procedural schedule, which the Commission approved by Procedural Order issued on March 10, 2023. The approved procedural schedule anticipated two sets of discovery requests to be completed by June 21, 2023, a technical session on June 29, 2023, responses to technical session data requests submitted by the Company by July 7, 2023, and ultimately a proposed Settlement Agreement that would be filed with the Commission

by August 3, 2023. A copy of updated Exhibit DLW-1, dated July 5, 2023, to the Company's original filing provided in response to discovery requests by the DOE is attached hereto as Attachment A. The complete set of DOE discovery requests and Company responses are attached and incorporated hereto as Attachment D.

6. On June 22, 2023, a "Final Audit Report" of PWW's 2023 QCPAC was issued by the DOE's Audit Staff. A copy of that report is attached hereto as Attachment B.

7. On July 28, 2023, the DOE's water engineer consultant, Douglas W. Brogan, P.E., issued his report regarding PWW's 2023 QCPAC filing. A copy of that report is attached hereto as Attachment C.

8. The Company will file budgetary updates on November 15, 2023 (for the period ending September 30, 2023) and on January 15, 2024 (for the period ending November 30, 2023), to the 2023 QCPAC Budget tab of Exhibit DLW-1, pursuant to Order No. 26,605 (April 8, 2022) in DW 21-023. The Company has requested a modification to the reporting requirements for the PWW QCPAC Mechanism discussed in further detail below.

II. BACKGROUND ON QCPAC PROCESS AND PURPOSE:

9. On August 17, 2016, PWW filed a Request for Change in Rates and a Petition for Specific Modifications to Ratemaking Structure in Docket No. DW 16-806. Among the requests made in that Petition was the establishment of a QCPAC enhanced step increase program.

10. On November 7, 2017, the Commission issued Order No. 26,070 ("Order No. 26,070") which authorized the QCPAC program as part of the overall Ratemaking Structure for PWW.

11. Order No. 26,070 confirms that the purpose of the QCPAC process is to allow the Company to establish a revenue requirement and the associated customer rates sufficient to recover debt service (principal/interest x 1.1) and the property tax expense associated with the Company's capital improvements on an annual basis, rather than to wait for recovery of such costs as part of a general rate case conducted every three years. This process acknowledges that PWW is a highly unique public utility because it is ultimately owned entirely by the City of Nashua and must rely entirely on debt financing for its operations and capital expenditures. In contrast to PWW, other traditional investor-owned utilities have a significant level of equity ownership, and those equity positions allow those utilities to carry the additional direct financial impact of capital expenses until their next general rate cases. Because PWW, which is ultimately owned entirely by a municipality, does not have access to such equity capital in any manner, it must borrow all funds needed to finance necessary annual capital investments, and must have revenues sufficient to service and repay those debt obligations on a timely and consistent basis. The approved QCPAC mechanism allows PWW to establish a surcharge on its permanent rates on an annual basis sufficient to support the additional debt service obligations arising from the new capital expenditures, as well as the associated property tax expense, incurred, funded, and requiring the initiation of repayment each year.

12. PWW and its lenders and bondholders rely on this regular, consistent, and annual QCPAC process, approved by the Commission as part of its Ratemaking Structure, to provide the loan financing necessary to support the annual capital investments required by a water utility, allowing it to meet its core, prudent and fundamental service as a regulated water utility. While such a process is unique, PWW and its management team have been able to explain the QCPAC mechanism to its lenders

and bondholders, and have been successful in issuing bonds into the financial markets and accessing new borrowings on an annual and ongoing basis. Without the clear and consistent application of the QCPAC process, however, lenders and bondholders may have uncertainty as to whether PWW would ultimately obtain, through the general ratemaking process, the rates necessary to repay new loans or service issued bonds. Because PWW does not have access to equity, these lenders may determine that such a loan or bond issuance may be too great a risk and, therefore, decide against extending the required credit or funds needed to finance PWW's regular and recurring capital expenditures. The QCPAC process was intentionally designed to address these potential concerns by lenders and bondholders and to enable PWW to access debt capital between general rate cases.

13. Pursuant to Order No. 26,070, to include the costs of capital projects in the calculation of the QCPAC, capital projects must meet the following criteria: (1) the capital project proposed by PWW must be completed, in service, and used and useful as utility infrastructure within the previous calendar year for which the QCPAC filing is made; (2) the capital project must have been financed by debt that has been approved by the Commission in accordance with RSA 369; and (3) the capital project must correspond with an annual capital budget which has been previously submitted by PWW, as updated periodically during the year, and approved by the Commission. *See, Pennichuck Water Works, Inc.*, Order No. 26,070 (Nov. 7, 2017).

14. Order No. 26,070 describes what should be contained in PWW's annual QCPAC petition:

Within its annual filing, PWW will provide: (1) its calculation of the QCPAC surcharge associated with capital investments from the previous year; (2) budget information regarding proposed capital projects for the current year; and (3) a detailed forecast of anticipated capital project expenditures for the subsequent two

years, for informational purposes only. Customers will receive notice of the proposed surcharge a minimum of 30 days in advance of the annual QCPAC filing.

15. The QCPAC consists of: (1) the annual principal and interest payments with respect to the applicable capital project debt, multiplied by 1.1; and (2) the incremental property tax expense associated with the specific capital projects, as determined in the year of the granting of the QCPAC for such projects.

III. TERMS OF THIS SETTLEMENT AGREEMENT

The Settling Parties agree and recommend the Commission approve the following:

A. Approval of the 2022 Completed Projects and 2023 QCPAC

16. The Settling Parties agree that the amount of the Company's 2022 QCP was \$6,742,259, the list of which is included in Attachment A, Page 2 to this Agreement. The Settling Parties agree that these projects are associated with a capital budget that was previously approved by the Commission in Order No. 26,697 (October 11, 2022) and further updated on November 15, 2022 and January 15, 2023. The Settling Parties also agree that these projects were reviewed by the DOE's Regulatory Support Staff, including its water engineer consultant, Douglas W. Brogan, and examined by the DOE's Audit Staff (Attachment B) with four audit issues noted.¹ The Company addressed these exceptions in its response to DOE 3-1, resulting in a revised Exhibit DLW-1 dated July 5, 2023 (Attachment A). The

¹ The Audit Report contained four Audit Issues regarding: 1) the inclusion of \$32,421 of Utility Network Migration that was classified as construction work in progress (CWIP) as of 12/31/22 and should be removed from the filing, to which the Company agreed and updated its filing schedules; 2) the inclusion of a \$13,507 vehicle repair receipt in the replacement cost of a different vehicle purchased in 2022 that should be deducted from the filing, to which the Company agreed and updated its filing schedules; 3) the Company not reflecting a trade-in allowance of \$26,000 relative to a 2022 purchased vehicle in its general ledger and CPR details, to which the Company agreed (no adjustment was required to the Company's filing schedules); and 4) the incorrect inclusion of \$3,615 in property tax expense on certain equipment for QCPAC recovery that should be deducted from the filing, to which the Company agreed and updated its filing schedules. (See Schedule B, Pages 29-32) The Company's corrections are reflected in Attachment A, Pages 1-2.

Settling Parties further agree that each project was completed, in service and used and useful in 2022; and, where applicable, a Commission Order was previously issued approving the debt financing associated with each financed project.

17. The Settling Parties recommend that the Commission approve these 2022 projects for recovery under the Company's QCPAC mechanism for 2023. The Settling Parties further recommend that the Commission find that these projects were prudent, used, and useful as of December 31, 2022, as well as approve these projects as eligible for recovery through the QCPAC surcharge.

18. The Settling Parties agree to the following calculation of the debt service component of the 2023 QCPAC:

- a. PWW sold bonds on April 26, 2023, in the amount of \$5,801,879 (Attachment A, Page 2, Cell K167) relative to its 2022 capital projects, at an average coupon rate of 5.005716% (Attachment A, Page 2, Cell E169) and a bond term of 30 years (Attachment A, Page 2, Cell C169), resulting in an initial annual debt service amount of \$377,666 (Attachment A, Page 1, Cell D11 and Attachment A, Page 2, Cell K171).
- b. A 1.1 x Principal and Interest Coverage Requirement (Attachment A, Page 1, Cell F12) is applied to the total annual debt service associated with the financing of \$377,666, resulting in a Debt Service Component of the 2023 QCPAC of \$415,433 ($\$377,666 \times 1.1$).

19. The Settling Parties agree that the property tax expense component of PWW's 2023 QCPAC is \$114,271 (Attachment A, Page 1, Cell D10 and Attachment A, Page 2, Cell O162).

20. The Settling Parties further agree that, based on the revenue requirement approved by the Commission in Order No. 26,862 (July 27, 2023) in DW 22-032, the inclusion of the calculated debt

service component of \$415,433 and property tax expense component of \$114,274 to PWW's QCPAC calculation results in a 2023 QCPAC of 1.36% (Attachment A, Page 1, Cells F18 and F19).²

21. Based on the above-described calculations that are depicted in Attachment A, Pages 1 and 2, the Settling Parties agree and recommend that the Commission approve a 2023 QCPAC of 1.36%.

22. The Settling Parties agree that for an average single-family residential customer, the calculated 1.36% QCPAC is anticipated to translate to a \$0.83 per month increase (Attachment A, Page 1, Cell F20), which, when added to the anticipated average base rate charge of \$61.28 (Attachment A, Page 1, Cell B21), results in a monthly bill of \$62.11 (Attachment A, Page 1, Cell F21).

23. The Settling Parties agree and recommend that the Commission approve recoupment of the 2023 QCPAC effective for service rendered as of the date of the 2023 bond issuance closing of April 26, 2023, until the date of the Commission's order approving the 2023 QCPAC. The Settling Parties agree that this recoupment is necessary because absent the ability to recoup costs necessary to pay the accrued interest, as well as the first principal payments on the bonds and other loans, there will be a shortage of the cash required to make these first interest and principal payments. Therefore, it is essential that the Company begin to collect the 2023 QCPAC coincident with the time that interest begins to accrue on the bonds, and the payment obligation starts to run for principal repayments on the debt. The Settling Parties further agree and recommend that, based on an anticipated order issuance date in this proceeding of September 15, 2023, the Commission approve a recoupment period of three (3) months that will result in a monthly recoupment charge for the average single-family residential

² As noted above, the 2022 QCPAC amounts reflect the capital project costs, debt service, and taxes in Attachment A updated as of July 5, 2023, in response to discovery from the DOE.

customer of \$1.29 per month ($\$0.83 \times 4.67 \text{ months} = \$3.87 \div 3 \text{ months} = \1.29). The Company requests fourteen (14) days following the last bills issued prior to the effective date of the Commission's order to submit a final recoupment calculation to assure there are no errors or corrections associated with the bills issued prior to the effective date of the Commission's order.

24. The Settling Parties agree that this represents a reasonable compromise of all issues relating to the revenue requirement pending before the Commission for the purpose of assessing the 2023 QCPAC. 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 2023 QCPAC recommended to the Commission results in an adjustment for PWW's customers that is just and reasonable.

B. Preliminary Approval of the 2023 Capital Projects Budget

25. The Settling Parties agree and recommend that the Commission approve, on a preliminary basis, PWW's proposed 2023 projects as appropriate for recovery through the QCPAC mechanism, subject to further refinement through periodic updates filed with the Commission for the purpose of keeping the Commission apprised of the Company's progress with regard to its 2023 projects, and finally subject to the Commission's audit and prudence review of the final costs associated with those projects as part of PWW's 2024 QCPAC proceeding.

26. The Settling Parties agree that PWW's 2023 capital projects budget is contained in Attachment A, Page 3 to this Settlement Agreement and totals \$13,414,775 (Cell G110). The individual capital projects contained in Attachment A, Page 3 were thoroughly reviewed by the DOE's Regulatory Support Staff, including its water engineer consultant, Douglas W. Brogan (see Attachment C). The Settling Parties agree that the proposed 2023 capital project budget of \$13,414,775 is currently

anticipated to result in a 3.04 percentage-point increase (Attachment A, Page 1, Cell I18) in PWW's cumulative QCPAC to 4.39% (Attachment A, Page 1, Cell I19). The Settling Parties further agree that for an average single-family residential customer, the projected 4.39% cumulative QCPAC is anticipated to translate to a \$2.69 per month surcharge (Attachment A, Page 1, Cell I20), which, when added to the anticipated average base rate charge of \$61.28 (Attachment A, Page 1, Cell B21), results in an anticipated monthly bill of \$63.97 (Attachment A, Page 1, Cell I21).

27. The Settling Parties therefore agree and recommend that the Commission preliminarily find that PWW's 2023 capital expense budget contained in Attachment A, Page 3 and totaling \$13,414,775 (Cell G110) is appropriate, subject to further refinement through updates filed with the Commission, and finally subject to the Commission's subsequent audit and prudence review of the final costs associated with those projects as part of PWW's 2024 QCPAC proceeding. Preliminary approval will allow for recovery of capital budget expenses, interest and debt service for those projects that are prudent, used, and useful by December 31, 2023, consistent with the QCPAC process set forth in Commission Order No. 26,070.

C. Informational Review of 2024-2025 Capital Project Budgets

28. The Company provided the details regarding its 2024-2025 project budgets in accordance with Order No. 26,070 for informational purposes only. The 2024-2025 capital projects have been updated as of July 5, 2023, in response to discovery between the Settling Parties (See Attachment A, Pages 4 and 5). PWW's 2024 capital projects budget is currently anticipated to be \$21,604,535 (Attachment A, Page 4, Cell F110) and its 2025 capital projects budget is currently anticipated to be \$11,799,975 (Attachment A, Page 5, Cell F90).

29. The Settling Parties, for the reasons set forth above, agree and recommend that the Commission accept, for informational purposes, the projected 2024 and 2025 capital projects budgets, as consistent with the QCPAC process approved in Commission Order No. 26,070.

D. Proposed Modification of QCPAC Budget Update Requirement

30. The Commission's approval of the QCPAC Mechanism in Order No. 26,070, included a requirement that the Company provide quarterly updates with the Commission on August 15, November 15, and January 15 (following the end of the fiscal year) detailing known or expected capital projects based on the periods ending June 30, September 30, and November 30, respectively.

31. The Commission approved a modification to the schedule of quarterly updates required detailing known or expected expenses for Capital projects to eliminate the August 15 budget update for the period ending June 30, but still requiring the November 15 budget update for the period ending September 30, and the January 15 budget update for the period ending November 30 by Order No. 26,605 (April 8, 2022) in Docket No. DW 21-023.

32. The Company's petition represented that ongoing discovery and updates during the review of the projects eligible for QCPAC recovery result in a number of updates to the capital projects under review. However, the updates (as set forth above) result in one-time snapshots of the respective capital project budgets, property tax expense, and project debt service that may overlap with updates resulting from the ongoing discovery both before and after consideration and approval of these projects for the QCPAC by the Commission. To avoid unnecessary overlap of reporting or redundancy by providing information that does not inform a decision by the Commission, the Company's petition proposed to reduce the two reports to one report due on August 30 for the period ending July 30. The Company indicated that allowing this modification will result in reduced time, effort and expense by the

Company's staff, the DOE's staff and reduce legal costs incurred by the Company related to review of these updates, thereby ultimately benefiting PWW's ratepayers.

33. Based upon further discussions between the Settling Parties, it is their recommendation that the Commission approve a modification to PWW's budget update reporting requirement that would only consist of one report on December 15 for the period ending on October 31. The Settling Parties agree that this modification from two reports to one report on December 15 will (1) essentially coincide with the end of PWW's annual construction season; (2) continue to provide the Commission with a full and complete update of the Company's capital project budgets as well as any accounting updates stemming from discovery between the Company, the DOE and other interested parties during the course of the annual QCPAC proceedings; and (3) result in reduced time, effort and expense by the Company's staff and the DOE's staff, and reduce legal costs incurred by the Company related to these updates, thereby ultimately benefiting PWW's ratepayers.

IV. SETTLEMENT CONDITIONS

34. PWW and the DOE request that the Commission approve this Settlement Agreement, and the associated QCPAC surcharge, without a hearing. In support of this request, PWW and the DOE note that neither the Office of Consumer Advocate nor any other party requested intervention in this proceeding. In addition, the parties agree that, with the attachment of the audit report, engineering report, and data request responses to the Settlement Agreement, the record in this matter is complete. In summary, as PWW and the DOE are the sole parties to this proceeding and are in agreement on the disposition of this matter, PWW and the DOE recommend that the Commission approve the Settlement Agreement without a merits hearing.

35. 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 fifteen (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.

36. 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.

37. 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.

38. This Agreement may be executed in counterparts.

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

PENNICHUCK WATER WORKS, INC.
By its attorneys
Rath, Young and Pignatelli, P.C.

Dated: August 1, 2023

By: 
James J. Steinkrauss

THE NEW HAMPSHIRE DEPARTMENT OF ENERGY

Dated: August 1, 2023

By: /s/ Suzanne G. Amidon

Suzanne G. Amidon
DOE Staff Counsel