

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

**DW 22-\_\_\_**

**Pennichuck East Utility, Inc.**

**and**

**Pittsfield Aqueduct Company, Inc.**

**JOINT PETITION FOR WAIVER AND INCREASE TO THE SHORT-TERM  
DEBT LIMIT**

**Page**

- 2. Joint Petition of PEU and PAC for a Waiver and Increase to the Short-Term Debt Limit
- 13. Direct Testimony of George Torres
- 24. Exhibit GT-1 – PEU and PAC Historic Short-term Debt Thresholds June 2019 to May 31, 2023.

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**JOINT PETITION FOR WAIVER AND INCREASE TO THE SHORT-TERM**  
**DEBT LIMIT**

Pennichuck East Utility, Inc. (“PEU”) and Pittsfield Aqueduct Company, Inc. (“PAC” or collectively “Companies”), are both corporations duly organized and existing under the laws of the State of New Hampshire and operating therein as public utilities subject to the jurisdiction of the New Hampshire Public Utilities Commission (the “Commission”) hereby jointly file this joint petition for a waiver of the ten percent (10%) limitation on its short-term debt under N.H. Admin. Rule Puc 608.05 and Puc 201.05, as was previously granted in Order No. 25,820 (DW 15-288), Order No. 26,311 (DW 19-112) and Order No. 26,823 (DW 22-075). In support of this Petition, PEU and PAC respectfully represent as follows:

**Background**

1. Puc 608.05 states: “No utility shall issue or renew any notes, bonds or other evidence of indebtedness payable less than 12 months after the date thereof if said short term debt exceeds 10% of the utility’s net fixed plant without prior commission approval

pursuant to Puc 201.05.”

2. On July 23, 2015, in accordance with Puc 201.05, PEU and PAC jointly sought a waiver of Puc 608.05 based on the 2011 acquisition of Pennichuck Corporation by the City of Nashua, which included the indirect acquisition of PAC. *See* Order No. 25,292 (November 23, 2011). A critical feature of the acquisition involved the transition to a capital structure composed primarily of debt, as opposed to a traditional capital structure.

3. On September 29, 2015, the Commission granted both PAC and PEU a waiver and increase of the short-term debt limit from ten percent (10%) to eighteen percent (18%) until June 20, 2019. *See* Order No. 25,820 (September 29, 2015). In its Order, the Commission found “[t]he waiver and increased debt limits are consistent with the waivers and increases that we have approved since Nashua’s acquisition of the companies.” Order No. 25,820 at

3. The Commission also found reasonable the proposal to report monthly short-term debt levels in the annual report and to file written notice with the Department of Energy (“DOE”) and the Office of Consumer Advocate (“OCA”) in any month that short-term debt exceeds 15% of net fixed capital. *See* Order No. 25,820 at 4.

4. In its Order, the Commission limited the time for the waiver. The Commission previously concluded that “If the companies want the waiver to continue beyond that date, they will need to file an appropriate request.” *See* Order No. 25,820 at 4.

On March 8, 2018, PAC filed a Petition for Approval of Refinancing of Intercompany Debt to refinance a 10-year \$776,850 fixed rate intercompany note payable between the Company and Pennichuck Corporation and to convert \$409,150 of short-term intercompany debt to a long-term note. The refinancing would eliminate a balloon payment, provide favorable debt carrying costs of 3.2% and reduce the level of PAC’s

short-term debt that was above the statutory 10% limit of net fixed plan.

5. On April 20, 2018, the Commission authorized the refinancing of the existing ten (10) year intercompany note and conversion of the \$409,150 of variable-rate short-term intercompany debt into a long-term note. *See* Order No. 26,125 (April 20, 2018). In the Order, the Commission found the refinancing and conversion of short-term debt to be routine in nature and in the public interest pursuant to RSA 369:1. *See* Order 26,125 at 4.6. On May 1, 2018, PAC completed the refinancing of its long-term note and conversion of its short-term intercompany debt into long-term debt. This had the net effect of lowering PAC's short-term debt below the statutory limit of 10%. 7. On June 20, 2019, PEU filed a petition for waiver of the short-term debt limit, which was set to expire on June 30, 2019, in Docket No. DW 19-112. The Commission by Order No. 26,311 granted PEU's petition granting a waiver of the short-term debt limit setting it at 18% through June 30, 2023. *See* Order 26,311 (November 27, 2019) at 5. PAC did not join that petition because the refinance of intercompany debt approved in Order No. 26,125 and subsequent transaction lowered its short-term debt below the 10% threshold.

6. On November 9, 2021, the Commission approved a settlement agreement and granted PAC's request to amend its ratemaking methodology. *See* Order No. 26,544 (November 9, 2021) in Docket No. DW 20-153 at 8-9. P A C ' s underlying capital structure composed primarily of debt; however, remains in place and is reinforced under the new ratemaking methodology.

7. On November 3, 2022, PAC files a petition for waiver of the short-term debt limit and increase which had expired, with a request that the Commission grant a waiver of the short-term debt limit setting it at 18% through June 30, 2023 in Docket No. DW 22-075. The

petition anticipated filing this joint petition for waiver with PEU prior to June 30, 2023. On May 16, 2023, the Commission approved the temporary waiver and increase through June 30, 2023, as being in the public interest by Order No. 26,823. *See* Order No. 26, 823 (May 16, 2023) in Docket No. DW 22-075 at 4. The Commission's order also requested PAC to review alternative measures or options to lessen any rate impacts on customers with respect to debt service. *See* Order No. 26,823 at 5.

8. On June 12, 2023, PAC filed a petition for approval to convert short-term inter-company payables to a long-term loan with Pennichuck Corp. in Docket No. DW 23-061. The goal of this petition, in accordance with the Commission's recommendation in Order No. 26,823, is to reduce the impact of short-term debt by refinancing the payables over a long-term loan with Pennichuck Corp. to eliminate re-term the debt consistent with the underlying financed capital assets and make the loan recoverable under the PAC rate structure. This will assist in stabilizing PAC's revenues and is one of the options considered by PAC has to reduce the impacts of short-term debt on its customers.

9. Since the grant of the waiver and short-term debt increase, PEU has experienced short-term debt levels that have ranged between 8.87% and 17.37%. *See* Direct Testimony of George Torres at 4, *see also* Exhibit GT-1, PEU and PAC Historic Short-Term Debt Thresholds June 2019 to May 2023. Schedule or Exhibit GT-1 presents the actual short-term debt limit levels for the Companies for the period from June 30, 2019 through May 31, 2023. *See* Direct Testimony of George Torres at 5.

10. PAC's short-term debt levels have ranged from -0.45% to 21.3% in August 2022 due to a temporary one-time year-to-date true up in the intercompany accounts for PAC's balance sheet. Upon completion of the acting for that one-time true-up the current debt level stands at

19.40% as of May 31, 2023. *See* Direct Testimony of George Torres at 4, see also Exhibit GT-1. As stated above, PAC has filed a petition to re-term short-term payables to a long-term intercompany loan to reduce the short-term debt levels. The Companies did notify DOE (1) on July 28, 2022 for PEU when its short-term debt level reached 15.82%; and (2) on November 3, 2022, for PAC when its short-term debt level reached 21.30%. However, due to current and anticipated levels of short-term debt, the Companies request a temporary short-term debt waiver and increase in the debt limit to 18% from the Commission until June 30, 2025, consistent with a joint waiver granted to the Companies in Docket No. DW15-288 (Order No. 25,820) and the most recent orders cited above. *See* Direct Testimony of George Torres at 4.

11. The Companies therefore requests a temporary waiver of Puc 608.05 pursuant to PUC 201.05, and increase to 18% consistent with the terms and conditions described in this petition until June 30, 2025, which is consistent with the two-year authorized waiver granted for PEU in Docket No. DW 19-112. *See* Order No. 26,311 (November 27, 2019).

### **Waiver Request**

12. Puc 608.05 implements, in part, RSA 369:7, which provides:

I. No public utility engaged in business within this state shall issue or renew any notes, bonds, or other evidences of indebtedness payable less than 12 months after the date thereof, except as provided in this section, by rules adopted by the commission, or by specific order of the commission in an individual case.

II. In establishing the amounts of the notes, bonds, and other evidences of indebtedness which the utility is permitted to issue or renew without prior commission approval, the commission shall consider the size, circumstances, and other characteristics of each utility, the aggregate term of the renewals of such notes, bonds, and other evidences of indebtedness, and the time period and manner for reporting such renewals to the commission.

13. Pursuant to RSA 369:7, the Commission may establish the amount of short-term

indebtedness a public utility may issue without prior approval by rule or by specific order in an individual case. In this case, the rule provides for a 10% of net fixed plant cap on short-term debt without prior Commission approval. By this petition, PEU and PAC seek by order to increase that cap to 18% of their respective net fixed plant.

14. The Commission is required to consider “the size, circumstances, and other characteristics of each utility” when establishing the permissible level of indebtedness. As is explained in the testimony of Mr. George Torres, the reasons for granting the waiver in 2015, 2018 and subsequently in 2023 continue to apply today. See Direct Testimony of George Torres at 3-4.

15. PEU and PAC propose that the Commission, consistent with Order No. 25,820, temporarily increase PEU’s and PAC’s short-term debt limits to 18% of their respective net fixed plants for two years. PEU and PAC also propose to continue to submit PEU’s and PAC’s monthly levels of short-term debt with its Annual Reports See Id. at 3-4. Consistent with Order No. 25,820, both PEU and PAC will notify DOE and OCA in writing in any month that short-term debt exceeds 15% of net fixed plant.

16. The Companies requests that this waiver extend until June 30, 2025, consistent with the prior short-term debt waiver term granted to PEU. See Order No. 26,311 at 5 (Nov. 27, 2019) Docket No. DW 19-112. The Companies also request that the existing waivers be continued during the review and consideration of this petition. The Companies will re-evaluate the need for continued short-term waivers for both PAC and PEU, and if necessary. As stated in PAC’s prior petition in Docket No. DW 23-075, the Companies are filing this petition jointly to be more efficient and minimize legal expenses.

17. Approval of an 18% short-term debt limit will serve the public interest because it will allow the Companies to:

- (a) Effectively re-invest in long-term capital projects and infrastructure at debt funding rates as opposed to debt/equity rates, thereby lowering the overall cost to ratepayers;
- (b) Provide the Companies with flexibility to effectively pursue long-term reimbursement financing in support of capital projects, which allows it to pursue favorable borrowing rates associated with the SRF loan program, the DWGTF loan program, and other commercial loan products which are available to PEU or may become available to PAC (although none currently exist); and,
- (c) Stabilize revenue levels by allowing the Companies to focus on annual revenue levels, without concern of running afoul of the overly restrictive 10% short-term debt limit requirement in portions of the fiscal year. *See Direct Testimony of George Torres at 10.*

18. PEU's and PAC's requests in this docket are consistent with the purpose of PUC 6-8.05 and RSA 369:7, which are intended to limit ratepayer exposure from utility funding of long-term projects with potentially higher cost short-term cash flows or debt, which, at the same time, would not properly match the cash outflows for the depreciation associated with capital expenditures to the cash inflows from the funding source. *See Id.* at 10.

19. The rate structure for both PEU and PAC differs from traditional rate making in a few key areas impacting total cash flow and the timing of cash flows including impacts to the short-term debt levels including:



- (1) a pre-determined Return on Equity (ROE) set at 3% above the 13-month average yield for 30-year Treasury Bonds, for the last approved test year (approved in 2012 (Dockets DW 13-126 and DW 12-238, and 2019 in DW 20-153) resulting in no traditional equity for either company for which ROE is earned;
- (2) the City Bond Fixed Revenue Requirement (“CBFRR”) portion of the revenue requirement which is a fixed revenue requirement for each companies’ annual funding of the City of Nashua’s acquisition debt resulting in annual dividends recorded as an offset to short-term debt accounts for each company having a material impact on short-term debt levels;
- (3) the capital structure being debt dependent, especially for PAC given its smaller size, utilizing short-term debt to support long-term capital investments and projects, until long-term debt is received; and,
- (4) Rate Stabilization Fund (“RSF”) providing the ability of each company to borrow these funds to offset deficits in revenues for CBFRR, OERR and DSRR portion of revenues that can increase or decrease each company’s short-term debt levels. *See Id.* at 5-6.

20. The existing rule sets a generic short-term debt limit, above which a utility may not issue short-term debt without Commission approval. Under this particular rate structure and specific to the circumstances of PAC, where the only short-term debt is intercompany loans, the 10% debt limit is especially and unnecessarily restrictive. Since all capital investments for PAC and PEU will be financed by debt, increasing the short-term debt limit to 18% appropriately balances the need to limit ratepayer exposure to increased financing costs with

the benefits of decreasing financing and regulatory costs by providing financing flexibility to PEU and PAC. See Id. at 10.

21. A waiver of the 10% short-term debt limit will allow the companies to better manage cash flows through the year, finance working capital as intended within the current rate structures and allow for effective investment in long-term capital replacement projects while obtaining annual reimbursement financing for these projects through various funding sources. See Direct Testimony of George Torres at 7-8. If a waiver is not granted for PEU and PAC, the companies would be barred from accessing available long-term debt financing for capital projects which would impact the companies' primary objective to provide adequate service to its customers through maintenance and proper upgrades to the respective treatment and distribution facilities. See Id. at 8.

22. A grant of waiver will serve the public interest by providing PEU and PAC with flexibility in the financing of operations of each company. See Id. at 8. PEU has access to funding for certain projects through CoBank or through State Revolving Fund ("SRF") or Drinking Water Groundwater Trust Fund ("DWGTF") loans for eligible projects; whereas, PAC is limited to SRF and DWGTF long-term funding for certain projects. See Id. at 8. The balance of PAC's long-term capital project funding excluding SRF or DWGTF funded projects is through short-term working capital advances from Penn Corp. which can be converted to long-term intercompany loans. See Id. at 8. Increasing short-term debt limits for both Companies will enable them to fund projects in a more predictable manner, reducing or foregoing the expense of long-term financing and rate cases. See Id. at 9.

23. Furthermore, the Companies asserts that this petition qualifies as a routine request consistent with the Commission's decision *In re PSNH*, Order No. 25,050, 94 NH PUC 691,699

(December 8, 2009). A routine request is one “that will have no discernible impact on rates or deleterious effect on capitalization, [and] in which the funds are to enable numerous investments appropriate in the ordinary course of utility operations.” See *In re PSNH*, Order No. 25,050 at 13 (December 8, 2009). Here the Companies aver that the proposed waivers and increase to the short-term debt limit will not have a significant impact on rates and provide the Companies with the financial flexibility and continued access to short and long-term capital funding, as stated above. In addition, the continued access will allow each company to fulfill their duties under RSA 374:1 to provide safe and adequate water service with the short-term and long-term debt proceeds used to finance these necessary capital investments.

24. For the reasons stated above, PEU and PAC assert that the grant of waiver and increase to 18% serves the public interest by providing financial flexibility, stabilizing revenues, and reducing costs to both PEU and PAC and their respective customers.

### **Conclusion**

WHEREFORE, by this petition, PEU and PAC respectfully requests that the Commission:

- A. Grant PEU’s and PAC’s requests for waivers of Puc 608.05 and increase the limitation on PEU’s and PAC’s short-term indebtedness subject to the terms and conditions described in this petition;
- B. Grant the waiver on a temporary basis until June 30, 2025;
- C. Find the proposed waivers serve the public interest;
- D. Find the waivers will not disrupt the orderly and efficient resolution of matters before the Commission;
- E. Find the waivers are routine or, in the alternative, issue an Order *Nisi*

approving its request; and,

F. Grant such other relief that is just and reasonable.

Respectfully submitted,

PENNICHUCK EAST UTILITY, INC., and  
PITTSFIELD AQUEDUCT COMPANY, INC.

By Its Attorneys

RATH, YOUNG AND PIGNATELLI, P.C.

Dated: June 26, 2023

By:  \_\_\_\_\_

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**Certificate of Service**

I hereby certify that a copy of this motion was provided via electronic mail to the individuals included on the Commission's service list for this docket.

Dated: June 26, 2023

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James J. Steinkrauss