

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 23-088

Pennichuck Water Works, Inc.
Pennichuck East Utility
Request for Change in Rates

JOINT PETITION TO CONSOLIDATE RATES

NOW COMES, Pennichuck Water Works, Inc. (PWW); Pennichuck East Utility, Inc. (PEU); and Pittsfield Aqueduct Company, Inc. (PAC), in accordance with N.H. Admin. Rule Puc 203.04 and Puc 203.05, and hereby petition the New Hampshire Public Utilities Commission (Commission) to approve the application of PWW rates to customers of PEU and PAC under a consolidated single tariff. In support of its motion, PWW, PEU, and PAC state as follows:

History of PWW, PEU, and PAC

1. PWW was established in 1852. It provides service to approximately 29,368 customer accounts in the City of Nashua and surrounding communities. About 26,613 accounts are General Metered. PWW serves a mix of residential, commercial, industrial, and municipal accounts. PWW's service territory consists of the so-called "Core" system in the City of Nashua. This Core system extends into adjacent towns: Merrimack, Amherst, and Hollis. PWW also has satellite franchise areas in the towns of: Bedford, Derry, Plaistow, Milford, Epping, Salem, and Newmarket.

2. PEU was established in 1998. It provides service to approximately 8,623 customer accounts in the towns of Litchfield, Londonderry, Windham, Pelham. PEU also has satellite franchise areas in Atkinson, Sandown, Derry, Raymond, Plaistow, Hooksett, Derry, Bow, Lee, Exeter, Chester, Conway, Middleton, Barnstead, Winnisquam Village, and Weare.

The customers are largely residential (approximately 8,347 General Metered accounts) with just 48 customers taking 3-inch service. There are no customers taking service larger than 3-inches. The remaining accounts are related to fire protection (hydrants). Thus, PEU has very little commercial and industrial customer accounts using high volumes of water.

3. PAC was acquired by Pennichuck in 1998 from the Town of Pittsfield. PAC provides service to approximately 649 General Metered customers, 12 Private Fire Protection customers, and 1 Public Fire Protection customer in the Town of Pittsfield. PAC's customer base is largely residential.

Legal Authorities

4. The Commission has long noted that RSA 378:7 authorizes the Commission to fix rates pursuant to an order after a hearing. In determining just and reasonable rates, the Commission must balance the consumers' interest in paying no higher rates than are required with the investors' interest in obtaining a reasonable return on their investment. See, *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. In circumstances where the utility seeks to consolidate rates, the Commission has reviewed a number of factors: (1) whether there will be a wide disparity among rates absent consolidation such that some rates would be outside of a 'zone of just and reasonableness'; (2) would consolidated rates ensure affordability; and (3) whether consolidated rates would ensure the continued viability of the water system. See, *Lakes Region Water Company, Inc.*, Docket No. DR 97-188, Order No. 23,146 (February 11, 1999) citing *Pennichuck Water Works, Inc.*, Docket No. DR 97-058, Order No. 22,883 (March 25, 1998).

5. Also pursuant to 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.” In *Public Service Company of New Hampshire*, Docket No. DR 79-107, Order No. 13,799 (August 29, 1979), the Commission noted that “[w]hile RSA 378:7 allows for a rate investigation prior to the expiration of a two-year period... the commission attempts to adhere to the general rule of waiting the two years unless there are unusual circumstances or a possible confiscation of property.” Here, PWW, PEU, and PAC aver that the Companies’ needs for revenues and rate relief and the desire to mitigate rate shock and unaffordable rates, is an “unusual circumstance” that warrants the Commission’s investigation. Consolidating PEU and PAC with PWW provides mitigation to that rate shock. Further, the rate relief is driven by the needs of PEU’s customers, which last received a rate increase, effective December 24, 2020, and based on a 2019 test year, by Order No. 26,586 (February 18, 2022). The instant case is based on a 2022 test year, which is greater than two years. Similarly, PAC’s last rate case was based on a 2019 test year.

6. In *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, in Docket No. DG 19-161, Order No. 26,319 (December 24, 2019), the Commission cited *Appeal of Gas Service, Inc.* 121 N.H. 602 (1981) and the issue of “whether deciding not to investigate [the] proposed rates at this time would constitute an unconstitutional taking.” Order at 5. As described in Mr. Ware’s testimony, PWW, PEU, and PAC have expenses that exceed the revenues authorized by this Commission. PEU and PAC are required by Commission order to file rate cases in 2023. Notwithstanding that PWW is not yet at its three-year ordered cycle, PWW’s revenue requirement is 7.43% greater than the 2021 test-year based revenue requirement approved by the Commission. Accordingly, even PWW is not earning sufficient revenues to

meet expenses, which constitutes a confiscatory situation, thereby satisfying the Commission's threshold considerations. Further, if the companies are merged absent a rate case, then PWW would suffer a loss of about \$5.3M in allowed revenues. Ware testimony at 18. A loss of \$5.3M would adversely affect the rate stabilization fund accounts. There would be an additional loss of about \$233,000 per year in fixed meter charges based on the difference between PEU's fixed meter charges (based on the projected 24.1% increase in revenues detailed in Attachment A of Mr. Ware's testimony) and the fixed meter charge approved in PWW's last rate case, DW 22-032. *Id.* at 19.

Past Commission Orders Approving Consolidated Tariff Rates

7. The Commission has recognized the need to consolidate rates when certain factors are met:

a. *Pennichuck Water Works, Inc.*, Docket No. DR 97-058, Order No. 22,883 (March 25, 1998). In that fully litigated docket, after hearing, the Commission approved consolidation of PWW's Core and Non-Core satellite system customer rates even though the systems were not interconnected. The Commission rejected allegiance to pure cost-causation ratemaking policy because "traditional cost of service regulation already includes some measure of rate averaging in that customers are not charged the true cost of serving them on an individual basis" and "perhaps more important, stand alone rates in this case produce results for some customers that are well beyond the zone of 'just and reasonable'". Order 22,883 at 11-12. The Commission opined that "[m]ost of the community systems are simply too small to absorb the magnitude of investments mandated by environmental enactments." *Id.* at 12. "[A]nnual rates in the range of \$800 to \$1,200" were not in the public interest when a reasonable alternative was available.

b. *Pennichuck East Utility, Inc.*, Docket No. DW 05-072, Order No. 24,591 (February 24, 2006). In this docket, the Commission approved a settlement among the parties involving PEU's proposal to consolidate three rate groups. The Commission revisited the rate structure it had approved in 1991 when PEU acquired water system assets from *Southern New Hampshire Water Company/Consumers Water Company* in Docket No. DR 89-224. The Town of Hudson had initiated a taking of the water system assets within the Town from Southern/Consumers but did not take the small systems outside of the Town. The Commission established the three rate groups in an effort to promote accurate price signals, economic efficiency and to minimize the risk of inappropriate subsidies between groups of ratepayers. The Commission had been concerned that PEU's rescue of the non-Hudson water systems could cause existing customers to pay substantial subsidies to rescue the smaller systems. The Commission found that the character of the water systems had changed greatly; therefore, no cost-based reasons justified retention of the three rate groups.

c. *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities* in Docket No. DG 17-048, Order No. 26,122 (April 27, 2018) at 63-64. In this fully litigated docket, in approving consolidation of rates, the Commission noted that evidence had been presented that the small Keene Division's rates would begin to escalate and make service in the City of Keene increasingly uneconomical. It further noted that there is evidence that consolidation would reduce administrative costs. The Commission likened the consolidation of rates to when a utility adds new franchise territory and applies its single tariff rather than create tariff rates for that newly acquired service territory.

d. *Hampstead Area Water Company*, Docket No. DW 05-112, Order No. 24,626 (dated May 26, 2006) at 15-16. In this docket, the Commission approved a settlement among the

parties to consolidate rates among the multiple water systems served by Hampstead Area Water Company (HAWC). The Commission noted:

“[a] decision on consolidation of rates is a policy decision that is subject to the statutory requirements that rates be just and reasonable and that we act in the public interest. See RSA 374:2 and RSA 378:28. We have considered the issue of single tariff pricing for water utilities in the past. See, *Pennichuck Water Works, Inc.*, 83 NH PUC 197 (1998); *Lakes Region Water Co.*, 84 NH PUC 125 (1999).”

In HAWC’s case, ten of HAWC’s systems would see a decrease in rates and six would see an increase in rates. The Commission compared the stand-alone rate range of \$571 to \$274 to the consolidated range which moderated rates to between \$515 and \$329. The Commission noted that:

“eliminating disparities among the individual systems is likewise consistent with the long-term best interests of the utility’s customers. In the case of water utilities with multiple individual systems, consolidation will help insulate those individual systems from future rate shock when significant investments are made to comply with environmental mandates or for other reasons. This protection helps ensure that each system can continue to provide safe and adequate water service pursuant to RSA 374:1. Additionally, as Staff has noted, the consolidated rate is likely to produce administrative efficiencies for HAWC that can reduce administrative costs borne by customers.”

“Although it might be argued that rate consolidation constitutes a departure from traditional, cost-of-service ratemaking because of the potential for cross-subsidization between individual systems, in another sense such an approach is consistent with the cost-of-service approach. This is because cost-of-service ratemaking always involves at least some degree of cost-averaging because the cost of serving any given customer is never identical to the cost of serving another.”

e. *Lakes Region Water Company, Inc.*, Docket No. DR 97-188, Order No. 23,146 (February 11, 1999). In this docket, the Commission approved consolidation of rates of Lakes Region Water Company, Inc.’s (LRWC) nine systems. The factors the Commission reviewed in determining whether rates should be consolidated came from the Commission’s experience with *Pennichuck Water Works, Inc.*, Order No. 22,883: (1) whether there will be a wide disparity

among rates absent consolidation such that some rates would be outside of a ‘zone of just and reasonableness’; (2) would consolidated rates ensure affordability; and (3) whether consolidated rates would ensure the continued viability of the water system. The Commission concluded that a 200% rate increase absent consolidation was outside of the zone of just and reasonableness.

What PEU and PAC Rates Will Look Like Absent Consolidation

8. PWW, PEU, and PAC are experienced with rate regulation and the Commission’s policies on rate consolidation and single tariff pricing. Given the present circumstances facing PEU and PAC’s customers and the future pressure of increasing rates, the Companies believe it important as a matter of good utility practice and for the future sustainability of PEU and PAC’s rates, to bring to the Commission’s attention the option of consolidating rates. In this rate proceeding, Mr. Donald L. Ware, describes in his testimony his first-hand experience with past circumstances where the Commission has sought solutions, such as rate consolidation, to high customer rates. Mr. Ware’s testimony describes that when preparing PEU and PAC’s 2023 rate cases, PEU and PAC learned that the necessary revenues would result in rate increases that would exceed 1% of New Hampshire’s median household income, a test that the U.S. Environmental Protection Agency (EPA) evaluates in measuring affordability of water rates in the context of Clean Water Act compliance matters.¹

9. Mr. John J. Boisvert described in his testimony that PEU’s proposed rates for the average single-family residential customer using 6.64 hundred cubic feet (CCF) of water per month would result in a monthly bill of \$106.28, or \$1,275.38 per annum. The EPA recommended affordability index for water rates specifies that the cost of public water should not

¹ Source: EPA 2023 [CWA Financial Capability Assessment Guidance](https://www.epa.gov/system/files/documents/2023-01/cwa-financial-capability-assessment-guidance.pdf) (<https://www.epa.gov/system/files/documents/2023-01/cwa-financial-capability-assessment-guidance.pdf>)

exceed 1% of Median Household income. New Hampshire's 2023 median household income is \$88,235². One percent of that income, \$882.35 per annum, sets the "high bar" for affordable water rates. PEU's rates would exceed that affordability threshold. Although PAC's immediate rate case rate increase alone would not exceed the affordability measure, its future trajectory would not be affordable. Further, given the integrated nature of PWW, PEU, and PAC and the fact that PEU and PAC rely on PWW's employees, it did not make economic sense to consolidate PEU with PWW and not include PAC's customers.

10. Mr. Ware and Mr. Boisvert describe the pressures which cause these rate increases. See Mr. Ware's testimony at pages 6-10 and Mr. Boisvert's testimony at pages 19-20. PEU and PAC do not have access to the bond markets, and therefore, cannot issue tax-exempt or taxable bonds for debt capital needs at terms that better match the useful lives of the assets. PEU only has access to long-term debt capital funding via: (a) loans through the NH Department of Environmental Services' (NHDES) State Revolving Loan Fund (SRF); (b) loans or grants through Drinking Water and Groundwater Trust Fund (DWGTF), which are both highly competitive and limited sources of capital; or (c) via term loans from CoBank, ACB (which are annually entered into as repayment of annual short-term usage of the Fixed Asset Line of Credit with CoBank, in accordance with PWW and PEU's approved QCPAC process. PAC is too small to access CoBank financing. The Commission acknowledged that fact in Order 26,898 (October 17, 2023) in Docket No. DW 23-66: "Finally, we commend PAC for finding a means to refinance a portion of its short-term debt, as requested by Order No. 26,823 (May 16, 2023) into a fixed rate intercompany long-term loan with Pennichuck Corporation that was approved by the

² Source, New Hampshire Employment Security:
<https://www.nhes.nh.gov/elmi/products/vs/documents/vs-2022-ch2-income-wages.pdf>

Commission earlier this month. See Order No. 26,893 (October 4, 2023) in Docket No. DW 23-061 ." Additional pressures include that PAC and PEU lack revenues from commercial and industrial customers. These types of customers help increase consumption volumes (and also revenues) and thus help lower the per-unit cost of water for all customers.

11. Consolidation of PEU and PAC into PWW would allow PEU and PAC better access to debt. As stated by Mr. Boisvert and Mr. Ware, the merged Company would have access to the bond markets, SRF and DWGTF loans and grants, as well as continuing to be credit worthy to lenders offering terms for the currently existing Fixed Asset Line of Credit (FALOC) existent at PWW with a bank lender, and the Working Capital Line of Credit (WCLOC) existent at Pennichuck Corporation, with that same bank lender. The merger would create better “critical mass” in two areas important in accessing the bond markets: (1) greater overall aggregate revenues in support of debt repayments; and (2) favorable ability to access the bond markets for debt funding. This critical mass would be more attractive to investors and could result in lower cost of debt. This lower cost of debt would benefit customers of all three utilities. Access to the bond market would help the PEU and PAC customers realize debt that better matches asset lives. This better match promotes better equity among existing and future customer users of those assets and better spreads the cost of those assets among all customers who use the asset, not just those who use the asset under the term of the SRF and DWGTF loans. This is not to imply that funding from low-cost SRF and DWGTF sources is unfavorable, rather, it is that access to the bond markets is more favorable.

Merger Petition and PEU and PAC Individual Rate Case Filings

12. In the near future, the Companies will be filing with a merger petition with the Commission. The merger petition will seek to consolidate PEU and PAC into PWW. The

Companies will request that both the corporate merger and consolidated rates be effective January 1, 2025. Rates would be effective on a service rendered basis, as of January 1, 2025.

PWW does not anticipate requesting temporary rates, therefore, the Companies do not anticipate the January 1, 2025 rates to include any recoupment between temporary and permanent rates.

13. Given that the Commission has ordered that PEU and PAC file rate cases on a three-year cycle, PEU and PAC will also be filing individual rate cases soon. PEU and PAC will be filing their individual rate cases to fulfill the three-year obligation and preserve their right to rate relief. To allow the Commission the ability to suspend the PEU and PAC rate cases as the Commission may deem proper in its efficient and orderly management of its dockets, the PEU and PAC Puc 1604 Full Rate Case schedules will also be attached to Mr. Ware's testimony in this instant PWW rate proceeding, as Attachments A and B.

Specific Consolidated Single Tariff Revenue and Rate Relief Sought

14. A revenue increase of 9.95% is being sought for the merged utilities over the sum of PWW, PEU, and PAC's individual combined 2022 test year revenues, adjusted to their five-year average revenues. The 2022 test year revenue requirement being sought is \$55,233,521 (from all revenue sources exclusive of Other Operating Revenues) versus the combined 2022 actual revenues (adjusted for the 5-year trailing average from all revenue sources, exclusive of QCPACs and Other Operating Revenues) of PWW, PEU and PAC of \$50,233,067, or a revenue deficiency of \$5,000,454.

15. PWW would largely keep its existing customer classes and rate groups. PWW would eliminate the 10-inch metered customer class because of lack of use. For its General Metered Service, PWW proposes to create a "Core" and "Non-Core" volumetric rate. Given the differences in the cost to provide municipal fire protection service, PWW would adopt PEU's

fire protection rate groups for Londonderry, Derry, Bow-Pines of Bow, Raymond-Green Hills, Windham, Exeter, Lee, Birch Hill, Pelham, and Litchfield. The consolidated tariff rate schedules for these changes to the rate groups are found at Tab 13 of the rate filing in track-change and clean versions.

16. The reasoning for these changes is described in Mr. Ware's testimony at pages 53-56 and is supported by the cost of service study described at pages 57-59. Mr. Gregg Therrien's cost of service testimony and study is found at Tab 10 of the rate filing. The reasoning for creating a Core and Non-Core volumetric rate is to recognize the difference between the cost to produce water for the Core and Non-Core customers. See Boisvert Testimony at page 27. The cost of treated water leaving the Nashua treatment facility and delivered to Core customers is approximately \$0.65 per CCF, whereas the average cost of purchased or treated water for Non-Core PEU customers is \$2.47 per CCF.

17. The rate changes to the existing and proposed PWW customer classes is reflected on the Report of Proposed Rate Change found at Tab 6 of the rate filing. Current PWW customers that are classified as Core will have an increase in their volumetric rate of 19.58% (\$1.05 per CCF) while those that are classified as Non-Core PEU will experience an increase of 43.40% (1.92 per CCF) in their volumetric rate from their current rate. Current PEU customers that are classified as Non-Core will see a decrease in their volumetric rate by 33.4% (\$3.17 per CCF) while those customers classified as Core will see a decrease by 44.5% (\$4.23 per CCF) in their volumetric rate, from their current rate. This rate differential is not uncommon in that Manchester Water Works maintains a tiered water rate with respect to general metered customers. MWW charges customers that reside outside of the City of Manchester nearly 1.15 times (15% more) than the customers within the City of Manchester.

2006 Cost Allocation Agreement

18. PWW, PEU, and PAC share costs pursuant to a 2006 Cost Allocation Agreement. PWW holds the employees who are then contracted out among the subsidiaries. This arrangement and function of the PWW employees will not change as a result of the merger. This cost allocation agreement is attached to Mr. Boisvert's testimony as Attachment B, Exhibit JJB-2. Since 2006, the Commission has reviewed the allocation of costs among the regulated and unregulated subsidiaries of Pennichuck Corporation at each rate case for PWW, PEU, and PAC. The underlying metrics and attributes currently attributed to PEU and PAC in that computation will be merged into the same metrics and attributes as PWW, and the resulting allocation of Penn Corp costs and PWW costs will then be allocated on that same multi-tier basis, based upon the pro-rata calculations that result.

QCPAC Programs to be Consolidated

19. PWW and PEU have Qualified Capital Project Adjustment Charge (QCPAC) programs approved by the Commission. The consolidation of PEU and PAC into PWW is not expected to change how the QCPAC functions because both PEU and PWW file on the same time schedule. The only change will be that PEU's capital projects would be merged into PWW's QCPAC review process, thereby improving the efficiency of the review and possibly lowering regulatory costs due to preparing one instead of two QCPAC filings.

No Change to Ratemaking Methodology

20. PWW, PEU, and PAC all have unique ratemaking structures which include revenue requirements for:

- a) City Bond Fixed Revenue Requirement (CBFRR);
- b) Material Operating Expenses (MOE's);

c) Non-Material Operating Expenses (NOE's), which are the basis of the Non-Material Operating Revenue Requirement (NOERR);

d) Material Operating Expense Factor (MOEF), which is applied against the MOE's, exclusive of its amortization expenses. The MOEF is applied to the merged Company's MOE's, less amortization expenses, and then amortization expenses are added in which are the basis of the Material Operating Expense Revenue Requirement (MOERR);

e) 1.0 Debt Service Revenue Requirement (1.0 DSRR), which is the annual principal and interest payments; and

f) Debt Service coverage factor of 0.1 which provides for the coverage of the Debt Service payments in accordance with the bond coverage requirements. This expense is the basis of the 0.1 Debt Service Revenue Requirement (0.1 DSRR).

The consolidation of PEU and PAC into PWW and aggregation of PEU and PAC's ratemaking components into PWW is not anticipated to change this ratemaking structure. Should future changes be necessary, the issue will be brought before the Commission in a separate rate filing.

2025 Test Year Rate Case Proposed to Realize Benefits of Consolidation

21. The Companies fully expect administrative efficiencies to occur as a result of the merger. As such, the Companies propose filing PWW's next future rate case, using a 2025 test year, to fully analyze the benefits of the merger and true-up rates. This first rate case under a consolidated PWW would be similar to what the Commission ordered PWW, PEU, and PAC to do following the first year under the City's ownership. For reference see Docket No. DW 11-026 and Order No. 25,292 ordering the Companies to file rate cases no later than June 1, 2013 so as to include in rates any savings from the City's ownership.

Special Contracts

22. PWW currently has Commission approved special contracts with: PEU; Anheuser-Busch; Town of Milford; Town of Hudson; Merrimack Village District (MVD); and Town of Tyngsborough, Massachusetts. As a result of the consolidation of PEU and PAC into PWW, these contracts, with the exception of the PWW-PEU contract, will proceed forward “as is” for the consolidated utility, which includes that certain charges in those contracts change as PWW’s rates change. Thus, rate changes proposed for these contracts appear on the Report of Proposed Rate Change, located at Tab 6 of the rate filing.

23. The existing PWW-PEU special contract approved by the Commission in DW 22-040 will no longer be necessary because customers in Litchfield will be treated as “Core” customers, post-merger. Any further expansion of water supply directly from the PWW Core into the Towns of Londonderry, Windham, and Pelham via the Litchfield system would classify those customers as Core customers as opposed to non-Core customers because they would be provided water directly water from the Nashua water treatment plant.

Notification of Rate Case

24. PWW, PEU, and PAC have conducted outreach to stakeholders who would be affected by this consolidation. As described in Mr. Boisvert’s testimony, PWW, PEU, and PAC met with the Department of Energy, Office of the Consumer Advocate, and the Department of Environmental Services. Boisvert Testimony at 42. PWW, PEU, and PAC met with representatives of communities including the City of Nashua, Town of Londonderry, Town of Litchfield, Town of Bedford, and the Town of Pelham. Additionally, PWW, PEU, and PAC directly mailed letters to the Town Managers, State Representatives and State Senators for all

communities served by PWW, PEU and PAC to inform them of the consolidated rate case and merger petitions.

25. PWW customarily informs its customers as part of its rate case filings. Presently, PWW is preparing individual notices to all PWW, PEU, and PAC customers, which will be delivered in a direct mailing, separate from the customer bills, and will include a Frequently Asked Questions information sheet. Drafts are included in the rate filing at Tab 7. The Companies will be providing the drafts to the Department of Energy's Consumer Assistance division for review prior to mailing to the customers.

WHEREFORE, Pennichuck Water Works, Inc.; Pennichuck East Utility, Inc.; and Pittsfield Aqueduct Company, Inc. respectfully requests the Commission:

- A. Grant this Petition; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.
PENNICHUCK EAST UTILITY, INC.
PITTSFIELD AQUEDUCT COMPANY, INC.

By its Attorney,

N.H. Brown Law, PLLC

Date: November 21, 2023

By: *Marcia A. Brown*
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Certificate of Service

I hereby certify that a copy of this motion has been emailed to the Docket-Related Service List for this proceeding.

Date: November 21, 2023



Marcia A. Brown, Esq.