STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 23-101

PENNICHUCK EAST UTILITIES, INC., PITTSFIELD AQUEDUCT COMPANY AND PENNICHUCK WATER WORKS, INC.

Joint Petition for Approval of Consolidation of Pennichuck East Utility, Inc. and Pittsfield Aqueduct Company with Pennichuck Water Works, Inc. and Approval of Consolidated Rates

Order Approving Merger Agreement and Consolidated Rates

O R D E R N O. 27,098

January 28, 2025

In this order, the Commission approves the merger agreement between Pennichuck East Utility (PEU), Pittsfield Aqueduct Company (PAC), and Pennichuck Water Works, Inc. (PWW or Surviving Corporation). Furthermore, the Commission approves a consolidated rate structure for all customers, resulting in a single consolidated rate with a final revenue requirement of $55,763,017 for the merged company.

Other than any information for which confidential treatment is requested of or granted by the Commission, all docket filings are available on the Commission's website at https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-101.html.

I. PROCEDURAL HISTORY

PWW, PEU, and PAC (together the Petitioners) are three separate public water utilities with a common owner, Pennichuck Corporation (Penn. Corp.). Pursuant to a 2011 settlement agreement in Docket No. DW 11-026, the Commission approved Nashua's purchase of Penn. Corp. while maintaining PWW, PEU, and PAC as separate legal entities. *See* Order No. 25,292 (November 23, 2011).

The Petitioners filed a merger petition in this docket on December 15, 2023. The Office of Consumer Advocate (the OCA) and the Department of Energy (DOE) filed appearances in this matter. The Commission granted Petitions to Intervene for the Towns of Londonderry, Bedford, Litchfield, and the City of Nashua.

On March 8, 2024, the Petitioners filed a motion to amend their petition to include a consolidated rate-making structure review in the underlying docket. The Commission granted the motion on March 29, 2024.

On April 8, 2024, the Petitioners filed a waiver to extend the 12-month time limit set on the Commission under RSA 378:6 to suspend the proposed rate schedules until March 7, 2026, to allow ample time to investigate and litigate this matter.

On September 26, 2024, the Petitioners filed supplemental testimony, and on December 11, 2024, the parties filed a fully executed settlement agreement. The parties appeared for a final hearing on January 14, 2025.

II. POSITIONS OF THE PARTIES

A. Petitioners

The Petitioners provide water service to multiple communities in New Hampshire. PWW serves approximately 29,368 customer accounts, with 26,613 General Metered (GM) accounts. Its service territory includes the City of Nashua (approximately 25,748 customers) and the Towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Plaistow, and Salem. PWW serves a mix of residential, commercial, industrial, and municipal accounts, with Single Family Residence (SFR) customers accounting for approximately 43% of its volumetric-based revenues. *See* March 8, 2024 testimony of Donald Ware at 4-5.

PEU provides service to approximately 8,623 customer accounts in the Towns of Atkinson, Bow, Barnstead, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Weare, Windham, and Winnisquam Village. Very few of PEU's commercial or industrial customers use high volumes of water. Its customers are predominately residential, with approximately 8,347 General Metered accounts, with just 47 customers receiving service through a 2-inch or larger meter, and no customer served through larger than a 3-inch meter. SFR customers account for approximately 87% of PEU's volumetric-based revenues, with the remaining customer accounts dedicated to fire protection services, e.g., fire hydrants. *See* March 8, 2024 testimony of Donald Ware at 5.

PAC serves a small territory within the Town of Pittsfield, numbering approximately 649 General Metered customers, 12 Private Fire Protection customers, and 1 Public Fire Protection customer. Nearly 70% of PAC's volumetric-based revenues are paid by SFR customers. *See* Id.

Although the Petitioners have functioned as three separate standalone utilities since the City of Nashua purchased Penn Corp. in 2011, the Petitioners contend that, due to current economic and financial conditions, PEU and PAC are unable to capitalize and operate their systems under their current corporate structure. Specifically, Penn Corp's executive management team[1] testified that PEU's and PAC's forecasted water rates, prepared in the spring of 2023, exceed the EPA's water affordability index.[2] *See* Id at 8. Mr. Ware testified that PEU's and PAC's lack of access to public debt markets inflates the Petitioners' debt service costs, resulting in higher customer rates. *See* Id.

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[1] The members of the Penn Corp. executive management team who gave testimony in this matter are Mr. Donald Ware, Mr. John Boisvert, Ms. Tara King, and Mr. George Torres.

[2] "Water affordability refers to the ability of an individual household to pay for essential water services bills, including drinking water, wastewater, and stormwater, without sacrificing other household needs." *Water Affordability Landscape*, U.S. EPA, https://www.epa.gov/waterfinancecenter/water-affordability-landscape (last visited Jan. 24, 2025).

Presently, PEU only has access to limited debt financing through (1) loans from (a) the New Hampshire Department of Environmental Service's State Revolving Loan Fund (SRF) and (b) Drinking Water and Groundwater Trust Fund (DWGTF), and (2) working capital loans and term loans provided by CoBank. Approximately half of PEU's capital financing consists of variable-rate term loans extended by CoBank with 20-to-25-year repayment terms. *See* Id at 9. Compared to its term loans, the Petitioners assert that if the PEU system had access to the public debt markets, it could more efficiently finance its capital needs via sales of tax-exempt municipal bonds at lower interest rates, which could result in lower capital borrowing costs being passed-through its rates to its customers. *See* Id.

Like PEU, PAC does not have access to the public debt markets. Unlike PEU, however, PAC's small size precludes it from accessing working capital or term debt financing via lending from CoBank. Presently, PAC's only source of capital financing is through the SRF, the DWFTF, or intercompany loans from Penn Corp. *See* Id at 10. Its inability to secure capital financing has prevented PAC from constructing a much-needed water storage tank in the Town of Pittsfield for over 10 years. *See* Id.

Given PEU's and PAC's operating and financing challenges, the Petitioners contend that merging PEU and PAC into PWW will result in a sustainable operating structure for the PEU and PAC systems and lower rates for their customers. The Petitioners further assert that any such merger will not unduly burden the rates paid by current PWW customers but, instead, will allow the Surviving Company to continue to provide safe and reliable service to all its customers. *See* Id at 11. The savings associated with the merger have been identified as:

1. Reduction in the number of regulatory filings including, but not limited to:
    a. Rate Case Filings;

    b. Annual Reports and Financials;

2. Elimination of multiple bank accounts;
3. Easier timekeeping for field staff;
4. Customer Service will improve by having only a singular set of rates to review and explain instead of three sets of rates when responding to Penn. Corp. customers.

See Id at 13.

Mr. Ware acknowledged that the rates for PWW customers will increase with the merger; however, the consequence of not merging the companies is far worse than the slight increase proposed for PWW customers. Not merging the companies would lead to unaffordable rates for PAC and PEU customers. PAC's lack of access to the public debt markets will continue to reduce its ability to provide safe and reliable water service. *See* Id at 24.

The Petitioners explained that the merger agreement is predicated on approval by the City of Nashua. *See* September 26, 2024 testimony of John Boisvert at 10-14 (explanation of Nashua's current ownership of Penn. Corp.). Post-merger, the surviving regulated utility will be PWW, which will remain a wholly-owned subsidiary of Penn. Corp., and Penn. Corp. will remain wholly owned by the City of Nashua. *See* Id. at 22. PEU and PAC have no employees; accordingly, there will be no immediate change in the number of PWW employees post-merger. *See* Id.

The Petitioners began informing their customers of the potential merger and consolidation process in the fall of 2023. *See* Id at 34.

The Petitioners testified that PWW's financial structure will remain the same post-merger; however, the combined annual capital expenditures and reinvestments of the merged entity will result in more extensive bond offerings, which, the Petitioners believe, will encourage more investor competition for PWW's bonds leading to lower borrowing costs. *See* George Torres's March 8, 2024, Testimony at 12-13. Before filing the petition to merge and consolidate rates, the Petitioners sought and received the assent of their lenders, TD Bank and CoBank. *See* Id at 19-20.

The Petitioners are not proposing any alterations to the previously approved rate mechanism for PWW. *See* January 14, 2025 Hearing Exhibit 5 at 15-16. Concerning rate impact associated with the newly established consolidated rate, the Petitioners assert the resulting consolidated rate post-merger will increase 9.95%. Accordingly, the Petitioners seek to increase the Surviving Corporation's revenue over the sum of PWW's, PEU's and PAC's individual combined 2022 Test Year (TY) revenues. As a result, the 2022 TY revenue requirement being sought is $55,763,017.[3] *See* January 14, 2024 Hearing Exhibit 5 at 16. The proposed rate design is multi-tiered with an inclining block rate structure. The inclining block rate structure is intended to discourage wasteful water usage and promote affordability. *See* September 26, 2024 testimony of John Boisvert at 3.

B. Department of Energy

The DOE's water group director, Jason Laflamme, testified before the Commission that the DOE supports the Petitioners' request to merge PWW, PEU, and PAC into a single entity and to establish a consolidated rate for the Surviving Corporation. Mr. Laflamme agreed that the viability of PEU depended on the merger and that there would be severe rate shock for PEU customers if the merger and

[3] The revenue requirement consists of 1. City Bond Fixed Revenue Requirement (CBFRR) and associated Rate Stabilization Fund (RSF), 2. Operating Expense Revenue Requirement (OERR) which is further composed of the following: a) Material Operating Expense Revenue Requirement (MOERR) and associated RSF b) Non-Material Operating Expense Revenue Requirement (NOERR), 3. Debt Service Revenue Requirement (DSRR) which is further composed of the following: a) Debt Service Revenue Requirement - 1.0 (DSRR-1.0) and associated RSF. b) Debt Service Revenue Requirement - 0.1 (DSRR-0.1). *See* January 14, 2025 Hearing Exhibit 5 at 16, FN 6.

consolidated rates were not approved. Mr. Laflamme noted that as part of the DOE's review of this docket, the DOE had performed a financial audit on the Petitioners. Mr. Laflamme noted that any inconsistency's found by the audit division in their initial assessment had been clarified by the Petitioners and the resulting final audit report identified no remaining issues and is attached to Hearing Exhibit 5.

Mr. Laflamme also testified that PAC customers would benefit from a merger allowing PWW to finance capital improvements for the customer base associated with PAC. Mr. Laflamme acknowledged that the proposed 8.49 percent increase was not insignificant to the PWW rate base; however, because of the overall benefit to all customers, the DOE found the Petitioners' request just, reasonable, and in the public's interest.

C. Office of the Consumer Advocate

The OCA supports the proposed merger and consolidated rates and recommends approval of the parties' settlement agreement.

D. City of Nashua

The City of Nashua (Nashua or the City) is a PWW customer and Penn. Corp's sole shareholder. As its sole shareholder, any PWW, PEU, or PAC merger requires the City's approval. During the Commission's hearing on the settlement agreement, the City's legal counsel, Mr. Steven Bolton, proffered evidence of the City's prior approval of the proposed merger. He called the Commission's attention to the City's approval of and signature to the settlement agreement and to the City's execution of all necessary corporate and shareholder resolutions to effectuate the merger. Mr. Bolton concluded his argument by confirming that the City need not undertake any further action to approve the merger should the Commission approve the settlement agreement and grant the Petitioner's requests to merge PWW, PEU, and PAC and establish the consolidated rate.

E. Intervenors

Each of the Towns of Litchfield, Londonderry, and Bedford, through their legal counsel, proffered evidence of each town's agreement to the proposed settlement agreement and recommended that the Commission approve the settlement agreement and grant the Petitioner's requests to merge PWW, PEU, and PAC and establish the consolidated rate.

III. SETTLEMENT AGREEMENT

A. Merger

At the effective time of the merger, the separate existences of PEU and PAC will cease upon merger into PWW. RSA 293-A:11.07(a)(2) (2016). "all title to real estate and other property owned by, and every contract right possessed by, [each of PEU and PAC will be vested in [PWW] without reversion or impairment." RSA 293-A:11.07(a)(3) (2016); *see* Hearing Exhibit 5 at ¶5.1.1.1. Similarly, "all liabilities of each of [PEU and PAC] [will be] vested in [PWW]." RSA 293-A:11.07(a)(4) (2016); *see* Hearing Exhibit 5 at ¶5.1.1.1. Penn. Corp. will continue to own all the outstanding shares of PWW, and the City will continue to be Penn. Corp's sole shareholder. *See* Hearing Exhibit 5 at ¶5.1.1.1.

More specifically, the settlement agreement requires the following measures:

1) The cancelation of the capital stock of PEU and PAC.
2) The amendment of the by-laws of PWW and the amendment of the by-laws and articles of incorporation of Penn. Corp. will add two (2) directors to the boards of directors of PWW and Penn. Corp, such that one (1) director will

be appointed by the mayor of Nashua and one by the City's Board of Alderman.

3) Under RSA 369:1, 2-4, 7, 11, and 14 (2009), the Surviving Corporation is authorized to assume the debts, liabilities, and obligations of PEU and PAC and, to the extent necessary or convenient, to enter into agreements with TD Bank, CoBank, and the State of New Hampshire to accomplish the assumption of said debts, liabilities, and obligations of PEU and PAC.
4) In addition to the authority granted by the preceding paragraph, the Surviving Corporation is authorized to assume any debts, liabilities, and obligations of each of PEU and PAC related to their capital expenses authorized for bonding by Order No. 26,459 (March 2, 2021) in Docket No. DW 20-157.
5) Penn Corp., the City, and the Commission must approve the PWW, PEU, and PAC merger.
6) The Commission authorizes the Surviving Corporation to assume the rights, privileges, duties, and obligations of PEU and PAC, including each of PEU's and PAC's capital debt.

In addition to the merger terms, the settling parties recommend that the Commission approve the recovery of the Petitioners' merger costs totaling no more than $400,000.00 from the actual finance and regulatory savings to customers, if any, realized from the merger. *See* Id at ¶5.2.1. The Settlement Agreement allows PWW to create a deferred debit account to recover an annual portion of the Petitioners' final, approved merger-related costs over the next ten (10) years. Said annual recovery of funds will be transferred from the PWW's 0.1 DSRR bank account and will not be collected as an amortization expense included in PWW's revenue requirement for future rate cases.

No later than ninety (90) days after the closing date of the merger, PWW shall file the Petitioners' final compilation of merger-related costs for Commission approval. At the time of filing, PWW will provide the Settling Parties with copies of said filing, which the Settling Parties may review and provide recommendations to the Commission concerning approval of those expenses. Per the Settlement Agreement, PWW will include calculations of the annual financing and regulatory savings realized from the merger in its subsequent 2026 and 2029 rate cases. *See* Id.

B. Consolidated Rates

The Settlement Agreement provides for the readoption of the revenue requirement methodology approved by the Commission for PWW at its last permanent rate case, Docket No. DW 22-032. *See* Order No. 26,862 (Jul. 27, 2023).

The current PWW revenue requirement methodology approved in DW 22-032 (Order No. 26,862) will remain the same. The revenue requirements consist of the following:

(1) City Bond Fixed Revenue Requirement (CBFRR) and associated Rate Stabilization Fund (RSF);

(2) Operating Expense Revenue Requirement (OERR), which is further composed of (a) Material Operating Expense Revenue Requirement (MOERR) and associated RSF, (b) Non- Material Operating Expense Revenue Requirement (NOERR), and (c) a Material Operating Expense Factor (MOEF), and

(3) Debt Service Revenue Requirement (DSRR), which is further composed of

(a) Debt Service Revenue Requirement - 1.0 (DSRR-1.0) and associated RSF, and

(b) Debt Service Revenue Requirement - 0.1 (DSRR-0.1).

See Hearing Exhibit ¶6.1.1. The Commission has approved the same revenue requirement methodology for PEU and PAC. See Order No. 26,586 (February 18, 2022) in Docket No. DW 20-156 for PEU; and Order No. 26,544 (November 9, 2021) in Docket No. DW 20-153 for PAC. *See* Id.

Based on a 2022 test year, the Settlement Agreement provides that the revenue requirement for the Surviving Corporation is $55,763,017. *See* Id at ¶6.2.1. The specific revenue components include:

City Bond Fixed Revenue Requirement (CBFRR)	**$ 8,802,880**
Material Operating Expense Revenue Requirement (MOERR)	$32,014,489
Non-Material Operating Expense Revenue Requirement (NOERR)	568,677
Material Operating Expense Factor (MOEF) @ 10.25%	3,262,217
Operating Expense Revenue Requirement (OERR)	**$35,845,383**
Debt Service Revenue Requirement – 1.0 (DSRR-1.0)	$10,104,322
Debt Service Revenue Requirement – 0.1 (DSRR-0.1)	1,010,432
Debt Service Revenue Requirement (DSRR)	**$11,114,754**
Total Revenue Requirement	**$55,763,017**

See Id at ¶6.2.3

The Settlement Agreement recommends that the Commission approve PWW's post-merger Rate Stabilization Fund (RSF) Accounts at the following imprest levels:

City Bond Fixed Revenue Requirement (CBFRR)-RSF:	$ 724,000
Material Operating Expense Revenue Requirement (MOERR)-RSF:	3,829,000
Debt Service Revenue Requirement-1.0 (DSRR-1.0)-RSF:	447,000
Total Rate Stabilization Fund	**$5,000,000**

See Id at ¶ 6.4.1.

For purposes of the instant proceeding, the Settlement Agreement recommends that the merged PWW RSF levels be filled to the allowed total target level of $5,000,000 by transferring $731,285 from the merged PWW 0.1 DSRR bank account to PWW's merged RSF bank accounts.

The Settlement Agreement recommends the continuation of the annual Qualified Capital Projects Adjustment Charge (QCPAC). Currently outstanding are the 2024 QCPAC filings for PWW and PEU (DW 24-027 and DW 24-029). The Settlement Agreement recommends that filings for Docket Nos. DW 24-027 and DW 24-029 will be merged and considered for Commission approval on a consolidated basis upon approval of the merger and rates proposed in the instant docket. The combined 2024 QCPAC will be applied to the accounts of current PWW customers and former PEU customers. *See* Hearing Exhibit 5 at ¶6.5.4. Beginning with the 2025 QCPAC filing for the Surviving Corporation, the settling parties recommend that the QCPAC be applied uniformly to all merged PWW customers at the percentages approved in that and the following QCPAC filings.

Concerning rate impacts for residential ratepayers, the Settlement Agreement reflects the following tiered rate impact for Penn. Corp. customers:

Tiered Rate Impact on PWW Single Family Residential @ average winter time usage						
		DW22-032		Stand Alone TY 2022		All Rates same (Unique Fire)@ Tiered
Average Single Family Residential Usage (CCF/Month) -		5.19		5.19		5.19
5/8" monthly meter charge -	$	26.90	$	28.73	$	29.02
Volumetric Charge -	$	4.37	$	4.62	$	4.50
Monthly Bill -	$	49.58	$	52.71	$	52.37
Annual Bill -	$	594.96	$	632.51	$	628.45
Additional Monthly Bill Amount (over TY 2022 Stand alone) -					$	(0.34)
Percentage increase over stand alone bill -						-0.64%
Percentage increase over current bill -				6.31%		5.63%

Tiered Rate Impact on PEU Single Family Residential @ average winter time usage						
		DW20-156		Stand Alone TY 2022		All Rates same (Unique Fire)@ Tiered
Average Single Family Residential Usage (CCF/Month) -		5.19		5.19		5.19
5/8" monthly meter charge -	$	22.56	$	26.33	$	29.02
Volumetric Charge -	$	9.50	$	11.09	$	4.50
Monthly Bill -	$	71.87	$	83.89	$	52.37
Annual Bill -	$	862.38	$	1,006.67	$	628.45
Additional Monthly Bill Amount (over TY 2022 Stand alone) -					$	(31.52)
Percentage increase over stand alone bill -						-37.57%

Tiered Rate Impact on PAC Single Family Residential @ average winter time usage						
		DW20-153		Stand Alone TY 2022		All Rates same (Unique Fire)@ Tiered
Average Single Family Residential Usage (CCF/Month) -		5.19		5.19		5.19
5/8" monthly meter charge -	$	25.82	$	26.21	$	29.02
Volumetric Charge -	$	6.83	$	6.93	$	4.50
Monthly Bill -	$	61.27	$	62.19	$	52.37
Annual Bill -	$	735.21	$	746.25	$	628.45
Additional Monthly Bill Amount (over TY 2022 Stand alone) -					$	(9.82)
Percentage increase over stand alone bill -						-15.78%

See Hearing Exhibit 5, Attachment AA, page 83.

The Settlement Agreement recommends a single-tariff pricing methodology be adopted for the Surviving Corporation, including a tiered, inclining block rate structure that provides for unified General Metered (GM) volumetric tiered rates for all customers across the former PWW, PEU, and PAC systems. The finalized GM volumetric tiered rates will specify an inclining block rate structure for three customer classes: GM-Volumetric, GM-Multi-family-Volumetric, and GM-Mixed-Use-Volumetric. The GM-Volumetric rate will encompass the following customer classes: single-family residential, commercial, industrial, and municipal, but excludes the multi-family residential and mixed-use customers. *See* Id at ¶ 6.7.1. The Settlement Agreement also proposes a Municipal Fire Rate comprising four (4) groups (Tier 1,2,3,4). *See* Id at

¶ 6.7.2. The Settlement Agreement recommends multiple changes to the tariff pages. *See* Id at ¶ 6.9. The Settlement Agreement provides for notice to all Penn. Corp. customers of the merger and consolidated rates and recommends that the permanent consolidated rates become effective on March 1, 2025. *See* Id at ¶ 6.13.1 & 6.14.1

IV. COMMISSION ANALYSIS

The legislature established the Commission to provide comprehensive oversight for establishing and controlling public utilities in this State. *Appeal of Public Serv. Co. of N.H.*, 141 N.H. 13, 22, (1996). As such, the Commission has broad statutory powers, *Appeal of Easton*, 125 N.H. 205, 210, (1984), which include its broad authority to review merger and acquisition transactions involving New Hampshire's public water utilities. *See*, *e.g.*, RSA 369:8, II (2009) (relative to corporate restructurings and changes in debt involving parent companies of public utilities); RSA 374:30, I (Supp. 2024) (relative to transfers or leases of public utility franchises, works, or systems); RSA 374:33 (Supp. 2024) (restricting acquisition of public utility stocks or bonds "unless the commission finds that such acquisition is lawful, proper, and in the public interest[…].").

Accordingly, the Commission must approve all sales or transfers of regulated public utility property after a finding that the sale or transfer is "for the public good." *See* RSA 374:30, I (Supp. 2024) ("Any public utility may transfer or lease its franchise, works, or system […] located in this state when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise […]."); *see also Appeal of Pub. Serv. Co.*, 124 N.H. 479, 483 (1984) (citing prior law) ("[…] all sales or transfers of regulated public utility property must be approved by the [Commission] after a finding that the sales are "for the public good.").

Our rules authorize the disposal of any contested case by Settlement Agreement if we "determine[ ] the settlement agreement is consistent with applicable law, is just and reasonable, and serves the public interest." N.H. Admin. R., Puc 204.10(b); *see* RSA 541-A:31, V(a) ("Unless precluded by law, informal disposition may be made of any contested case […] by stipulation, agreed settlement, consent order or default."); *but see* RSA 541-A:38 ("Except to the extent precluded by law, informal settlement of matters by nonadjudicative processes is encouraged. This section does not require any party or other person to utilize informal procedures or to settle a matter pursuant to informal procedures.").

Still, we cannot approve a settlement agreement concerning the merger or acquisition of utility property, even when all parties agree, "without independently determining that the result comports with applicable standards." *E.g.*, *Abenaki Water Company, Inc.*, Order No. 26,549 at 9 (Nov. 12, 2021) (citation omitted); *Unitil Energy System, Inc.*, Order No. 24,677 at 18 (Oct. 6, 2006) (citation omitted).

A. The Merger

The standards applicable to the merger, transfer, or sale of a public utility or its property are found in RSA 369:8, II (2009) (relative to corporate restructurings and changes in debt involving parent companies of public utilities); RSA 374:30, I (Supp. 2024) (relative to transfers or leases of public utility franchises, works, or systems); and RSA 374:33 (Supp. 2024) (restricting acquisition of public utility stocks or bonds "unless the commission finds that such acquisition is lawful, proper, and in the public interest[…].").

Per RSA 369:8, II, we must review whether a transaction will "adversely affect rates, terms, service, or operation of the public utility within the state." *See* RSA 369:8, II(a) (2009). In those cases, RSA 369:8, II provides that our review ends upon finding no adverse impacts, the so-called “no net harm” standard. *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 25,736 at 5 (Nov. 21, 2014). “Few cases are so clear.” *Id.* “[W]e usually do not accept at face value a petitioner's representations of no net harm and rarely approve a transaction under the summary process available under RSA 369:8, because the Commission must independently verify that no adverse effect on the rates, terms, service or operation of the utility to be acquired will occur.” *Id.* (citations and internal quotations omitted).

In cases requiring further inquiry, the petitioners must satisfy the “no adverse impacts” standard under RSA 369:8, II and the requirements of RSA Chapter 374. Under RSA 374:30, a public utility may transfer its franchise, works, or system only upon our finding that “it will be for the public good.” *See*, *e.g.*, Hampton *Water Works, Inc.,* 87 NH PUC 104 (2002) (approving the acquisition of Hampton Water Works by Aquarian- NH); *Consumers New Hampshire Water Co.*, 82 NH PUC 814 (1997); and *Eastern Utilities Associates,* 76 NH PUC 236 (1991). Considering these requirements, the Commission evaluates the petitioners' assertions that there are no adverse effects or net harm associated with the transaction and that it is in the public good.

Having reviewed all the evidence in this matter and presided over the final hearing, the Commission finds that the merger proposed by the Settlement Agreement will have no adverse effect on the “rates, terms, service, or operation” of PWW, PEU, or PAC, and “that it will be for the public good” under the RSA 374:30 standard.

Concerning adverse effects, PWW, as the surviving corporation, is a regulated water utility with the requisite technical, managerial, and financial capability to operate water systems in New Hampshire. The Surviving Corporation, as evidenced by the compelling testimony of Mr. Ware, Mr. Boisvert, Mr. Torres, and Ms. King, has the personnel to support the merged utility. A review of the current operating structure of

PWW, PEU, and PAC demonstrates that PEU and PAC do not employ their staff. Employees of PWW perform all managerial tasks. The hours the PWW staff works on PEU and PAC business are billed to PEU and PAC. The merger will provide for a streamlined process whereby all customers will be PWW customers, and all work performed will be work for PWW. Besides administrative costs, the merger reduces the regulatory costs to customers. Simply put, management will only be required to file finance petitions, annual reports, and rate petitions for one public water utility instead of preparing and filing finance petitions, annual reports, and rate petitions for three separate utilities.

In determining whether a transfer is for the public good, the Commission must also assess the transferee's financial, managerial, and technical capability and the potential impact of the transfer on rates and services. See *Lakes Region Water Company, Inc.*, Order No. 26,144 at 5 (June 15, 2018).

When assessing public good, the Commission found the Petitioners' testimony persuasive. Specifically, the Petitioners' testimony made clear that without a merger, the increase in PEU rates would be over 24%, which would destabilize PEU's customers and communities, ultimately causing customers to be unable to afford basic water service. See Donald Ware's September 26, 2024 testimony at 8-11, 20.

The adverse effects on PEU customers would have a trickle-down effect on Penn. Corp. and, ultimately, the City of Nashua. These effects could adversely impact the ability of PEU to contribute to the required City Bond Fixed Revenue Requirement (CBFRR) which is PEU's contribution to pay for the City's acquisition of Penn Corp. See Id. Any impact on PEU's ability to pay the CBFRR would likely result in adverse rate impacts to PWW and PAC customers. *See* Id.

Concerning the benefits to PAC, the Commission agrees that PAC's inability to finance capital projects is leading to failing infrastructure and merger provides for access to capital that is in dire need by PAC to provide reliable service to its water utility customers. Furthermore, the Commission notes that merger will end the ongoing trend in recent years for PEU and PAC to petition the Commission for an increase and waiver of the short-term debt limit of 10 percent. Which in turn leads to reduced interest charges passed on to ratepayers.

For the reasons explained above, it is found that the Surviving Corporation possess the financial managerial and technical capacity needed to support approval of the merger and that approval of the merger is found to be in the public good. We find the Settlement Agreement concerning the proposed merger to be just and reasonable and approve it based on our interpretation of the settlement language. Accordingly, we approve the requested consolidated rates for the surviving corporation pursuant to RSA 369:8, RSA 374:30 and Puc 204.10(b), as discussed above.

B. Permanent Rate Increase

The Commission is authorized to fix rates after a hearing, upon determining that rates, fares, and charges are just and reasonable. RSA 378:7. 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 determining whether rates are just and reasonable, the Commission must balance the customers' interest in paying no higher rates than are required against the investors' interest in obtaining a reasonable return on their investment. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In this way, the Commission serves as arbiter between the interests of customers and those of regulated utilities. *See* RSA 363:17-a; *see also EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 17 (March 10, 2011).

The settling parties testified at the hearing that the terms of the Settlement Agreement, including the consolidated rate structure, were just and reasonable. Since its acquisition by the City of Nashua in 2011, PWW has been funded by debt only, with cash needs funded by debt issuances, and with strict limitations on dividends of excess cash flows up to the parent, Pennichuck Corporation. See Order No. 25,292 (November 23, 2011) at 32 and 45. Given its capital structure fully comprised of debt, the Commission has previously approved several ratemaking mechanisms designed to maintain adequate cash flow to support PWW's operations and capital investments.

The components of the Surviving Corporation's revenue requirement are: City Bond Fixed Revenue Requirement (CBFRR) of $8,802,880; an Material Operating Expense Revenue Requirement (OERR) totaling $35,845,383, inclusive of the proposed 10.25 percent MOEF; a Debt Service Revenue Requirement (DSRR) of $11,114,754 to equate to a $55,763,017 total revenue requirement for the Surviving Corporation.

These revenue components have been approved in previous rate cases and we find each of the revenue components to represent reasonable measures for the cost of delivering water service. Further, in reliance on the DOE audit filed in this docket we find that the expenses in each category are prudently incurred and properly calculated. *See* Hearing Exhibit 5, Attachment F starting at 675.

The MOEF is a percentage factor applied to the Material Operating Expense Revenue Requirement (MOERR) component of the Surviving Corporation's overall revenue requirement to provide adequate cash flow coverage. The MOEF allows for increases in material operating expenses between rate cases.[4] The MOEF is an adjustable factor, which is re-evaluated and revised, as necessary. *See*, Exhibit 9 in

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[4] In Commission Order No. 26,383 (July 24, 2020), the Commission approved a modification to PWW's ratemaking structure to include an imbedded Material Operating Expense Factor (MOEF) within PWW's overall revenue requirement.

DW 19-084, settlement agreement at pages 29-30. We approve the MOEF at 10.25 percent. While the MOEF will increase PWW's revenues, ratepayers are protected against misuse of any excessive cash generated because the cash cannot be distributed as additional dividends to the City of Nashua per the settlement agreement in Docket No. DW 11-026. *See* Order No. 26,383 (July 24, 2020). Further, the MOEF will be re-examined and reset in a subsequent rate case.[5]

The proposed consolidated rate design includes a multi-tiered, inclining block rate structure based on a single tariff that provides a single volumetric rate for all GM customers across the PWW, PEU, and PAC systems. *See* September 26, 2024 testimony of John Boisvert at 3. The new rate proposal also includes a new customer rate class, GM-Multi Family volumetric. This rate would apply to all multifamily buildings, that is, a building with a single meter that provides service to two or more residential units. The volumetric pricing for this class of customers would be the same volumetric pricing, per tier, as the GM Volumetric customer, but each GM-Multi Family tier would be adjusted for each Multi Family building that is master metered with the volume allocated to each tier based on the number of units in the multifamily building. *See* Id.

Having reviewed the proposed multi-teared system, the Commission finds the testimony of Mr. Boisvert persuasive. Specifically, the proposed three-tier, inclining block rate structure, with the addition of the multifamily rate group, will be more protective of customers' non-discretionary water use and will result in residential customers with more discretionary use paying more than the customers' non-discretionary use. *See* Id at 6. Furthermore, the Commission finds Mr. Boisvert's

[5] Pursuant to the settlement agreement in Docket No. DW 11-026 dividends from PWW to Pennichuck Corporation are strictly limited. See Order No. 25,292 (November 23, 2011) at 32 and 45.

testimony concerning the increasing use of the inclining block rate structure in the United States to be persuasive. The inclining block rate structure discourages wasteful water use and promotes affordability among lower and fixed income customers. *See* Id at 7[6].

We find the Settlement Agreement concerning consolidated rates to be just and reasonable and approve it based on our interpretation of the settlement language. Accordingly, we approve the requested consolidated rates for the Surviving Corporation pursuant to RSA 378:7, RSA 378:28 and Puc 204.10(b), as discussed above. A summary of the proposed rate impact reflecting the monthly bill for average single family residential customers can be seen in the following table:[7]

Utility	**Current Rate**	**Proposed Rate**	**Rate Change**	**Percentage Change**
PWW	$60.31	$63.83	$3.52	5.84%
PEU	$84.31	$58.27	($26.04)	(30.89%)
PAC	$62.57	$53.23	($9.34)	(14.93%)

Based upon the foregoing, it is hereby

ORDERED, that the Merger of each of PEU and PAC with and into PWW is consistent with the public interest and public good within the meaning of RSA 374:30, 374:33, and RSA Chapter 378 and is **APPROVED**; and it is

FURTHER ORDERED, PWW shall assume any and all of PEU's and PAC's assets, including any real estate or other property, and liabilities, including any

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[6] Mr. Boisvert's testimony cites *Water & Sewer Price and Affordability Trends in the United States, 2017-2023*, American Water Works Journal, Volume 116, Issue 7, Sept. 2024, pages 14-24 attached as Attachment A. The National Association of Clean Water Agencies' report *Addressing the Affordability of Water and Wastewater Services in the U.S.* (May 2021) at 26 notes that the Maryland Department of the Environment regulations identify an inclining block rate structure as addressing affordability.

[7] The table was created by using the information contained in Hearing Exhibit 5, Attachment A. The rates for PWW and PEU in the table do not reflect the QCPAC surcharge.

short-term and long-term indebtedness associated with their respective assets in accordance with RSA 369:8; and it is

FURTHER ORDERED; the Surviving Corporation is authorized to enter into agreements with TD Bank, CoBank, and the State of New Hampshire pursuant to RSA 369:1-4 to assume the debt obligations of PEU and PAC; and it is

FURTHER ORDERED; the Surviving Corporation is authorized to include assumed debt for capital expenses of PEU and PAC to be included in the express purposes authorized for bonding by Order No. 26,459 (March 2, 2021) in Docket No. DW 20-157; and it is

FURTHER ORDERED; the Surviving Corporation is authorized to take any and all actions necessary or incidental to concluding and effecting the Mergers and Merger Agreements, and in connection therewith, authorize PWW to act as the merged entity going forward, assuming all rights and obligations of each of PEU and PAC, including the assumption of any and all outstanding agreements of each of PEU and PAC, including but not limited to, all design, engineering, and/or construction agreements, interconnection agreements, escrow agreements, management agreements, and water supply agreements; and it is

FURTHER ORDERED; the consolidated rates as set forth above for the Surviving Corporation are found to be just and reasonable and in the public interest and appropriate for this merger transaction in accordance with RSA 378:7, 378:8, and 378:28; and it is

FURTHER ORDERED; the customer rates, including the affected changes to the volumetric charges of the PWW special contracts, identified on Attachment A, Schedule 4 are **APPROVED;** and it is

FURTHER ORDERED; the tiered Municipal Fire Rate comprising of four (4) groups – Tiers 1, 2, 3, 4 for the Surviving Corporation is **APPROVED;** and it is

FURTHER ORDERED; PWW shall be allowed to implement the rate change on a bills rendered basis on the effective date of the consolidated rates; and it is

FURTHER ORDERED; the North Country Capital Recovery Surcharge (NCCRS) previously approved for PEU, by Order No. 25,051 in Docket No. DW 08-052 (December 11, 2009), shall be discontinued in the Surviving Corporation and, instead, the debt service previously recovered through the NCCRS be incorporated into overall revenue requirement of the Surviving Corporation; and it is

FURTHER ORDERED; the reconciliation of the Rate Stabilization Fund as described in para. 6.4.1 of the settlement is **APPROVED;** and it is

FURTHER ORDERED; adjustments to the Rate Stabilization Funds (RSF) of PWW, PEU, and PAC to allow for the consolidation or combination thereof in the Surviving Corporation consisting of three RSF accounts at the following imprest levels: CBFRR-RSF -$724,000, MOERR-RSF - $3,829,000, 1.0 DSRR-RSF - $447,000. The total of the three merged RSF accounts is $5,000,000 is **APPROVED;** and it is

FURTHER ORDERED; the Surviving Corporation shall be allowed to recover its merger-related costs, capped per the agreement at $400,000, up to the savings generated by the merger via a deferred debit that will recover the final approved total merger related expenses annually over ten (10) years. The annual recovery of funds, over ten years, shall be paid for from the Company's 0.1 DSRR bank account and shall not be collected as an amortization expense included in the revenue requirement of a future rate case; and it is

FURTHER ORDERED; the Surviving Corporation shall file its final compilation of merger-related costs, for Commission approval, no later than ninety (90) days from the closing of the merger. Merger related expenses shall be reviewed by all settling parties with recommendation on approval or denial of merger-related costs to be made to the Commission within 30 days of receipt of the request; and it is

FURTHER ORDERED; the Surviving Corporation shall be authorized to pay the combined CBFRR requirements of the former stand-alone subsidiaries, PWW, PEU, and PAC, to the City of Nashua in the amount of $8,802,880; and it is

FURTHER ORDERED; the expressed distributions from the paid-in-capital of the Surviving Corporation to the City of Nashua to satisfy Nashua's Acquisition Bonds through the CBFRR is **APPROVED;** and it is

FURTHER ORDERED; intercompany payments between Pennichuck Corporation and the Surviving Corporation for allocation of federal and state income tax liabilities in accordance with existing practices of Pennichuck Corporation and its current subsidiaries is **APPROVED**; and it is

FURTHER ORDERED; the Surviving Corporation shall not pay or distribute funds in any fiscal year through dividends or other distributions to Pennichuck Corporation in excess of the applicable CBFRR amount; and it is

FURTHER ORDERED; the Surviving Corporation shall provide detailed annual reports, beginning in 2025 through 2028, regarding the usage patterns and resulting revenues received from the following customer groups: single-family, multi-family, mixed-use, municipal, commercial, and industrial as described in section 10.3.8 of the Settlement; and it is

FURTHER ORDERED; that pursuant to RSA 365:28, Order No. 26,425 is hereby modified to allow the instant proposed rate design changes to supersede the rate design approved in Order No. 26,425; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 1603, the Surviving Corporation shall submit properly annotated revised tariff pages within 15 days of the date of this order; and it is

FURTHER ORDERED, the DOE shall review the annotated revised tariff pages and submit its assessment of the annotated changes within 10 days of PWW's submission of the revised tariff pages; and it is

FURTHER ORDERED, that the Surviving Corporation shall file, no later than 30 days after the date of this order, a request for recovery of its rate case expenses with the Commission; and it is

FURTHER ORDERED, that all other provisions of the Settlement Agreement, including commitments made by the New Hampshire Department of Energy to review the Company's filings and provide reports to the Commission, are **APPROVED** and shall remain in effect unless and until the Commission rules otherwise, pursuant to the subsequent submission by the Settling Parties of petitions requesting any alteration of those commitments.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January 2025.

Daniel C. Goldner Chairman	Pradip K. Chattopadhyay Commissioner	Mark W. Dell'Orfano Commissioner

Service List - Docket Related

Docket#: 23-101

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Email Addresses

ClerksOffice@puc.nh.gov
wfa@rathlaw.com
Marie-Helene.B.Bailinson@energy.nh.gov
john.boisvert@pennichuck.com
boltons@nashuanh.gov
mab@nhbrownlaw.com
chris.countie@pennichuck.com
mcourtney@uptonhatfield.com
Energy-Litigation@energy.nh.gov
robyn.j.descoteau@energy.nh.gov
lori.douglas@pennichuck.com
julia.gagnon@pennichuck.com
david.n.goyette@energy.nh.gov
jay.kerrigan@pennichuck.com
donald.m.kreis@oca.nh.gov
jayson.p.laflamme@energy.nh.gov
anthony.j.leone@energy.nh.gov
rlirette@sheehan.com
jlyon@sheehan.com
ocalitigation@oca.nh.gov
mosbon@uptonhatfield.com
chris@mitchellmunigroup.com
davidrussell015@comcast.net
laura@mitchellmunigroup.com
jjs@rathlaw.com
George.Torres@Pennichuck.com
Charles.J.Underhill@oca.nh.gov
smw@rathlaw.com
donald.ware@pennichuck.com
Matthew.C.Young@energy.nh.gov