

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

Pennichuck East Utility, Inc.

Docket DW 20-156

Request for Change in Rates

Permanent Rate Proceeding

**SETTLEMENT AGREEMENT**

December 9, 2021

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**SETTLEMENT AGREEMENT**

SUMMARY: This Settlement Agreement (Agreement) is entered into by and among Pennichuck East Utility, Inc. (PEU, or the Company), the New Hampshire Department of Energy (the Department), Town of Litchfield, Town of Londonderry, PEU customer Richard M. Husband, the Office of the Consumer Advocate (OCA), and Andrew D. Myers (together, Settling Parties), with the intent of establishing a modified ratemaking mechanism as requested in PEU's petition for modification, and resolving all other outstanding issues in this proceeding, as discussed below. The proposed ratemaking modifications include those that have been previously approved by the New Hampshire Public Utilities Commission (Commission) for PEU's affiliates, Pennichuck Water Works, Inc. (PWW)<sup>1</sup> and Pittsfield Aqueduct Company, Inc. (PAC)<sup>2</sup>. The modifications are intended to ensure that PEU has sufficient earnings between general rate proceedings to cover its debt obligations and operating expenses.

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<sup>1</sup> *Pennichuck Water Works, Inc.*, Docket DW 19-084, Order Nos. 26,383 (July 24, 2020) and 26,425 (November 24, 2020).

<sup>2</sup> *Pittsfield Aqueduct Company, Inc.*, Docket DW 20-153, Order No. 26,544 (November 9, 2021).

## A. BACKGROUND AND PROCEDURAL HISTORY

1. PEU is a regulated public utility that provides water service to approximately 8,251 customers over a diverse geographic region that includes the towns of Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare, and Windham.

2. PEU was formed in 1997 following the Town of Hudson's acquisition, pursuant to RSA Chapter 38, of the portion of the franchise territory of Consumers New Hampshire Water Company (Consumers) located in Hudson. Because the Consumers franchise and water works extended beyond the municipal boundary of Hudson, the Commission approved a division of those remaining Consumers franchise territory and assets. Pennichuck Corporation was authorized to acquire the non-Hudson service territory and assets, except for the water supply wells in Litchfield and a main on Old Derry Road in Hudson. Pennichuck Corporation assigned the franchises to PEU, which was formed to hold the new franchises and operate them under an unconsolidated tariff.<sup>3</sup> For the mutual benefit of the Town of Hudson and Pennichuck Corporation, the Commission approved the sharing of two water storage tanks located in Hudson and other transmission mains. The Commission also approved a wholesale water supply agreement between the Town of Hudson and Pennichuck Corporation, which was also assigned to PEU. Additionally, PEU entered into agreements with Manchester Water Works and the Town of Derry for additional source of supply. PEU's affiliate, PWW, acquired a wholesale water supply agreement as part of Pennichuck Corporation's acquisition of the non-Hudson franchises from Consumers. See *Consumers New Hampshire Water Co.*, Docket No. DE 96-

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<sup>3</sup> The Commission eventually approved consolidated rates for PEU in *Pennichuck East Utilities, Inc.*, Docket DW 05-072, Order No. 24,591.

227, 82 NH PUC 814, Order No. 22,792 (1997); *see also Consumers New Hampshire Water Co.*, Docket No. DE 96-227, Order No. 22,880 (1998).

3. PEU is now wholly-owned by Pennichuck Corporation, which, in turn, is wholly-owned by the City of Nashua, (Nashua). Pennichuck Corporation also owns PEU's regulated affiliates (PWW and PAC), as well as two non-regulated subsidiaries (Pennichuck Water Service Company and The Southwood Corporation). Nashua acquired its ownership of Pennichuck Corporation in 2012, pursuant to the Commission's approval in *City of Nashua, et al.*, Docket No. DW 11-026, Order No. 25,292 (2011) pursuant to RSA Chapter 38.

4. Nashua's ownership of Pennichuck Corporation resulted in a "limitation on Nashua's ability to draw dividends or other distributions from Pennichuck Corporation" *Id.* at 45. Thus, the Corporation is no longer publicly traded and cannot obtain equity infusions via the sale of stock. Therefore, Pennichuck Corporation and its subsidiaries depend exclusively on debt to meet capital needs. Accordingly, the Commission also approved in Docket No. DW 11-026 a modified ratemaking structure for PWW, PEU, and PAC. The ratemaking structure also included a \$5,000,000 Rate Stabilization Fund (RSF), which was originally designed to provide assurance to creditors that the three regulated utilities would meet the repayment requirements relative to municipal revenue bonds issued to fund the acquisition. Order No. 25,292 at 30.

5. The rate structure approved by the Commission was further refined in each of the respective regulated utilities' first post-acquisition general rate proceedings: Docket Nos. DW 13-126 (PEU), DW 13-128 (PAC), and DW 13-130 (PWW). The Commission established, among other things, the value of equity-related items and determined how the return on equity would be calculated. *See* Order No. 25,693 (2014) (PWW); Order No. 25,695 (2014) (PAC); and Order No. 25,696 (2014) (PEU).

6. In order to satisfy new bank/lender coverage requirements associated with certain refinanced debt, and to attract new debt under favorable loan terms for ongoing capital needs, it was determined that the PWW and PEU ratemaking structures should be based exclusively on each company's respective cash flow needs so as to provide creditors further assurance of the companies' solvency and liquidity. Therefore, in Docket No. DW 16-806, PWW's subsequent general rate proceeding, and Docket No. DW 17-128, PEU's subsequent general rate proceeding, the Commission approved further modifications to the respective ratemaking structures of these utilities. Specifically, PWW's and PEU's ratemaking structures were modified so as to recover the aggregate of their respective: (1) cash flow needed to fund their portions of the repayment on the acquisition debt (City Bond Fixed Revenue Requirement (CBFRR)), (2) utility operating expenses (Operating Expense Revenue Requirement (OERR)), and (3) debt service obligations (Debt Service Revenue Requirement (DSRR)). Additionally, the Commission determined that the respective OERRs should consist of the following sub-components: (a) Material Operating Expense Revenue Requirement (MOERR); and (b) Non-material Operating Expense Revenue Requirement (NOERR).<sup>4</sup> The Commission also approved the following debt service revenue requirement (DSRR) sub-components: (a) Debt Service Revenue Requirement-1.0 (DSRR-1.0), and (b) Debt Service Revenue Requirement-0.1 (DSRR-0.1).<sup>5</sup>

7. In Docket Nos. DW 16-806 and DW 17-128 the Commission also approved additional rate stabilization funds for PWW and PEU relative to their respective allowed material operating expense and debt service revenue components: MOERRs (MOERR-RSF) and DSRR-1.0s (DSRR-1.0-RSF). The creation of these additional RSFs involved the bifurcation and

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<sup>4</sup> The MOERR consists of all of the operating expenses included in an Operating Expense Revenue Requirement (OERR) with the exception of those expenses specified as Non-Material Operating Expense Revenue Requirement items.

<sup>5</sup> The DSRR-0.1 is intended to provide a 10% over-cover for annual debt service obligations in order to satisfy debt lending requirements relative to debt service ratio covenants.

reallocation of the original \$5,000,000 funded target account balance (or, imprest value) of the CBFRR-RSF among PEU, PAC, and PWW, as well as further allocating those amounts to the newly created subaccount RSFs in each utility. *See* Order No. 26,070 (2017) (PWW) and Order No. 26,179 (2018) (PEU).

8. Finally, in these dockets, the Commission also approved a revenue requirement calculation for PWW and PEU which averaged data over five years so as to limit the influence of unusual or abnormal weather impacts on a test period revenue requirement.

9. These ratemaking modifications were specifically designed to provide: (1) rate stability<sup>6</sup>, (2) assurance to creditors of the utilities' ability to meet their respective cash obligations and debt repayment obligations<sup>7</sup>, (3) sufficient cash-flow coverage for ongoing and prudent operating needs<sup>8</sup>, and (4) an enhancement to PWW's credit rating<sup>9</sup>. All of these modifications were anticipated to increase and stabilize the regulated affiliates' abilities to access credit markets and obtain lower-cost debt financing.<sup>10</sup>

10. In Docket No. DW 19-084, the Commission approved further modifications to PWW's ratemaking structure. Specifically, the Commission approved a Material Operating Expense Factor (MOEF) for inclusion in PWW's MOERR. *See* Order No. 26,383 in DW19-084 and DW 20-055 (2020), approving a maximum revenue requirement, ratemaking mechanism modifications, and financing for PWW. The Commission also approved: (1) a modification to the calculation of the 5-year average for revenues; (2) the inclusion of Business Enterprise Tax payments in the revenue requirement; (3) a re-prioritization of the usage of available DSRR-0.1

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<sup>6</sup> *Pennichuck Water Works, Inc.*, Docket No. DW 19-084, Order No. 26,383 at 10 (July 24, 2020); *Pennichuck East Utility, Inc.*, Docket No. DW 17-128, Order No. 26,179 at 9 (October 4, 2018).

<sup>7</sup> Order No. 26,383 at 14 and 17; Order no. 26,179 at 14.

<sup>8</sup> Order No. 26,383 at 5 and 14; Order No. 26,179 at 14.

<sup>9</sup> Order No. 26,383 at 14; Order No. 26,179 at 4.

<sup>10</sup> Order No. 26,383 at 17; Order No. 26,179 at 15.



funds; (4) recovery of State Revolving Loan Fund and Drinking Water and Groundwater Trust Fund debt issuance costs; and (5) re-establishment of the imprest levels of PWW's RSF accounts and retention of a previously approved reconciliation mechanism for these funds. These components, as proposed relative to PEU's ratemaking structure, are described in more detail in a narrative and flow diagram attached to this Agreement as Attachment D.

11. On September 23, 2020, PEU filed with the Commission a Notice of Intent to File Rate Schedules. On September 25, 2020, the Commission acknowledged the rate case filing and opened the instant docket. On November 23, 2020, PEU made its full rate case submission and requested temporary rates. PEU also filed a petition for modification of its ratemaking structure to bring its revenue requirement in line with that approved for PWW in Docket No. DW 19-084.

12. PEU's rate filing was intended to increase its overall revenue requirement by 21.05%. However, because PEU had also conducted a Cost of Service Study (COSS) in this rate case, the proposed implementation of this revenue requirement increase among the various customer rate classes would have resulted in rate increases for some customers and rate decreases for others. The Company proposed December 24, 2020 as the effective date for new rates.

13. On December 17, 2020, the Commission issued Order No. 26,436 suspending PEU's proposed tariff schedules for eighteen months and scheduling a prehearing conference for January 27, 2021. This suspension authority was pursuant to RSA 378:6 and also pursuant to Exhibit D to Governor Sununu's Executive Order #29. The prehearing conference was duly noticed and held on January 27, 2021. On February 2, 2021, the then Staff of the Public Utilities Commission, filed a proposed procedural schedule that included multiple rounds of data requests, technical sessions, and hearing dates for temporary and permanent rates. On February 9, 2021, the Commission issued a secretarial letter approving that schedule.

14. On April 27, 2021, the Company filed a settlement agreement on temporary rates, which the Commission considered at a hearing held on May 10, 2021. On August 16, 2021, the Commission issued Order No. 26,508 approving an overall 14.03% increase in PEU's revenue requirement and customer rates based upon PEU's existing rate design effective December 24, 2020 on a service-rendered basis. This increase, net of PEU's existing Qualified Capital Project Adjustment Charge (QCPAC) of 2.98%, resulted in an effective 11.05% temporary rate increase. The Commission also approved reductions in the respective North Country Capital Recovery Surcharges (NCCRS) of PEU's Locke Lake, Birch Hill, and Sunrise Estates customers, as follows:

<u>Service Area</u>	<u>Previous</u>	<u>New</u>
Locke Lake (Barnstead)	\$12.81	\$12.58
Birch Hill (North Conway)	\$12.81	\$12.69
Sunrise Estates (Middleton)	\$10.74	\$10.36

See Order No. 26,508.

## **B. TERMS OF THIS SETTLEMENT AGREEMENT**

### **1. Reasons for Ratemaking Structure Modifications**

The Settling Parties agree that modifications to PEU's ratemaking structure are necessary and will improve PEU's ability to meet expenses as well as maintain adequate cash flow and liquidity. Given that Pennichuck Corporation and its regulated subsidiaries rely exclusively on debt financing, which is generally less expensive than equity financing, the Settling Parties agree that reliance on this form of financing is in the public interest and that it is appropriate to address the concerns of credit rating agencies and lenders about the ratemaking structures of the regulated subsidiaries and their abilities to meet their financial obligations. The Settling Parties acknowledge that the previously approved modifications to the ratemaking structure of PWW in Docket Nos. DW 16-806 and DW 19-084, were made to address these concerns and thereby to improve PWW's ability to access credit markets with enhanced credit ratings. Therefore, the Settling Parties agree that similar ratemaking modifications proposed by PEU in this docket, in combination with the initial ratemaking structure modifications previously approved for PEU in Docket No. DW 17-128, are appropriate and in the public interest.

### **2. Modifications to Structure of PEU's Revenue Requirement**

The Settling Parties agree to recommend the Commission approve the following modifications to the formulation of PEU's revenue requirement.

#### **a. Material Operating Expense Factor (MOEF)**

The Settling Parties agree to recommend that the Commission approve the establishment of a Material Operating Expense Factor (MOEF). The Settling Parties further recommend that the MOEF become a component of the revenue requirement structure used by PEU in the calculation of its permanent rates in this and subsequent rate proceedings.

The Settling Parties agree that the MOEF shall work in similar manner to the Debt Service Revenue Requirement-0.1 (DSRR-0.1) that provides a 10% over-cover for PEU's annual debt service obligations in order to satisfy debt lending requirements. The Settling Parties further agree that in similar fashion, the MOEF shall be a percentage factor applied to PEU's Material Operating Expense Revenue Requirement (MOERR) less Amortization Expense as established in each general rate proceeding. The result shall be included in the Operating Expense Revenue Requirement (OERR) component of PEU's overall revenue requirement. The MOEF shall be re-evaluated and revised, as necessary, in PEU's future general rate proceedings.

The Settling Parties agree that the purpose of the MOEF is to increase the MOERR portion of PEU's allowed revenues to enable adequate cash flow coverage for increases in material operating expenses that occur after the effective date of new permanent rates. The Settling Parties anticipate that in future rate proceedings, the MOEF will be re-established in conjunction with the MOERR-RSF.

The Settling Parties agree to recommend that the Commission approve a MOEF of 4.0% in the instant rate proceeding, while acknowledging that a 6.0% MOEF may ultimately be necessary to enable PEU to maintain the MOERR-RSF at the recommended imprest level of \$898,000 through the Company's next general rate proceeding. The Settling Parties agree that the Company shall borrow the anticipated funds necessary to make up the deficit between a 6.0% MOEF and the settled upon 4.0% MOEF through the financing recently approved by the Commission in Order No. 26,538 (October 29, 2021) in Docket No. DW 21-129. The financial model in support of the adequacy of the recommended 4.0% MOEF and the necessary cash borrowing for a 6.0% MOEF is appended to this Agreement as Attachment A (Exhibit DLW-1). Whether or not the MOEF should be retained at the 4.0% level or any other level will be determined as part of PEU's next rate case.

The Settling Parties recognize that the MOEF will increase the revenues of the Company for the purpose of shoring up its material operating expense reserve fund (MOERR-RSF) and facilitating the Company's ability to recover its operating expenses. However, ratepayers are protected from this additional revenue requirement, because the order approving the settlement agreement in Docket No. DW 11-026 places limitations on the dividends paid by Pennichuck Corporation to its sole shareholder. Order No. 25,292 at 45.

**b. Modification to the Calculation of the 5-Year Revenue Average**

As approved in Docket No. DW 17-128, PEU calculates its revenue requirement based on a trailing 5-year average for revenues. The Settling Parties agree to recommend the Commission determine that in rate proceedings where an "Atypical Year" is and would otherwise be included in the 5-year trailing revenue average, data from the next most recent preceding "Typical" year shall be substituted for the data from the Atypical Year. For purposes of this paragraph, an Atypical Year means a year in which water consumption either exceeds or falls short of the trailing 5-year average of water consumption by more than 15 percent without any adjustment for atypical consumption.

**c. Inclusion of Actual NHBET Cash Payments in Revenue Requirement**

The Settling Parties acknowledge that (1) recent changes in Federal tax laws result in a more rapid than anticipated exhaustion of available Federal Net Operating Loss (NOL) carry-forwards that PEU uses to offset current taxable income, (2) PEU may therefore be subject to actual cash costs related to Federal income taxes prior to its next fully promulgated rate proceeding, and (3) PEU must make New Hampshire Business Enterprise Tax (BET) payments regardless of the Company's NOL carryforward position for purposes of the New Hampshire Business Profits Tax (BPT) and available BET Credit carryforwards. The Company's pro forma test year in this proceeding included PEU's actual BET cash payment of \$23,882 but did not

include cash payments of either the BPT or Federal income taxes, as no payments were currently due on those corporate taxes due to existing Net Operating Loss carryforwards and NH BET Credits available to offset current tax liabilities requiring cash payment.

Therefore, the Settling Parties agree to recommend the Commission approve the inclusion of PEU's actual cash expenditures for the BET in the MOERR component of its overall revenue requirement. The Settling Parties further agree to defer consideration of the inclusion of any actual cash outlays associated with the BPT and Federal income taxes in PEU's revenue requirement until the Company's next rate proceeding.

**d. Re-Prioritization of Usage of Available DSRR-0.1 Funds**

Under the ratemaking method approved in Docket No. DW 17-128, revenues collected by PEU via the DSRR-0.1 component of its overall revenue requirement are deposited in a DSRR-0.1 account. The DSRR revenue requirement (comprised of the DSRR-1.0 and DSRR-0.1) is intended to replace "both the return on rate base as well as depreciation expense." Docket No. DW 17-128 Exh. 3 at 16. The DSRR-0.1 is equal to 10% of the pro forma debt service payments for the test year. *Id.* at 17. The established priority of uses of these DSRR-0.1 funds is to: 1) allow for the collection of revenues sufficient to satisfy the debt service coverage ratio requirements of PEU's debt financings and Pennichuck Corporation's covenant requirements for its working capital line of credit, which is used by Pennichuck Corporation and its subsidiaries as a "back stop" for short-term capital needs; and 2) allow PEU to collect revenues over-and-above its actual debt service in order to comply with cash flow coverage requirements which are typical for such financings, as well as to meet obligations on new debt incurred between rate filings. Further, the current priority use of funds from the DSRR-0.1 account at the end of a given fiscal year is, 1) fund capital expenditures incurred during the first months of the succeeding fiscal year leading up to an annual bonding or financing event in support of capital expenditures for that

succeeding year, and 2) pay for engineering studies or permitting costs associated with QCPAC projects.

Therefore, the Settling Parties agree to recommend the Commission determine that, effective January 1, 2022, the Company shall re-prioritize its usage of funds available in its DSRR-0.1 account in the following manner, by order of priority: (1) fund the cost of PEU's deferred assets (i.e. studies, engineering design work completed in advance of construction bids and construction, and other intangible assets<sup>11</sup>) that do not qualify for debt financing and, thus, for QCPAC recovery, 2) replenish PEU's RSF fund balances to their fully approved imprest values; and 3) fund PEU's capital improvements, as previously authorized in DW 17-128.

**e. Recovery of SRF and DWGTF Debt Issuance Costs**

Prior to the ratemaking modifications previously approved for PEU and proposed in this Agreement, the debt issuance costs incurred by PEU to obtain loans through such programs as the New Hampshire Drinking Water State Revolving Loan Fund (DWSRF) or Drinking Water and Groundwater Trust Fund (DWGTF) were recovered as part of its cost of debt via the annual amortization of these costs over the life of the loan. However, under PEU's proposed ratemaking structure, the amortization of debt acquisition expenses associated with DWSRF and DWGTF loans are no longer recoverable as they are not included in the OERR component of PEU's overall revenue requirement. Although, on average, these costs might be considered *de minimis* during a given year, such would represent an expense to the Company for which it has no cash coverage.

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<sup>11</sup>Intangible assets are assets that have historically been classified and approved for accounting treatment as Deferred Assets, with recovery in rates over a period of the benefit.

As a remedy to the cash coverage shortfall that PEU may experience relative to its debt acquisition costs incurred to procure DWSRF and DWGTF loans, the Settling Parties agree to recommend the Commission authorize PEU, commencing on January 1, 2022, to record such costs in its Outside Services Expense account to be recovered through the OERR revenue component of its overall revenue requirement. The Settling Parties acknowledge that pursuant to the ratemaking modifications approved in Docket No. DW 17-128, Outside Services Expense is classified as a Non-Material Operating Expense Revenue Requirement (NOERR) account. As such, there would be no cash over-cover for these expenses through PEU's proposed MOERR-RSF.

**f. Re-establishment of Imprest Levels of RSF Accounts  
Retention of Reconciliation Mechanism**

The Settling Parties agree to recommend that the Commission approve the re-establishment of the imprest values of the CBFRR-RSF, MOERR-RSF and DSRR-1.0-RSF at the respective levels provided for and approved in Docket No. DW 17-128. Specifically, the CBFRR-RSF at \$31,000; the MOERR-RSF at \$898,000; and the DSRR-1.0-RSF at \$51,000. For purposes of this rate proceeding, these funds shall be restored to the proposed imprest values on a one-time basis via a portion of the proceeds received from the financing recently approved by the Commission in Order No. 26,538 (October 29, 2021) in Docket No. DW 21-129. *See* Attachment A.

In Docket No. DW 11-026, the Commission created an RSF reconciliation mechanism that required PWW to maintain the target amount for the original \$5 million rate stabilization fund through adjustments, i.e. charges or credits, to PWW's revenue requirement in connection with its full rate proceedings. In Docket No. DW 16-806, the \$5,000,000 RSF was re-allocated among Pennichuck Corporation's regulated subsidiaries. PWW's share of the RSF was amended



to \$3,920,000. The remaining \$1,080,000 was allocated among PEU (\$980,000) and PAC (\$100,000).

PEU's \$980,000 was further allocated among three RSF accounts: (1) the City Bond Fixed Revenue Requirement Rate Stabilization Fund (CBRFF-RSF) - \$31,000; (2) the Material Operating Expense Revenue Requirement Rate Stabilization Fund (MOERR-RSF) - \$898,000; and (3) Debt Service Revenue Requirement-1.0 Rate Stabilization Fund (DSRR-1.0-RSF) - \$51,000. These RSF funds provide a "backstop" for the three revenue requirement components associated with the RSF Accounts and ensure that the Company can meet its fiscal obligations.

The Settling Parties agree and affirm the continuation of that RSF reconciliation mechanism for PEU, so that its target RSF balances are maintained via charge or credit adjustments to PEU's established revenue requirements. Further, the Settling Parties agree that the addition of the MOEF will not alter that reconciliation mechanism.

### **3. Revenue Requirement**

Based on a calculation including the above proposed modifications, the Settling Parties agree to a Revenue Requirement for PEU to be derived from base rates of \$10,130,530, exclusive of \$178,915 in NCCRS revenues and \$30,188 in Other Operating Revenues. This revenue requirement represents a 16.79% increase in PEU's pro forma test year revenues from water sales of \$8,674,186, or an increase of \$1,456,344. The calculation of the revenue requirement for PEU is contained in Attachment B, Summary, Column C to this Agreement. The Settling Parties also reaffirm their agreement with the modifications made to PEU's NCCRS as described in the Settlement Agreement on Temporary Rates and approved by the Commission in Order No. 26,508 (August 16, 2021). Those modifications reduce the annual revenue derived from the NCCRS from \$181,603 to \$178,915 (-1.48%).

The Settling Parties, with the exception of the Towns of Litchfield and Londonderry and Mr. Husband, agree to recommend that, based on the Department's recommendation in PEU's QCPAC proceeding, Docket No. DW 20-019 (Attachment C), the Commission find that PEU's 2019 capital projects are prudent, used, and useful and, as such, the debt service and operating expenses related to these assets should be included in the proposed revenue requirement for PEU. The Towns of Litchfield and Londonderry and Mr. Husband take no position on the prudence issue but do not object to the inclusion of the capital projects in PEU's revenue requirement. The Settling Parties agree that, as noted in the Department's recommendation, these capital projects have been fully examined and audited.

The Settling Parties agree that the Total Operating Revenues to be realized by PEU immediately following implementation of Permanent Rates in this proceeding shall be \$10,339,633 including Revenues from Base Rates of \$10,130,530, Other Operating Revenues of \$30,188, and NCCRS Revenues of \$178,915. (Attachment B, Summary, Column C, Lines 24-27).

The Settling Parties agree that this represents a reasonable compromise of all issues relating to the revenue requirement pending before the Commission for the purposes of permanent rates, including but not limited to debt service, pro forma adjustments, capital additions, and operating expenses. As the sums expressed above are the result of compromise and settlement, they are liquidations of all revenue requirement issues and do not constitute binding precedent regarding any particular principle or issue. The Settling Parties agree that the revenue requirement recommended to the Commission results in rates for PEU's customers that are just and reasonable.

#### **4. Impact of DW 21-129 Financing on Revenue Requirement**

The net reduction in PEU's revenue requirement as a result of the financing approved in Commission Order No. 26,538 (October 29, 2021) in DW 21-129 is \$168,697 and comprised of the following:

- 1) A reduction in Amortization Expense of \$212,455 as the result of the elimination of the annual amortized replenishment of the Company's RSF deficit of \$2,124,555 over a 10-year period proposed by PEU in its original rate filing. (See Attachment B, Summary, Line 4, Columns B and C.)
- 2) A reduction in the proposed MOEF of \$139,647 as the result of applying a 4.0% MOEF rather than the 6.0% MOEF proposed by PEU in its original rate filing. (See Attachment B, Summary, Line 11, Columns B and C.)
- 3) An increase in the Debt Service Revenue Requirement of \$183,405 as a result of the annual debt service associated with the approved financing in Docket No. DW 21-129. (The annual debt service of the financing based on borrowing \$2,546,632 at an interest rate of 4.25% is \$166,732. However, after application of the 10% Debt Service Coverage Factor to this amount, the result is \$183,405 addition to the DSRR.) (See Attachment B, Summary, Line 15, Columns B and C.)

**5. Proposed Tariffs Withdrawn**

In light of this Agreement, the Settling Parties further agree that the proposed permanent rate tariffs, submitted by the Company on November 23, 2020, with an effective date of December 24, 2020, and suspended for a period of 18 months by Order No. 26,436 (December 17, 2020) pursuant to the authority of Exhibit D to Executive Order #29 shall not take effect.

**6. Rate Design**

As part of the required contents of a full rate case under N.H. Code Admin. Rules Puc 1604, PEU filed a Cost of Service Study (COSS). The COSS recommendations are described on

the Report of Proposed Rate Changes, which is Schedule 9 located at Bates page 59 of PEU's rate filing (Hearing Exhibit 1).<sup>12</sup> The Settling Parties have considered the recommendations of the COSS and agree that it is important to strike a balance between providing a reasonable level of customer rate gradualism and full immediate implementation of the COSS's recommended rates. Therefore, the Settling Parties agree to recommend that the Commission approve the allocation of PEU's revenue requirement among its customer classes as follows:

Rate or Class of Service	Effect of Proposed Change	Average Number of Customers	Five Year Ave 2019 TY Proforma Rates <sup>1</sup>	Proposed Perm Rates <sup>6</sup>	Amount	% Increase
G-M <sup>4,5</sup>	Increase	7,927	7,395,303	8,931,198	1,535,894	20.77%
Private FP <sup>2</sup>	Increase	320	358,892	358,892	-	0.00%
FP - Hydrants <sup>8</sup>	Increase	4	852,013	769,098	(82,915)	-9.73%
Windham Public Hydrant <sup>3</sup>	Increase	357	38,577	39,640	1,063	2.76%
Raymond Public Hydrant <sup>3</sup>	Increase	248	6,139	7,638	1,499	24.42%
Lee Public Hydrant <sup>3</sup>	Increase	34	4,312	4,519	207	4.81%
Exeter Public Hydrant <sup>3</sup>	Increase	52	5,604	5,355	(249)	-4.44%
Birch Hill Public Hydrant <sup>3</sup>	Increase	216	11,103	10,799	(304)	-2.74%
Bow Public Hydrant <sup>3</sup>	Increase	26	2,240	2,552	312	13.94%
NC Capital Recovery <sup>7</sup>	No change	1,199	181,603	178,915	(2,688)	-1.48%
<b>TOTALS</b>		<b>8,251</b>	<b>8,855,787</b>	<b>10,308,607</b>	<b>\$1,452,820</b>	

Source: Puc 1604.08 schedules, Schedule 9, Report of Proposed Rate Changes.

## **7. Rate Impact on Average Residential Customers**

For illustration purposes, prior to the implementation of temporary rates in this proceeding, an average non-North Country single-family residential 5/8-inch metered customer using 6.50 hundred cubic feet (ccf) of water per month was charged \$71.59 per month, including the 2.98% QCPAC granted in DW 19-035. Under the Settling Parties proposal, this customer would be initially charged \$84.31 per month (not including a subsequent QCPAC). This represents an initial increase of \$12.72 per month, or \$152.64 on an annual basis.

<sup>12</sup> The COSS recommended the following changes in customer rates in order to recover PEU's revenue requirement: G-M (+23.37%); Private Fire (-4.11%); Public FP Hydrants (+16.04%); Windham Hydrants (+11.33%); Raymond Hydrants (+47.34%); Lee Hydrants (+38.27%); Exeter Hydrants (+26.69%); Birch Hill (+14.10%); and Bow Hydrants (+10.85%).

For an average North Country single-family residential 5/8-inch metered customer subject to the NCCRS and using an average of 3.45 ccf of water per month, the proposed rate increase will result in approximate initial billings (not including a subsequent QCPAC) as follows by North Country system:

	Previous Monthly Charge <sup>13</sup>	Proposed Monthly Charge	Monthly Increase
North Country – Locke Lake/Barnstead	\$60.81	\$67.92	\$7.11
North Country – Sunrise Estates/Middleton	\$58.74	\$65.70	\$6.96
North Country – Birch Hill/North Conway	\$60.81	\$68.03	\$7.22

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

The Settling Parties agree and recommend that the effective date for permanent rates shall be on a service-rendered basis effective December 24, 2020, pursuant to Commission Order No. 26,508 (August 16, 2021). The Settling Parties agree that PEU shall file, within fifteen (15) days of the Commission’s final order approving permanent rates, annotated tariff pages effectuating the approved permanent rates.

#### **9. Temporary-Permanent Rate Recoupment**

Pursuant to RSA 378:29, to reconcile the difference between temporary rates and permanent rates the Settling Parties agree to recommend the Commission authorize PEU to charge customers an amount equal to the difference between the revenues PEU would have collected had the agreed upon level of permanent rates been in effect for service rendered on and

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<sup>13</sup> Based on PEU’s tariffed rates in effect prior to implementation of temporary rates in this proceeding including a 2.98% QCPAC.

after December 24, 2020 through the issuance date of the Commission's final order approving permanent rates (Recoupment Period) and the actual revenues collected by PEU during that Recoupment Period.

Upon the issuance of the Commission's order approving permanent rates in this proceeding, PEU shall file, within thirty (30) days of that order, and for Commission review and approval, a calculation of the temporary-permanent rate recoupment and a recommendation on a surcharge to be applied to customer bills. PEU shall calculate the surcharges based on each customer's actual usage during the Recoupment Period. On or before the date that PEU bills its surcharge, PEU shall also reconcile the difference between temporary rates and permanent rates by refunding any temporary rates that a customer paid during the Recoupment Period that exceeded what the customer would have paid had the final permanent rates been in effect. The Settling Parties agree that each Settling Party shall have an opportunity to review PEU's proposal and provide recommendations to the Commission for its consideration prior to the issuance of an order approving such recoupment.

The resulting surcharge shall be reflected as a separate item on all customers' bills. Upon receipt of the Commission's order approving a temporary-permanent rate recoupment, PEU shall file, within fifteen (15) days of that order, a compliance tariff supplement including the approved surcharge relating to the total recoupment of the difference between the level of temporary rates and permanent rates, as well as the average monthly surcharge for each customer class based on customers' individual usage.

#### **10. Rate Case Expense Surcharge**

The Settling Parties agree that PEU may recover its reasonable rate case expenses for this proceeding. Such expenses may include, but are not limited to, legal and consultant expenses, incremental administrative expenses such as copying and delivery charges, and other expenses

allowed under N.H. Code Admin. Rules Part Puc 1900. PEU agrees to file its final rate case expense request, pursuant to Puc 1905.02, with supporting documentation, no later than thirty (30) days from the date of the Commission's approval of PEU's revenue requirement and resulting customer rates.

The Settling Parties agree that they shall have an opportunity to review the rate case expenses and provide recommendations to the Commission for its consideration prior to the issuance of an order approving such recovery.

The resulting surcharge shall be reflected as a separate item on all customers' bills. Upon receipt of a Commission order approving rate case expense recovery, PEU agrees to file, within fifteen (15) days of that order, a compliance tariff supplement including the approved surcharge relating to rate case expense recovery.

#### **11. Monthly, Semi-Annual, and Annual Reporting**

Commencing with the fiscal year beginning January 1, 2022, PEU shall file the following additional reports with the Commission and the Department:

##### **a. Monthly Reporting**

PEU shall submit monthly reports to the Commission and the Department regarding the status of its CBFRR-RSF, the DSRR-1.0-RSF, and the MOERR-RSF. These reports shall be filed concurrently with PEU's monthly statement of operations report to the Commission. Within forty-five (45) days after the last day of the month, PEU shall file (1) an Income Statement showing monthly and year-to-date activity, and (2) a Balance Sheet by month and to date including the GAAP basis cash balances of the CBFRR-RSF, MOERR-RSF, DSRR-1.0-RSF, and DSRR-0.1 accounts.

For the reports of December and January, PEU shall file the reports specified by March 31.

**b. Semi-Annual Reporting**

PEU shall file the following semi-annual reports with the Commission and the Department within forty-five (45) days after June 30 and within ninety (90) days after December 31:

- i. Detailed Debt Service Schedule** showing the actual principal and interest cash payments made by the Company on each of its outstanding debt issuances.
- ii. NHBET and NHBPT** actual cash payments made or refunds received.
- iii. Federal Income Tax** actual cash payments made or refunds received.
- iv. MOERR Variance Report:** a narrative for year-to-date amounts as of June 30 and December 31, substantiating and explaining the major items that comprise the difference between actual current year MOERR expenses versus the allowed MOERR expenses as authorized from the most recently completed permanent rate case. This report shall provide the basis and explanation for up to 80% of the MOERR expense differential, as it relates to the overall aggregate dollar difference.

**c. Annual Reporting**

In addition to the annual report filing required from PEU in accordance with N.H. Code Admin. Rules Puc 609.04 and 609.14, PEU shall file, concurrently with its annual report:

- i. Reconciliation of Net Income/Loss with Calculated Revenue Surplus/Deficit:** An annual reconciliation of PEU's actual Net Income/Loss as reported on Schedule F-2 of its Annual Report with its recognized Revenue Surplus/Deficit as calculated based on the ratemaking structure approved in the instant rate proceeding.
- ii. Reconciliation of Cash and Regulatory RSF Account Balances:** A reconciliation of the year-end cash balances of the CBFRR-RSF, MOERR-RSF, and DSRR-1.0-RSF accounts with the respective year-end regulatory balances of the CBFRR-RSF, MOERR-RSF, and DSRR-1.0-RSF. (Regulatory Balance is defined as that relating to the revenue and expenditure general ledger activity relative to the respective RSF accounts. This is not the same as the GAAP basis cash balances of the respective RSF accounts.)



## **12. Resolution of Repeat Audit Issues**

Following the Department Audit Staff's (Audit Staff) review of PEU's financial information relative to this rate proceeding, the Audit Staff made certain audit findings contained in its Final Audit Report dated April 9, 2021 (Audit Report), with which PEU expressed disagreement. To resolve these audit disputes between PEU and the Audit Staff, and for purposes of achieving administrative efficiency in future rate proceedings, the Settling Parties, except for the Towns of Litchfield and Londonderry and Mr. Husband,<sup>14</sup> have agreed to resolve the issues identified in the Audit Report as follows:

### **a. Audit Issue #1: Allocation of Supplemental Executive Retirement Plan Costs**

The Audit Staff included a finding in the Audit Report that the calculation of certain allocation determinants amongst the Pennichuck Corporation regulated and non-regulated entities included, as a component, Deferred Supplemental Executive Retirement Plan (SERP) costs.<sup>15</sup> The Audit Staff took the position that this supplemental expense along with any related deferrals and accruals should not be included as a component with respect to the determination of the respective affiliate allocations. PEU respectfully disagreed with the Audit Staff's conclusion, stating that this allocated expense is a contractual obligation of the Pennichuck affiliates that has been included in PEU's books and records, as an allocated expense in the Management Fee Allocation, since the Company's inception and, therefore, has consistently been a component of its overall allocable costs of compensation and benefits.

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<sup>14</sup> The Towns of Litchfield and Londonderry and Mr. Husband take no position on the audit issues and do not object to the other Settling Parties' resolution of these issues.

<sup>15</sup> The total SERP costs allocated amongst all Pennichuck Corporation affiliates during the test year was \$38,030. PEU's allocated share of these costs was \$7,876.

In light of the contractual obligation aspect of these costs as well as their inclusion on PEU's books and records since its inception as part of the overall costs of compensation and benefits of PEU, the Settling Parties, except for the Towns of Litchfield and Londonderry, agree that the inclusion of these costs as a component of the affiliate allocation calculations is just and reasonable.

**b. Audit Issue #6: ARRA Loan Forgiveness should be CIAC**

The Audit Staff included a finding in the Audit Report relative to its reporting of loan forgiveness pertaining to an American Recovery and Reinvestment Act (ARRA) loan and certain SRF loans. Specifically, the Audit Staff disagreed with PEU's recording of principal forgiveness totaling \$23,661 associated with these loans as 'Gains from Forgiveness of SRF Debt' rather than as Contributions in Aid of Construction (CIAC). In response, PEU argued that since the principal forgiveness provision associated with these loans are not necessarily guaranteed, the Company must account for such in the manner it does. Further, it is PEU's assertion that any current and previously forgiven principal amount cannot be classified as CIAC, if the benefit is revocable at a future point in time.

The Settling Parties, except for the Towns of Litchfield and Londonderry and Mr. Husband, agree that under PEU's current rate structure, neither the Company's 'Gain' account nor CIAC account have any impact on PEU's proposed revenue requirement. The Settling Parties, except for the Towns of Litchfield and Londonderry and Mr. Husband, therefore, agree to recommend the Commission find that PEU's current methodology for accounting for principal forgiveness on pertinent ARRA and SRF loans is acceptable.

**13. Frequency of Rate Cases**

In light of PEU's unique ratemaking structure that the Settling Parties have agreed to modify in this Settlement, and given that PEU is a debt-only financed entity that is acutely

sensitive to changes in cash flow relative to factors such as weather effects, as well as the effects of regulatory lag, the Settling Parties agree that PEU shall make rate case filings with the Commission on a regular basis. Specifically, the Settling Parties agree that PEU shall employ a three-year full rate case cycle, so that PEU files a general rate case, pursuant to RSA 378:3 and N.H. Code Admin. Rules Puc 1604, every three years.

This settlement term is not intended to remove or otherwise modify the settlement term approved in the Docket No. DW 17-128 settlement agreement, at section III, C, 3, c., requiring PWW to file a full rate case when the average of the amounts of cash held in the combined rate stabilization funds (CBFRR-RSF, DSRR-1.0-RSF, and MOERR-RSF) as of the last day of each month for the 13-month period ending December 31<sup>st</sup> of each year is greater than 150% of the combined target amount for such funds, as most recently established by the Commission. This settlement term is also not intended to limit PEU's ability to file for rate changes, pursuant to State law including RSA Chapter 378, in the event PEU believes circumstances warrant filing for emergency rates or other rate relief.

The Settling Parties agree to recommend that the Commission require PEU to file all future rate cases in accordance with the procedures and methods contained in this Agreement, unless otherwise modified by the Commission, and consistent with the computations set forth in the exhibits and attachments to this Agreement.

#### **14. Renewal of 1997 Water Supply Agreement**

As noted above, PEU was formed in conjunction with the sale of the Consumers New Hampshire Water Company assets. The Town of Hudson purchased assets lying within the Town of Hudson as well as wells and mains necessary to provide service to its residents. PEU ultimately purchased the remaining assets and franchises. Because the Town of Hudson purchased the water wells supplying the water system and associated supply agreements, it was

necessary for Pennichuck Corporation to enter into a separate agreement for source water to supply customers on the system PEU would ultimately own. This resulted in a Water Supply and Transmission Agreement between the Town of Hudson and Pennichuck Corporation, dated November 5, 1997 (the “1997 Agreement”).

Pursuant to section 12, Contract Term, of the 1997 Agreement, the initial term was for 20 years, followed by 5-year renewal periods. The 1997 Agreement provides that if a party to that agreement wishes to terminate it, notice must be given at least three years prior to the month and date on which the contract expires. Because the next renewal date is November 5, 2027, any notice of termination must be given by November 5, 2024.

As part of settlement of issues raised in this proceeding, PEU shall participate in joint discussions with the Town of Litchfield and Mr. Husband in advance of the November 5, 2024 notice deadline with the goal of determining if renewal of the 1997 Agreement benefits PEU and its customers. These discussions shall occur between November 5, 2023 and November 4, 2024. If discussions result in a proposed revised water supply agreement, PEU shall prepare a filing for the Commission’s review and approval at that time. PEU shall also send out a timely notice of termination as well as prepare the Commission filing. This Agreement does not waive or preclude any rights or request(s) for relief otherwise available respecting the 1997 Agreement, including the exercise of the same prior to the discussions or any resulting action.

**C. CONDITIONS**

1. The Settling Parties expressly condition their support of this Agreement upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept the provisions in their entirety, without change or condition, any party hereto, at its sole option exercised within 15 days of such Commission order, may withdraw from this Agreement, in which event it shall be deemed to be null and void and without effect and shall not be relied upon by any Settling Party to this proceeding or by the Commission for any purpose.

2. The Commission's acceptance of this Agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the adjustments and provisions set forth herein in their totality are just and reasonable and consistent with the public interest. In its order addressing the approvals recommended in this Agreement, the Commission should expressly find that the approvals recommended herein are unique to this case and should not be viewed as having precedential impact with respect to any particular principle or issue in this proceeding for any other case or situation for reasons.

3. The discussions that produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

4. This Agreement may be executed in counterparts.

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

Date: December 9, 2021

  
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By its Attorney, Marcia A. Brown

New Hampshire Department of  
Energy

Dated: December 9, 2021

**/s/Suzanne G. Amidon**

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By its Attorney, Suzanne G. Amidon

Dated: December 9, 2021

Office of the Consumer Advocate

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By its Attorney, Donald M. Kreis

Dated: December 9, 2021

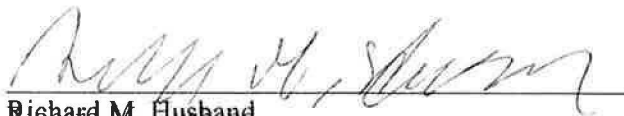
Town of Litchfield Town of  
Londonderry

  
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By its Attorney, Ryan P. Lirette

Dated: December 9, 2021

Richard M. Husband

  
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Richard M. Husband

Andrew D. Myers

Dated: December 9, 2021

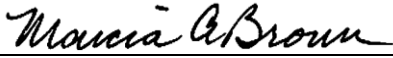
Pennichuck East  
Utility, Inc.

\_\_\_\_\_  
Andrew D. Myers

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

**Pennichuck East Utility, Inc.**

Date: December 9, 2021

  
By its Attorney, Marcia A. Brown

**New Hampshire Department of Energy**

Dated: December 9, 2021

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By its Attorney, Suzanne G. Amidon

**Office of the Consumer Advocate**

Dated: December 9, 2021

  
By its Attorney, Donald M. Kreis

**Town of Litchfield  
Town of Londonderry**

Dated: December 9, 2021

\_\_\_\_\_  
By its Attorney, Ryan P. Lirette

**Richard M. Husband**

Dated: December 9, 2021

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Richard M. Husband

**Andrew D. Myers**

Dated: December 9, 2021

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Andrew D. Myers