

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 13-128

PITTSFIELD AQUEDUCT COMPANY, INC.

Notice of Intent to File Rate Schedule

Order Approving Permanent Rates and Settlement Agreement

ORDER NO. 25,695

July 22, 2014

APPEARANCES: Devine, Millimet & Branch, P.A., by Thomas B. Getz, Esq., for Pittsfield Aqueduct Company, Inc.; Office of the Consumer Advocate on behalf of residential ratepayers, by Rorie E.P. Hollenberg, Esq.; and Marcia A. Brown, Esq. for the Staff of the Public Utilities Commission.

In this order, the Commission approves an 8.95% permanent rate increase for PAC. The Commission also approves clarifications pertaining to Order No. 25,292 and the City of Nashua's acquisition of PWW's parent, Pennichuck Corporation.

I. PROCEDURAL HISTORY

Pittsfield Aqueduct Company, Inc. (PAC), provides water service to approximately 626 customers in the Town of Pittsfield. PAC is a subsidiary of Pennichuck Corporation, which is wholly owned by the City of Nashua. In Docket No. DW 11-026 (the Acquisition Docket), the Commission approved the City of Nashua's acquisition of Pennichuck Corporation and required PAC and its affiliates, Pennichuck Water Works, Inc. (PWW), and Pennichuck East Utility, Inc. (PEU), to simultaneously file full rate cases no later than June 1, 2013. *See generally City of Nashua*, Order No. 25,292 (Nov. 23, 2011).

On April 29, 2013, PAC filed a notice of intent to increase customer rates by \$63,909, or 9.34%. PWW and PEU also filed rate cases, and the Commission separately docketed those

filings. In Order No. 25,599 (Nov. 22, 2013), the Commission approved a 7% temporary rate increase for PAC.

On May 15, 2014, Commission Staff (Staff) filed a Settlement Agreement on permanent rates. PAC, the Office of the Consumer Advocate (OCA), and Staff (together, Settling Parties) agreed to an 8.95% rate increase. The Settling Parties agreed to other terms, including interpretations of provisions in the settlement agreement from the Acquisition Docket. Those terms are more fully described below.

The Commission held a hearing on May 20, 2014. During the hearing, the Commission took administrative notice of testimony in Docket No. DW 13-126, PEU's rate case. N.H. Code Admin. Rules Puc 203.27 and RSA 541-A:33, V. Specifically, the Commission took administrative notice of testimony on Sections C, D, E, and F of the settlement agreement in Docket No. 13-126. Section C pertained to *Clarification of Certain Ambiguities Contained within the DW 11-026 Settlement Agreement*. Section D pertained to *Treatment of Non-Revenue Producing Assets*. Section E pertained to *Eminent Domain Costs*. Section F pertained to the *Municipal Acquisition Regulatory Asset (MARA)*. The PEU rate case involved the same parties and the same issues concerning interpretations of the settlement in the Acquisition Docket.

II. SUMMARY OF SETTLEMENT AGREEMENT

A. Revenue Requirement, Permanent Rates, Rate Design, Effective Date

The Settling Parties recommend that the Commission approve an increase to PAC's annual revenue requirement of \$61,217, or 8.95%, for a total of \$745,186 based on a 2012 test year. This revenue requirement is based on a rate base of \$799,765 and an overall rate of return of 6.14%. The overall rate of return is based on an overall cost of debt of 6.15%, a cost of equity of 5.90%, and a capital structure of 96% debt and 4% equity. The Settling Parties agree that the

plant in service in rate base is used and useful in the provision of service to PAC's customers. The Settling Parties agree to an effective date of July 1, 2013. The Settling Parties propose no changes in rate design and recommend that the 8.95% be applied evenly to all customer rate groups.

B. Clarification of Issues from Acquisition Docket No. DW 11-026

The Settling Parties recommend that in future rate proceedings the value of the "Equity-Related Items," as described in the settlement agreement in Docket No. DW 11-026 at Section III.B.1.c., include the value of common stock at the time of the merger, which for PAC was \$100.

The Settling Parties recommend that in future rate proceedings PAC's return on equity, be equal to the average of the most recent 12 months of thirty-year United States Treasury Bond interest rates available at the time of the filing of the rate case, plus 3.0%.

C. Treatment of Non-Revenue Producing Assets

The Settling Parties agree that in future rate cases, non-revenue producing assets should be recognized in rate base at year-end value when:

1. The underlying project that establishes the acquired or installed asset(s) is in response to a regulatory mandate, such as a state agency's regulations or enforcement action or a municipality's construction projects.

2. The underlying purpose of the project is not to increase PAC's revenues through either increasing its customer base or service capacity. Any increase in annual revenues resulting from the project should be both incidental and negligible. For PAC, the Settling Parties define incidental and negligible annual revenues as those which result in an increase in annual revenues of less than 1% of a project's expended cost during the test year. When incidental revenues do

result from a non-revenue producing asset(s), such as the increased revenue under a municipal fire protection tariff after a main has been upsized, these increased revenues should be reflected in test year revenues to the benefit of customers.

3. The expended cost during the test year on the project must be significant, i.e., the resulting asset(s) placed into service has a book value greater than 1.5 times the reportable amount for filing a Form E-22 set forth in Puc 609.12 (d). For PAC, the expended cost must exceed \$45,000 (\$30,000 x 1.5).

4. The asset(s) are used and useful by the end of the test year.

If the asset(s) in question meet the above criteria, the Settling Parties recommend that the value of the assets in rate base be recognized at year-end value rather than the 13-month average value. The Settling Parties recommend that this treatment extend to the Plant in Service, Accumulated Depreciation, Contributions in Aid of Construction (CIAC), and to any Accumulated Amortization of the CIAC.

D. Eminent Domain Costs

The Commission previously authorized the City of Nashua to recover from PAC and its affiliates, PWW and PEU, up to \$5 million in costs incurred from January 2002 through August 2009 in the eminent domain proceeding. *See, City of Nashua*, Order No. 25,292 (Nov. 23, 2011). On October 1, 2013, the Commission's Audit Staff recommended that the Commission allow the City of Nashua to recover \$4,458,232. Exh. 3 at 7. Audit Staff recommended disallowance of \$490,090. *Id.*

E. Municipal Acquisition Regulatory Asset (MARA)

This regulatory asset was authorized in Order No. 25,292. The Commission ordered that the MARA be subject to an audit at PWW, PEU, and PAC's next full rate cases. On

November 19, 2013, the Commission's Audit Staff issued its report and found no exceptions concerning the MARA accounts of PWW, PEU, and PAC.

F. Water Infrastructure and Conservation Adjustment (WICA)

The Settling Parties recommend that the Commission allow PAC's WICA pilot to expire.

III. COMMISSION ANALYSIS

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. Notwithstanding a settlement among the parties, the Commission must independently determine whether the settlement results comport with applicable standards. N.H. Code Admin. Rules Puc 203.20(b) requires the Commission to determine whether the settlement results are just and reasonable and serve the public interest. RSA 378:7 authorizes the Commission to fix rates after a hearing upon determining that the rates, fares, and charges are just and reasonable. In determining whether rates are just and reasonable, the Commission "must balance consumers' interest in paying no higher rates than are required with the investors' interest in obtaining a reasonable return on their investment." *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). Applying those standards, the Commission approves the Settlement Agreement.

A. Revenue Requirement, Rates, and Effective Date

The Settling Parties propose an overall revenue requirement of \$745,186, based on a test year ending December 31, 2012. Exhibit 4 at 2. The Commission finds this revenue requirement to be reasonable and approves it. As noted above, the Commission required PAC along with its affiliates, PWW and PEU, to file full rate cases no later than June 1, 2013. In the Acquisition Docket, the City of Nashua anticipated that savings would inure to the benefit of

PAC and its affiliates after the City of Nashua acquired PAC's parent. The requirement that PAC and its affiliates file rate cases was an effort to pass those savings on to customers. The rate case was also to ensure that rates were adjusted promptly to reflect the actual borrowing costs of the City Acquisition Bonds in the new ratemaking structure approved in the Acquisition Docket. The savings have been incorporated within the proposed revenue requirement in this proceeding, and the proposed rate increase is lower than it would otherwise have been under the prior ownership.

Along with approving PAC's revenue requirement, the Commission approves an overall rate of return of 6.14% for PAC. This rate of return includes an overall cost of debt of 6.15% and a cost of equity of 5.90%. PAC's capital structure is 96% debt and 4% equity. The Commission finds this capital structure to be reasonable in light of the unique ratemaking mechanisms in place for PAC and its affiliates. The capital structure and rate mechanisms were approved in the Acquisition Docket and take into account the municipal stock ownership of PAC's parent Pennichuck Corporation. The Commission also finds the resulting overall rate of return to be reasonable.

The revenue requirement assumes a rate base of \$799,765. The Settling Parties testified that the plant in service in PAC's rate base is used and useful in the provision of service to PAC's customers. Hearing Transcript of May 20, 2014 (5/20/14 Tr.), at 16. Accordingly, the Commission finds that the plant is used and useful. RSA 378:28. The Settling Parties agree to an effective date of July 1, 2013. The Commission previously found this effective date reasonable and approved it as the effective date for temporary rates. *See*, Order No. 25,599 (Nov. 22, 2013). The Settling Parties propose no changes in rate design and recommend that the 8.95% revenue increase be applied evenly to all customer rate groups. Exh. 3 at 40. The

Commission finds this approach to be reasonable and approves the rates as just and reasonable pursuant to RSA 378:7.

As stated earlier, in November 2013, the Commission approved a 7% temporary rate increase for PAC. Pursuant to RSA 378:29, if the permanent rates approved by the Commission are higher than temporary rates, then the utility is entitled to recover the difference. Here, PAC's permanent rates are slightly higher than its temporary rates. At hearing, PAC testified that it would seek to recover the difference between temporary and permanent rates through a surcharge collected from customers over twelve months. 5/20/14 Tr. at 35. It agreed to make a reconciliation filing within 30 days of the date of the final order on permanent rates. The Commission will await PAC's proposal before making a determination on the amount and duration of any recovery surcharge.

B. Clarifications to Settlement Agreement in Docket No. DW 11-026

The Settling Parties recommend two clarifications to the settlement agreement approved in the Acquisition Docket. First, the Settling Parties recommend that in future rate proceedings the value of the "Equity-Related Items" include the value of common stock at the time the City of Nashua closed on its acquisition of Pennichuck Corporation, which for PAC, was \$100. Exh. 3 at 4. The Settling Parties also recommend that this amount be removed from the computation of the revenue deficiency. *Id.*; 5/20/14 Tr. in Docket No. DW 13-126 at 43–44. Second, the Settling Parties recommend that in future rate proceedings PAC's return on equity be equal to the average of the most recent 12-months of thirty-year United States Treasury Bond interest rates available at the time of the filing of the rate case, plus 3.0%. The Commission accepts these clarifications and approves them. These provisions were associated with the establishment of a unique ratemaking structure. The Commission reserved this rate case and

PAC's affiliates' rate cases to test these mechanisms and make modifications, if necessary. The Commission finds it reasonable to set the value of PAC's Equity-Related Items at the value of its common stock at the time the City of Nashua closed on the acquisition.

C. Treatment of Non-Revenue Producing Assets

The Settling Parties recommend that non-revenue producing assets be recognized in rate base at year-end value when they meet the following criteria: (1) the project that creates the asset is in response to a regulatory mandate, (2) the project is not intended to increase revenues, (3) the costs of the project are significant, and (4) the assets of the project are used and useful by the end of the test year. Exh. 3 at 5-6. The Settling Parties also recommend that the year-end valuation extend to Plant in Service, Accumulated Depreciation, CIAC, and any Accumulated Amortization of the CIAC. *Id.* at 6. The Commission finds these criteria to be reasonable and approves them. Those criteria are not new. The Commission has approved a year-end valuation of assets in rate base in other rate cases when they meet similar criteria. *See Lakes Region Water Company, Inc.*, Order No. 25,391 (July 13, 2012). Accordingly, the Commission approves this term of the Settlement Agreement.

D. Eminent Domain Costs

As stated above, the Commission authorized the City of Nashua to recover from PAC and its affiliates, PWW and PEU, up to \$5 million in costs associated with the City's eminent domain proceeding in Docket No. DW 04-048. *See City of Nashua*, Order No. 25,292 (Nov. 23, 2011). The Settling Parties recommend that the Commission authorize the City of Nashua to recover \$4,458,232. Exh. 3 at 7. This amount is not included in the establishment of customer rates, but can be recovered through earnings and profits of PAC and its affiliates. Only costs incurred by the City of Nashua from January 2002 through August 2009 qualify for recovery. *Id.* The

Commission must therefore determine whether: the costs submitted by the City of Nashua relate to Docket No. DW 04-048, are within the time frame specified, and are reasonable.

The Commission's Audit Staff reviewed the City of Nashua's documentation and recommended that the Commission allow the City of Nashua to recover \$4,458,232 in eminent domain costs. 5/20/14 Tr. at 6. The Audit Staff recommended that the Commission disallow \$490,090. *Id.* The disallowed amounts pertain to attorney fees and report expenses relating to Docket No. DW 02-126, mathematical errors, and expenses that exceeded contract caps. Exh. 3 at 23-31. The Settling Parties, including PAC, recommend that the Commission accept this recovery amount. The Commission finds that the \$4,458,232 is reasonable, that the costs relate to Docket No. DW 04-048, and that the costs were incurred within the requisite time frame. The Commission approves recovery of \$4,458,232 from PWW, PEU, and PAC.

E. MARA

The MARA is another unique accounting mechanism authorized by the Commission in the Acquisition Docket. *See City of Nashua*, Order No. 25,292 (Nov. 23, 2011). As PAC testified, the MARA entry on PAC's books is PAC's *pro rata* share of the acquisition premium resulting from the City of Nashua's acquisition of Pennichuck Corporation. 5/20/14 Tr. in Docket No. DW 13-126 at 49. Per Order No. 25,292, the Commission's Audit Staff reviewed the components of the MARA. Audit Staff found no exceptions. Exh. 3 at 32-39. The Commission accepts Audit Staff's report and finds that the City of Nashua and PAC have complied with the terms of Order No. 25,292.

F. WICA

The Settling Parties recommend that the Commission allow PAC's WICA pilot to expire effective as of the date of the final order in this proceeding. The Commission first approved the pilot in Order No. 25,229. *See, Pittsfield Aqueduct Company, Inc.*, Order No. 25,229 (June 8, 2011). The WICA was to continue on a pilot basis unless modified or discontinued by the Commission, and was to terminate automatically at the time of the final order in PAC's next general rate case. *Id.* The intent of the pilot was to increase cash flow to PAC, increase reliability through consistent replacement of aging infrastructure, mitigate rate shock to customers by permitting recovery in between rate cases, and require PAC to work closely with the municipality's construction schedule to reduce costs such as paving. *Id.* at 13-14. PAC testified that it looked at its plans for capital improvements and realized that the WICA was not going to accomplish those goals. 5/20/14 Tr. at 23. The Commission notes that PAC's WICA pilot program was approved for the completion of capital improvements every other year. Given the small size of PAC's system and the dollar level of capital improvements in it, along with the cost of the associated regulatory filings, a WICA program may not make sense for a small utility such as PAC. Accordingly, the Commission will let the WICA pilot automatically terminate with this order.

G. Rate Case Expenses

Pursuant to the Settlement Agreement, PAC agrees to file documentation of its rate case expenses no later than thirty days from the date of the final order in this proceeding. The Commission's administrative rules authorize utilities to file for rate case expenses. *See* N.H. Code Admin. Rules Chapter Puc 1900. A utility seeking recovery of rate case expenses shall file its request for recovery along with all supporting documentation no later than thirty days after

the Commission's final order. N.H. Code Admin. Rules Puc 1905.02. Accordingly, the Commission will allow PAC thirty days from the date of this order to file its rate case documentation and will defer ruling on the recovery of rate case expenses until after PAC makes its filing.

H. Conclusion

The Commission approves the Settlement Agreement and incorporates its terms and conditions into this order. The Commission finds that the revenue requirement proposed by the Settling Parties is reasonable and that the resulting rates are just and reasonable. The Commission finds that the terms of the Settlement Agreement represent an appropriate balancing of ratepayer interests and the interests of PAC's investor under current economic circumstances, are just and reasonable, and serve the public interest.

To facilitate the efficient administration of the Settlement Agreement, the Commission authorizes PAC, Staff, and the OCA to modify the Settlement Agreement so long as any modification is mutually agreed upon and non-substantive, such as a clerical or ministerial amendment that involves timing or scheduling. The Settling Parties shall file any such modification with the Commission and provide a copy to all parties on the service list. The Commission will approve the requested modification, if appropriate, via a secretarial letter but will not require notice or hearing.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the Settlement Agreement are hereby adopted and APPROVED as discussed herein; and it is

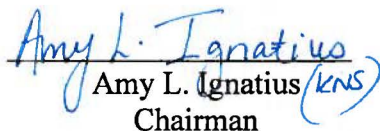
FURTHER ORDERED, that PAC is authorized to collect from customers permanent rates, as discussed herein, effective for service rendered on or after July 1, 2013; and it is

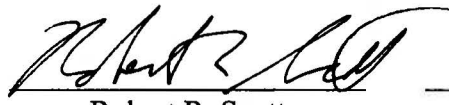
FURTHER ORDERED, that PAC shall file with the Commission its calculation and reconciliation of temporary and permanent rates no later than thirty calendar days from the date of this order; and it is

FURTHER ORDERED, that PAC shall file with the Commission a final accounting of its rate case expenses no later than thirty calendar days from the date of this order; and it is

FURTHER ORDERED, that PAC file with the Commission tariff pages in compliance with this order within fourteen calendar days from the date of this order.

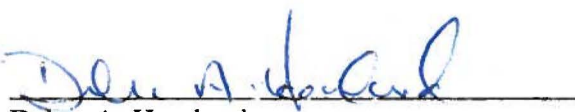
By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 2014.


Amy L. Ignatius
Chairman


Robert R. Scott
Commissioner


Martin P. Honigberg
Commissioner

Attested by:


Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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