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February 14, 2022

Daniel C. Goldner, Chair
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301-2429

Re: Docket No. DW 21-137 (Pennichuck Water Works, Inc.)
Petition for Approved Modification of Accounting Treatment of Leases
Department of Energy Position Statement

Dear Chairman Goldner:

On January 20, 2022, the New Hampshire Public Utilities Commission (Commission), issued an Order denying Pennichuck Water Works, Inc.'s (PWW or the Company) motion to withdraw its petition requesting Commission approval to account for the Company's lease on a "cash requirement basis" rather than the accrual methodology required by the Financial Accounting Standards Board (FASB) to be applied pursuant to standard ASC 840 and updated FASB standard ASC 842." *Pennichuck Water Works, Inc.*, Order No. 26,567 at 1 (January 20, 2022). The Commission also directed PWW to file an analysis of the applicability of FASB 840 and 842 to PWW's accounting practices and the requirements of RSA 374:8 and N.H. Admin. R., Puc 607. *Id.* at 2. The Commission further ordered PWW to specifically address the applicability of certain FASB updates. *Id.* The Company responded on February 4, 2021.

The Commission further requested that the Department of Energy (Department) file a recommendation also on the "applicability of FASB 840 and 842, as revised, to the accounting practices and applicable requirements under New Hampshire law with respect to PWW." *Id.* at 2-3. Please accept this letter as the Department's position statement on this matter.

Applicability of ASC 840 and 842 to PWW

The short answer to the question posed by the Commission regarding the applicability of ASC 840 and 842 to PWW is that ASC 840 applies, but its update, ASC 842, does not. Thus, any relief requested by PWW from the requirements of ASC 842 is unnecessary. That is because ASC 842 is not applicable to water utilities as it contravenes the Commission published Uniform System of Accounts for Water Utilities, the accounting system prescribed to all regulated water utilities in New Hampshire.¹

¹ See <https://www.puc.nh.gov/Water-Sewer/Chart%20of%20Accounts/USOA-WATER.pdf>.

The Commission has authority to impose an accounting method upon the utilities it regulates. RSA 374:8, I (the Commission “may, whenever it deems it advisable, establish a system of accounts and records to be used by public utilities for their business within this state, may classify them and prescribe a system of accounts for each class, and may prescribe a manner in which said accounts shall be kept”); *see also* RSA 374:13 (mandating that each public utility shall keep those records and accounts accurately and honestly in the manner prescribed) and RSA 374:14 (prohibition against false entries, destruction, or mutilation into and of the accounts or records of any public utility).

The Commission, furthermore, has the authority to adopt rules pursuant to RSA 541-A, including standards and procedures for safe and reliable utility service. RSA 365:8, I(g). Congruous to this authority, the Commission adopted, among other rules applying to water utilities, Puc 607.07(a) which states, “[e]ach utility shall maintain its accounts and records in conformity with the "Uniform Classification of Accounts for Water Utilities" established and issued by the commission as a uniform system of accounts pursuant to RSA 374:8.” The uniform system of accounts, which includes the Uniform Classification of Accounts for Water Utilities, are exempt from the rulemaking requirements of RSA 541-A. RSA 374:8, II and RSA 541-A:21, I(q). Thus, the Uniform Classification of Accounts for Water Utilities remains in effect until the Commission “shall prescribe, amend, rescind, or otherwise affect” the Uniform Classification of Accounts for Water Utilities for the regulated water utilities. *Uniform System of Accounts*, Order No. 21,310 (August 8, 1994). The Commission last modified the Uniform Classification of Accounts for Water Utilities in June 2015.

In the instant matter, PWW requested approval to modify its accounting method pertaining to the treatment of leases, specifically relief from the requirements of ASC 842. In order for the Commission to determine if approval is necessary, the Commission must examine the requirements of the Uniform Classification of Accounts for Water Utilities which dictates the manner in which regulated water utilities in New Hampshire must maintain its accounts and records. Section 1(e)(5) pertains to the accounting for capital and operating leases. Section 1(e)(5)(B) states:

Leases shall be accounted for by the utility as described in Statement of Financial Accounting Standards Nos. 13 (as amended) and 71 published by the [FASB]; however, the Commission may elect to approve the entries made to the utility’s accounts in recording the effect of utility leases.

Per that section, water utilities must account for its leases pursuant to Statement of Financial Accounting Standard (SFAS) Nos. 13 (as amended) and 71.

FASB recodified the generally accepted accounting principles, which includes SFAS Nos. 13 (as amended) and 71, effective July 1, 2009.² SFAS No. 13 (as amended) became ASC 840,³ and SFAS No. 71 became ASC 980.⁴ Thus, while the Uniform Classification of Accounts for Water Utilities does not contain reference to ASC 840 and 980, water utilities have adhered to those exact same accounting principles contained therein as their recodification did not change anything other than each respective title. The substance of the accounting principles remained unchanged. The same, however, cannot be said about ASC 842.

As ASC 842 supersedes ASC 840, it is considered the current method for leases under United States Generally Accepted Accounting Principles (GAAP).⁵ ASC 842 also drastically modifies the accounting requirements for leases, including the requirement to account for all leases on a utility's balance sheet.⁶

Section 1(b) of the Uniform Classification of Accounts for Water Utilities states that the utility's "financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by this system of accounts." If that section stopped short after "generally accepted accounting principles," the Department would argue that, as ASC 842 is the current GAAP method, it would apply. Section 1(b), however, further states "to the extent permitted by this system of accounts." That provision prohibits the application of ASC 842 as its requirements are starkly different from that of ASC 840 (SFAS No. 13 (as amended)). Thus, any difference in accounting practices introduced by ASC 842 from that of ASC 840 (SFAS No. 13 (as amended)) cannot be applied to the New Hampshire regulated water utility until the Uniform Classification of Accounts for Water Utilities is amended by the Commission to include the provisions of ASC 842.

As stated earlier, the Uniform Classification of Accounts for Water Utilities is not subject to rulemaking and remains in effect until altered by the Commission. Order No. 21,310. For ASC 842 to apply to a utility, the Commission would need to modify the current version of the Uniform Classification of Accounts for Water Utilities. As no such

² See Attachment A for explanation for recodification. Document found at: https://www.fasb.org/cs/ContentServer?c=Document_C&cid=1175801986033&d=&pagename=FASB%2FDocument_C%2FDocumentPage.

³ See Attachment B, Page 2 ("To recap: SFAS 13 was the original US GAAP pronouncement that was amended and re-interpreted numerous times. ASC 840 was the Codification of SFAS 13 (as amended) in 2009." Document found at: https://www.theibfr.com/download/rbfs/2020_rbfs/rbfs_v11n1_2020/RBFS-V11N1-2020-3.pdf

⁴ See Attachment C, Page 1 ("[t]he primary source of industry specific accounting guidance for regulated operations was outlined in SFAS 71...currently codified into ASC 980"). Document found at: <https://www.mossadams.com/mossadams/media/Documents/Publications/Utilities/May-2014-Regulatory-accounting-can-serve-as-a-tool-for-rate-setting.pdf>.

⁵ See Attachment B, Page 2 ("ASC 842 is the new/current, method of accounting for leases under US GAAP. It supersedes the SFAS 13/ASC840.").

⁶ See Attachment D for a comparison of ASC 840 and ASC 842. Document found at: https://viewpoint.pwc.com/dt/us/en/pwc/accounting_guides/leases/leases_4_US/chapter_1_introducti_2_US/13_comparison_of_asc_US.html#:~:text=Under%20ASC%20840%2C%20and%20is,of%20the%20la nd%20and%20building,&text=Under%20ASC%20842%2C%20the%20determination,done%20at%20the %20inception%20date.

modification has occurred, PWW is not subject to the accounting requirements of ASC 842 and thus does not require an order from the Commission granting such specific relief.

A Modification of the Current Accounting Principles Contained in the Uniform Classification of Accounts for Water Utilities, However, is Still Required

In both its petition, amended petition, and supplemental information filed, PWW requested that the Company be allowed to account for its recent lease, located at 25 Walnut Street in Nashua, on a “cash requirement basis” instead of the straight-line method which is required by ASC 842.⁷ As a preliminary matter, the Department would like to make clear that it has no objection to the Company’s reporting of the lease on a “cash requirement basis.” The Department, however, maintains that the Commission would need to grant a modification to the Uniform Classification of Accounts for Water Utilities for PWW for it to report its lease by that accounting method.

The Company argued that, among other things, the straight-line method could result in an initial over-reporting and, ultimately, under-reporting of actual cash paid for its rent. Pennichuck Water Works, Inc., Supplemental Information to the Amended Petition for Approved Modification of Accounting Treatment of Leases, February 4, 2022, at 4. That is due, partly, because the initial two months of the Company’s current lease were rent free. *Id.* Attachment A, at 9. The straight-line method would average the entire cost of the lease over the entire term, which, when including two months at no charge, brings down the average monthly cost of rent. *Id.* at 9-10. The result is a difference in the amount of rent reportedly paid on its accounts and the amount of rent actually paid. *Id.*

The Department, however, notes that SFAS 13 (as amended) also requires the straight-line method. Section 15 of SFAS 13 (as amended) states:

“[n]ormally, rental on an operating lease shall be charged to expense over the lease term as it becomes payable. If rental payments are not made on a straight-line basis, rental expense nevertheless shall be recognized on a straight-line basis unless another systematic and rational basis is more representative of the time pattern in which use benefit is derived from the leased property, in which case that basis shall be used.”⁸

⁷ Pennichuck Water Works, Inc., Petition for Approved Modification of Accounting Treatment of Leases, November 12, 2021, at 1; Pennichuck Water Works, Inc., amended Petition for Approved Modification of Accounting Treatment of Leases, January 14, 2022, at 1; and Pennichuck Water Works, Inc.,

⁸ See Attachment E, Page 1 Supplemental Information to the Amended Petition for Approved Modification of Accounting Treatment of Leases, February 4, 2022, at 6, 8.1. Document found at: https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1218220129131&acceptedDisclaimer=true.

As SFAS 13 (as amended) requires a straight-line method, as applied through the Uniform Classification of Accounts for Water Utilities, the Company's request for a "cash requirement basis" still requires Commission approval.

The Commission's power to approve this request is derived from Section 1(e)(5)(B), which states that "the Commission may elect to approve the entries made to the utility's accounts in record the effect of utility leases." Section 1(i), further provides for waivers, which states:

A waiver from any provision of this system of accounts shall be made by the Commission upon its own initiative or upon the submission of written request therefore from any water company, or group of water companies, provided that such a waiver is in the public interest and each request for waiver expressly demonstrates that: existing peculiarities or unusual circumstances warrant a departure from a prescribed procedure or technique which will result in a substantially equivalent or more accurate portrayal of operating results or financial condition consistent with the principles embodied in the provisions of this system of accounts and the application of such alternative procedure will maintain or improve uniformity in substantive results as among water companies.

The Department contends that the requirements of both sections have been fulfilled, allowing the Commission to either elect to approve the "cash requirement basis," per Section 1(e)(5)(B), which arguably it may do of its own accord, or with a finding that it is within the public interest, pursuant to Section 1(i). The Department contends that the "cash requirement basis" departure from the straight-line method will result in a more accurate portrayal of the cash spent each month on rent by the Company. The accuracy of the "cash requirement basis," furthermore, is within the public interest as it is more reflective of its ratemaking system, as argued by the Company. Pennichuck Water Works, Inc., Supplemental Information to the Amended Petition for Approved Modification of Accounting Treatment of Leases, February 4, 2022, at 4.

The Department recognizes that the Company argues that Section 15 of SFAS 13 (as amended) already permits the "cash requirement basis" by allowing PWW to use "another systematic and rational basis [that] is more representative of the time pattern in which use benefit is derived from the leased property." *Id.* at 6. The Company further argues that, as such, it is already in compliance with the Uniform Classification of Accounts for Water Utilities. *Id.* at 6, 8.

The Department, however, is not convinced that Section 15 of SFAS 13 (as amended) allows for the "cash requirement basis." Specifically, the Department is unsure that the circumstances of their current lease, including two months rent-free, is "more representative of the time pattern in which use benefit is derived from the leased

property,” as permitted by Section 15. The Department asserts that the Company may have an actual derivation of use benefit from the property for the full term of the lease, which includes the two months rent-free, as PWW was free to use the property during that time. If that it is the case, then the Company would be required to account for the lease using the straight-line method. As such, the Department contends that, in an abundance of caution, the Commission modification is required.

The Department further notes that the Company does not object to the waiver to the extent that it is necessary. Pennichuck Water Works, Inc., Supplemental Information to the Amended Petition for Approved Modification of Accounting Treatment of Leases, February 4, 2022, at 8, 11. The Department, again, stresses that it does not object to the Company’s proposed “cash requirement basis.” As such, the Department endorses a waiver for PWW to the Uniform Classification of Accounts for Water Utilities, allowing them to account for the lease on a “cash requirement basis.”

Conclusion

The Department considers ASC 840 applicable to water utilities pursuant to the Uniform Classification of Accounts for Water Utilities. Given the stark differences between ASC 842 and ASC 840, however, the Department does not consider ASC 842 applicable to water utilities as it directly contravenes the Uniform Classification of Accounts for Water Utilities. Thus, a Commission waiver or approval is not required of PWW’s request for relief from ASC 842’s accounting standards.

The Department, however, contends that the Company’s request of accounting for its lease on a “cash requirement basis” does require Commission approval or waiver from the current Uniform Classification of Accounts for Water Utilities, which the Department supports.

Thank you for your consideration.

Sincerely,

/s/ Christopher R. Tuomala

Christopher R. Tuomala, Esq.
Hearings Examiner/Department Attorney

cc: Service List