

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 21-022

Pennichuck Water Works, Inc.
2022 Qualified Capital Project Adjustment Charge (“QCPAC”)

SETTLEMENT AGREEMENT

September 2022

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STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-006

Pennichuck Water Works, Inc.
2022 Qualified Capital Project Adjustment Charge (“QCPAC”)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 23rd day of September 2022 (the “Agreement”), by and among Pennichuck Water Works, Inc. (“PWW or Company”) (a subsidiary of Pennichuck Corporation) and the New Hampshire Department of Energy (“the DOE”) with the intent of resolving all issues in the above-captioned docket. (PWW and the DOE are referred to collectively in this Agreement as the “Settling Parties.”)

I. PROCEDURAL BACKGROUND

1. On February 14, 2022, PWW filed its initial petition for a 2022 Qualified Capital Project Adjustment Charge (“QCPAC”) with the New Hampshire Public Utilities Commission (“Commission”) in Docket No. DW 22-006. A copy of updated Exhibit DLW-1 of the Petition is attached hereto as Attachment A¹. The purpose of the petition was three-fold. First, the petition sought final approval of a 2022 QCPAC based on eligible projects and amounts expended for capital projects that were used and useful in 2021. Second, the petition sought preliminary approval of the capital budget for eligible capital project expenditures set to occur in 2022. Third, the petition provided the Commission with

¹ Exhibit A has been updated as of July 14, 2022, in response to discovery requests by the DOE.

information regarding the Company's forecast of capital project expenditures slated for completion in 2023 and 2024.

2. Overall, the original petition sought a 2022 QCPAC of 1.75%, recouped on a service rendered basis to the date of the projected closing date for the annual bond issuance in April of 2022, for the approved capital projects completed, used and useful by December 31, 2021. When added to the 3.90% QCPAC recently granted in DW 20-020 by Order No. 26,555 (December 9, 2021), and 1.56% QCPAC granted in DW 21-023 by Order No. 26,598 (March 29, 2021) (as modified by Order No. 26,605 (April 8, 2021)) the result was estimated to be a cumulative surcharge of 7.21%. For an average single-family residential customer, this translated to a \$4.01 per month surcharge, which, when added to a present average base rate charge of \$55.65, would result in a monthly bill of \$59.66. Thus, the additional 2022 QCPAC of 1.75% originally sought in this petition was projected to result in an increase of \$0.97 per month over the current average single-family residential bill, and includes the 3.90% QCPAC approved in DW 20-020 and 1.56% QCPAC approved in DW 21-023.

3. On February 16, 2022, the Commission issued a Letter of Acknowledgment in receipt of the Company's petition. The Company filed a notice of service change on February 17, 2022, and the DOE filed a notice of appearance on March 31, 2022. The DOE filed a petition or assented-to motion for proposed procedural schedule on April 12, 2022.

4. On April 13, 2021, the Commission issued an Order of Notice for a pre-hearing conference to be held on June 3, 2022. The Order also stated that the procedural schedule would be determined at the pre-hearing conference. On April 14, 2022, the Company published a copy of the Notice of Pre-hearing Conference on its website and filed an affidavit on April 22, 2022. On April 18, 2022, the Company filed a Motion to Reschedule the Prehearing Conference due to scheduling conflicts

with the proposed June 3, 2022, hearing date. On April 25, 2022, the Commission granted the motion and rescheduled the pre-hearing conference for June 15, 2022. The Company published the notice of pre-hearing conference and procedural order on its website on April 26, 2022, and filed an affidavit of publication on April 27, 2022.

5. On May 23, 2022, a Final Audit Report of the PWW 2022 Qualified Capital Project Adjustment Charge was issued by the DOE's Audit Staff. A copy is attached hereto as Attachment B.

6. A pre-hearing conference was held by the Commission on June 15, 2022, and attended by the Company and the DOE, at which time the Commission granted the DOE's motion for approval of a procedural schedule previously filed on April 12, 2022. The Commission also issued a procedural order to that affect dated June 15, 2022.

7. The approved procedural schedule anticipated two sets of discovery requests to be completed by July 20, 2022, a technical session on August 10, 2022, and responses to technical session data requests submitted by the Company by August 17, 2022, and ultimately a proposed Settlement Agreement that would be filed with the Commission by September 14, 2022².

8. On September 9, 2022, the Company with DOE's assent, filed a Motion to Amend the Procedural Schedule to extend the deadline for filing the proposed Settlement Agreement from September 14, 2022 to September 28, 2022, to allow for additional time to prepare the necessary attachments for this report. That motion was approved by the Commission via a procedural order on September 13, 2022.

² The complete set of DOE discovery requests and the Company's responses are attached and incorporated as Attachment D.

9. The Company will file budgetary updates on November 15, 2022 (for the period ending September 30, 2022) and on January 15, 2023 (for the period ending November 30, 2022), to the 2022 QCPAC Budget tab of Exhibit DLW-1, pursuant to Order No. 26,605 (April 8, 2022) in DW 21-023.

II. BACKGROUND ON QCPAC PROCESS AND PURPOSE:

10. On August 17, 2016, PWW filed a Request for Change in Rates and a Petition for Specific Modifications to Ratemaking Structure in Docket No. DW 16-806. Among the requests made in that Petition was the establishment of a QCPAC enhanced step increase program.

11. On November 7, 2017, the Commission issued Order No. 26,070 (“Order No. 26,070”) which authorized the QCPAC program as part of the overall Ratemaking Structure for PWW.

12. Order No. 26,070 confirms that the underlying purpose of the QCPAC process is to allow the Company to establish a revenue requirement and the associated customer rates sufficient to recover debt service and expenses associated with the Company’s capital improvements (debt service x 1.1 and property taxes) on an annual basis, rather than to wait for recovery of such costs as part of a general rate case conducted every three years. This process acknowledges that PWW is a highly unique public utility because it is ultimately owned entirely by the City of Nashua and must rely entirely on debt financing for its operations and capital expenditures. In contrast to PWW, other traditional investor-owned utilities have a significant level of equity ownership, and those equity positions allow such utilities to carry the additional direct financial impact of capital expenses until their next general rate cases. Because PWW, which is ultimately owned entirely by a municipality, does not have access to such equity capital in any manner, it must borrow all funds needed to finance necessary annual capital investments,

and must have revenues sufficient to service and repay those debt obligations on a timely and consistent basis. The approved QCPAC mechanism allows PWW to establish a surcharge on its permanent rates on an annual basis sufficient to support the additional debt service obligations arising from the new capital expenditures, as well as the associated property tax expenses, incurred, funded, and requiring the initiation of repayment each year.

13. PWW and its lenders rely on this regular, consistent, and annual QCPAC process, approved by the Commission as part of its Ratemaking Structure, to provide the loan financing necessary to support the annual capital investments required by a water utility, allowing it to meet its core, prudent and fundamental service as a regulated water utility. While such a process is unique, PWW and its management team have been able to explain the QCPAC mechanism to its lenders and have been successful in accessing new borrowings on an annual and ongoing basis. Without the clear and consistent application of the QCPAC process, however, lenders may have uncertainty as to whether PWW would ultimately obtain, through the general ratemaking process, the rates necessary to repay new loans. Because PWW does not have access to equity, these lenders may determine that such a loan may be too great a risk and, therefore, decide against extending the required credit to finance PWW's regular and recurring capital expenditures. The QCPAC process was intentionally designed to address these potential concerns by lenders and to enable PWW to access debt capital between general rate cases.

14. Pursuant to Order No. 26,070, in order to include the costs of capital projects in the calculation of the QCPAC, capital projects must meet the following criteria: (1) the capital project proposed by PWW must be completed, in service, and used and useful as utility infrastructure within the previous fiscal year for which the QCPAC filing is made; (2) the capital project must have been financed by debt that has been approved by the Commission in

accordance with RSA 369; and (3) the capital project must correspond with a capital budget which has been previously submitted by PWW, as updated quarterly during the year, and approved by the Commission. *See, Pennichuck Water Works, Inc.*, Order No. 26,070 (Nov. 7, 2017).

15. Order No. 26,070 describes what should be contained in PWW's annual QCPAC petition as follows:

Within its annual filing, PWW will provide: (1) its calculation of the QCPAC surcharge associated with capital investments from the previous year; (2) budget information regarding proposed capital projects for the current year; and (3) a detailed forecast of anticipated capital project expenditures for the subsequent two years, for informational purposes only. Customers will receive notice of the proposed surcharge within 30 days of the annual QCPAC filing.

16. The QCPAC consists of: (1) the annual principal and interest payments with respect to the applicable capital project debt, multiplied by 1.1; and (2) incremental property taxes associated with the specific capital projects, as determined in the year of the granting of the QCPAC for such projects.

III. TERMS OF THIS SETTLEMENT AGREEMENT

The Settling Parties agree and recommend the Commission approve the following:

A. Approval of the 2021 Completed Projects and 2022 QCPAC

17. The Settling Parties agree that the amount of the Company's 2021 Qualified Capital Projects ("QCP") was \$7,585,454, the list of which is included in Attachment A, Page 4 to this Agreement. The Settling Parties agree that these projects are associated with a capital budget that was previously approved by the Commission in Order No. 26,598 (March 29, 2022), as modified by Order No. 26,605 (April 8, 2022). The Settling Parties also agree that these projects were audited by the

DOE's Audit Staff with, ultimately, no exceptions noted³ (see Attachment B) and were also reviewed by the DOE's Staff, including its Engineering Consultant, Douglas W. Brogan (Attachment C). The Settling Parties further agree that each project was completed, in service and used and useful in 2021; and, where applicable, a Commission order was previously issued approving the debt financing associated with each financed project.⁴

18. The Settling Parties recommend that the Commission approve these 2021 projects for recovery under the Company's QCPAC mechanism for 2022. The Settling Parties recommend that the Commission find that these projects were prudent, used, and useful as of December 31, 2021, and that the Commission should approve those projects as eligible for recovery through the QCPAC surcharge.

19. The Company's QCPAC is calculated to recover 1.1 times the principal and interest payments for the long-term debt incurred to fund the capital expenditures on projects that were used and useful on or before December 31, 2021, as well as recover the projected property taxes on the completed slate of 2021 qualified capital projects.

20. The Settling Parties agree that the calculation of the debt service component of the 2022 QCPAC is as follows:

- A. PWV sold bonds on April 26, 2022, in the amount of \$6,875,000. These bonds were sold at a premium in the bond markets, netting the amount of \$6,567,306 for 2021

³ The Audit Report contained one Audit Issue regarding the inclusion of property tax expense on certain equipment for QCPAC recovery. (See Schedule B, Pages 24-25) However, upon review of PWV's response to its initial Audit Recommendation, the DOE Audit Staff indicated its concurrence with the Company's position regarding the taxability of these equipment items for inclusion within the QCPAC.

⁴ A total of \$6,567,306 of PWV's 2021 capital projects were financed by previously approved debt financing. On April 26, 2022, the Company issued bonds totaling \$6,785,000 consisting of \$6,695,000 of Series A tax exempt bonds and \$90,000 of Series B taxable bonds. This bond issuance was previously approved by Commission Order No. 26,459 (March 2, 2021) in DW 20-157. The difference between PWV's \$6,567,306 of 2021 debt financed capital projects and the final Bond issuance amount of \$6,875,000 is related to the costs of issuing the bonds. The remaining balance of the Company's 2021 capital projects of \$1,018,148 were funded by proceeds from PWV's 0.1 Debt Service Revenue Requirement (0.1-DSRR) account.

capital projects, at an average coupon rate of 4.277920% and a bond term of 30 years, resulting in an initial annual debt service amount of \$408,348 (See Attachment A, Page 1, Cells K10, Q27, and Q28; and Attachment A, Page 4, Cell L144).

B. A 1.1 x Principal and Interest Coverage Requirement (See Attachment A, Page 1, Cell M11) is applied to the total annual debt service associated with the financing of \$408,348, resulting in a Debt Service Component of the 2021 QCPAC of \$449,183 ($\$408,348 \times 1.1$).

21. The Settling Parties agree that the property tax expense component of PWW's 2022 QCPAC is calculated as \$176,160 (See Attachment A, Page 4, Cell P138 and Attachment A, Page 1, Cell K9).

22. The Settling Parties further agree that the inclusion of the calculated debt service component of \$449,183 and property tax expense component of \$176,160 to PWW's QCPAC calculation results in a 2022 QCPAC of 1.80% (See Attachment A, Page 1, Cell M16)⁵, which when added to the Company's previously approved QCPAC of 3.90% in DW 20-020, and 1.56% in DW 21-023, results in a cumulative QCPAC of 7.25% (See Attachment A, Page 1, Cell M17).

23. Based on the above-described calculations that are depicted in Attachment A, Pages 1 and 4, the Settling Parties agree and recommend that the Commission approve a 2022 QCPAC of 1.80%, which when added to the previously approved QCPAC of 3.90% in DW 20-020 and 1.56% in DW 21-023 results in a cumulative QCPAC of 7.25%.

⁵ As noted above, the 2022 QCPAC amounts reflect the capital project costs, debt service, and taxes in Attachment A updated as of July 14, 2022, in response to discovery from the DOE.

24. The Settling Parties agree that for an average single family residential customer, the calculated 7.25% cumulative QCPAC translates to a \$4.04 per month surcharge (Attachment A, Page 1, Cell M18), which, when added to a present average base rate charge of \$55.65 (Attachment A, Page 1, Cell B19), results in a monthly bill of \$59.69 (Attachment A, Page 1, Cell M19). Thus, the additional QCPAC of 1.80% sought in this docket will result in an increase of \$1.00 per month over the current average single family residential bill of \$58.69 (Attachment A, Page 1, Cell I19) which is inclusive of the 3.90% QCPAC approved in DW 20-020 and 1.56% QCPAC approved in DW 21-023.

25. The Settling Parties agree and recommend that the Commission approve recoupment of the 2022 QCPAC effective for service rendered as of the date of the 2022 bond closing of April 26, 2022, until the date of the Commission's order approving the 2022 QCPAC. The Settling Parties agree that this recoupment is necessary because absent the ability to recoup all of the cash necessary to pay the accrued interest, as well as the first principal payments on the bonds and other loans, there will be a shortage of the cash required to make these first interest and principal payments. Therefore, it is essential that the Company begin to collect the 2022 QCPAC coincident with the time interest begins to accrue on the bonds, and the payment obligation starts to run for principal repayments on these loans. The Settling Parties further agree and recommend that, based on an anticipated order issuance date in this proceeding of November 1, 2022, the Commission approve a recoupment period of three (3) months that will result in a monthly recoupment charge for the average single family residential home of \$2.05 per month ($\$1.00 \times 6.167 \text{ months} = \$6.17 \div 3 \text{ months} = \2.05).

26. The Settling Parties agree that this represents a reasonable compromise of all issues relating to the revenue requirement pending before the Commission for the purpose of assessing the 2022 QCPAC. As the sums expressed above are the result of compromise and settlement, they are

liquidations of all revenue requirement issues and do not constitute precedent regarding any particular principle or issue. The Settling Parties agree that the 2022 QCPAC recommended to the Commission results in an adjustment for PWW's customers that is just and reasonable.

B. Preliminary Approval of the 2022 Capital Projects Budget

27. The Settling Parties agree and recommend that the Commission approve, on a preliminary basis, PWW's proposed 2022 projects as being appropriate for recovery through the QCPAC mechanism, subject to further refinement through quarterly updates filed with the Commission for the purpose of keeping the Commission apprised of the Company's progress with regard to its 2022 projects, and finally subject to the Commission's audit and prudence review of the final costs associated with those projects as part of PWW's 2023 QCPAC proceeding.

28. The Settling Parties agree that PWW's 2022 capital projects budget is contained in Attachment A, Page 5 to this Settlement Agreement and totals \$12,146,500 (See Cell G91). The individual capital projects contained in Attachment A, Page 5 were thoroughly reviewed by the DOE's Staff, including its Engineering Consultant, Douglas W. Brogan (see Attachment C). The Settling Parties agree that the proposed 2022 capital project budget of \$12,146,500 is currently anticipated to result in a 3.29 percentage point increase (Attachment A, Page 1, Cell Q16) in PWW's cumulative QCPAC to 10.54% (Attachment A, Page 1, Cell Q17). The Settling Parties further agree that for an average single family residential customer, the projected 10.54% cumulative QCPAC translates to a \$5.87 per month surcharge (Attachment A, Page 1, Cell Q18), which, when added to a present average base rate charge of \$55.65 (Attachment A, Page 1, Cell B19), results in a monthly bill of \$61.52 (Attachment A, Page 1, Cell Q19).

29. The Settling Parties therefore agree and recommend that the Commission preliminarily find that PWW's 2022 capital expense budget contained in Attachment A, Page 5 and totaling \$12,146,500 (Cell G91) is appropriate, subject to further refinement through updates filed with the Commission, and finally subject to the Commission's subsequent audit and prudence review of the final costs associated with those projects as part of PWW's 2023 QCPAC proceeding. Preliminary approval will allow for recovery of capital budget expenses, interest and debt service for those projects that are prudent, used, and useful by December 31, 2022, as consistent with the QCPAC process set forth in Commission Order No. 26,070.

C. Informational Review of 2023-2024 Capital Project Budgets

30. The Company provided the details regarding its 2023-2024 project budgets in accordance with Order No. 26,070 for informational purposes only. The 2023-2024 capital projects have been updated as of July 14, 2022, in response to discovery between the Settling Parties. Updated lists of PWW's 2023-2024 capital project budgets are contained in Attachment A, Pages 6 and 7 to this Settlement Agreement. PWW's 2023 capital projects budget is currently anticipated to be \$8,514,768 (Attachment A, Page 6, Cell G73) and its 2024 capital projects budget is currently anticipated to be \$11,405,760 (Attachment A, Page 6, Cell G59).

31. The Settling Parties, for the reasons set forth above, agree and recommend that the Commission accept, for informational purposes, the proposed 2023-2024 capital expense budget projects, as consistent with the QCPAC process approved in Commission Order No. 26,070.

IV. SETTLEMENT CONDITIONS

32. PWW and the DOE request that the Commission approve this Settlement agreement, and the associated increase in the QCPAC surcharge, without a hearing. In support of this request, PWW

and the DOE note that neither the Office of Consumer Advocate nor any other party requested intervention in this proceeding. In addition, the parties agree that, with the attachment of the audit report, engineering report, and data request responses to the Settlement Agreement, the record in this matter is complete. In summary, as PWW and the DOE are the sole parties to this proceeding, and are in agreement on the disposition of this matter, PWW and the DOE recommend that the Commission approve the Settlement Agreement without a merits hearing.

33. 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.

34. 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.

35. 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.

36. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be duly executed in their respective names by their fully authorized agents.

PENNICHUCK WATER WORKS, INC.
By its attorneys
Rath, Young and Pignatelli, P.C.

Dated: September 23, 2022

By: 
James J. Steinkrauss

THE NEW HAMPSHIRE DEPARTMENT OF ENERGY

Dated: September 23, 2022

By: /s/ Suzanne G. Amidon

Suzanne G. Amidon
DOE Staff Counsel