

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

Docket No. DW 21-022

Pennichuck East Utility, Inc.  
2021 Qualified Capital Project Adjustment Charge (“QCPAC”)

**SETTLEMENT AGREEMENT**

**February 2022**

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**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into this 18th day of February 2022 (the “Agreement”), by and among Pennichuck East Utility, Inc. (“PEU” or “Company”) (a subsidiary of Pennichuck Corporation) and the New Hampshire Department of Energy (“Department”) with the intent of resolving all issues in the above-captioned docket. (PEU and the Department are referred to collectively in this Agreement as the “Settling Parties”.)

**I. PROCEDURAL BACKGROUND**

1. On February 11, 2021, PEU filed its original petition for a 2021 Qualified Capital Project Adjustment Charge (“QCPAC”) with the New Hampshire Public Utilities Commission (“Commission”) in Docket No. DW 21-022. PEU subsequently filed amendments to its petition on March 10, 2021. The purpose of the petition as amended was three-fold. First, the petition sought final approval of a 2021 QCPAC based on eligible projects and amounts expended for capital projects in 2020. Second, the petition sought preliminary approval of the capital budget for eligible capital project expenditures anticipated to occur in 2021. Third, the petition provided the Commission with information regarding the Company’s forecast of capital project expenditures for 2022 and 2023. The original petition also sought approval for payment of

interest incurred on PEU's fixed asset line of credit ("FALOC). This request, however, is withdrawn by PEU due to prior approval of inclusion of FALOC interest in the QCPAC. See *Pennichuck East Utility, Inc.*, Order 26,313, (December 6, 2019) at 1 and 3.

2. The original petition sought a 2021 QCPAC of 4.08%, recouped on a service rendered basis from July 31, 2021, for the approved capital projects completed, used and useful as of December 31, 2020. However, the QCPAC recommended for approval in this Agreement, as updated December 29, 2021, is 4.02%. When applied to the base rates currently pending approval in Docket No. DW 20-156, PEU's general rate proceeding, where an average monthly single-family bill is estimated to be \$84.31, the projected 2021 QCPAC will be \$3.39 ( $\$84.31 \times 4.02\%$ ) per month resulting in a total average estimated monthly bill of \$87.70 ( $\$84.31 + \$3.39$ ).

3. On April 2, 2021, the Commission issued an Order of Notice for a pre-hearing conference to be held on May 17, 2021. At the pre-hearing conference held on May 17, 2021, the Company confirmed that the Order of Notice had not been posted to its website in compliance with the April 2, 2021 Order of Notice. Later, on May 17, 2021, the Company filed a statement that acknowledged such and requested the Commission re-issue the Order of Notice and reschedule the pre-hearing conference.

4. To ensure proper public notice, a Supplemental Order of Notice was issued by the Commission on June 3, 2021, that scheduled a subsequent pre-hearing conference on July 14, 2021.

5. On June 7, 2021, a Final Audit Report of PEU's 2021 Qualified Capital Adjustment Charge was issued by the Department's Audit Staff. A copy is attached hereto as Attachment B.

6. A Supplemental Order of Notice was issued by the Commission on June 30, 2021, to ensure a quorum given expiration of the Covid-19 State of Emergency on June 11, 2021, for the hearing scheduled for July 14, 2021.

7. A pre-hearing conference was held by the Commission attended by the Company and the Department on July 14, 2021, at which time the parties agreed to a procedural schedule that was submitted to the Commission for review and approval on July 23, 2021.

8. On September 15, 2021, the Commission approved a procedural schedule that anticipated two sets of discovery requests be completed by December 2, 2021, a technical session planned for December 29, 2021, and responses to technical session data requests to be submitted by the Company by January 7, 2022.

9. The Company filed quarterly QCPAC budget updates on August 9, 2021 (a revision of such was filed on August 13, 2021), November 15, 2021 (a revision of such was filed on November 16, 2021), and January 13, 2022.

10. On December 3, 2021, the Commission issued a procedural order requesting the Company and the parties (only the Department has entered an appearance in this matter) to submit a revised procedural schedule including a date for a hearing on the merits by January 21, 2022.

11. On December 29, 2021, the parties met in a technical session to discuss outstanding discovery questions as well as discuss potential procedural scheduling matters and preliminary settlement discussions. As a result of the technical session, the parties reached a settlement in principle on all issues in this proceeding.

12. On December 30, 2021, the Company and the Department filed a joint proposed procedural schedule with a proposed deadline to file a Settlement Agreement by February 28, 2022, and requesting a final hearing on the merits of the Agreement.

13. On January 19, 2022, the Commission issued a Procedural Order, Supplemental Order of Notice and Hearing Guidelines approving a deadline for the parties to file a Settlement Agreement in this matter by February 28, 2022 and scheduling a final hearing on March 16, 2022.

14. On January 20, 2022, the Company filed a request for remote participation at the March 16 hearing, and filed an affidavit of publication of the January 19, 2022 Supplemental Order of Notice.

15. On February 3, 2022, the Department filed a motion to reschedule the date of the final hearing.

## **II. BACKGROUND, PURPOSE, AND PROCESS OF QCPAC**

16. On September 9, 2017, PEU filed a Request for Change in Rates and a Petition for Specific Modifications to Ratemaking Structure in Docket No. DW 17-128. Among the requests made in that Petition was the establishment of a QCPAC enhanced step increase program similar to that approved for Pennichuck Water Works, Inc. (“PWW”) in Docket No. DW 16-806.

17. On October 4, 2018, the Commission issued Order No. 26,179 (“Order No. 26,179”) which authorized the QCPAC program as part of the overall ratemaking structure of PEU. See *Pennichuck East Utility, Inc.*, Order No. 26,179, (October 4, 2018) at 16.

18. Order No. 26,179 confirms that the underlying purpose of the QCPAC process is to allow the Company to establish a revenue requirement and 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. See Order No. 26,179 at 12. This purpose acknowledges that PEU, like PWW, is a unique public utility because it is ultimately owned by the City of Nashua and must rely entirely on debt financing for its operations and capital expenditures. In contrast to PEU (and PWW), other traditional investor-owned utilities have significant equity financing, and this equity position allows such utilities to carry the additional direct financial impact of capital expenses until their next general rate cases. Because PEU, which is ultimately owned entirely by a municipality, does not have access to such equity capital in any manner, the Company must borrow all funds needed to finance necessary annual capital investments. The approved QCPAC mechanism allows PEU to establish a surcharge on its permanent rates on an annual basis sufficient to support the additional debt service obligations arising from its annual capital expenditures, as well as the associated property tax expenses, incurred, funded and requiring the initiation of repayment each year. See *Id.* at 2 and 16.

19. PEU 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, to meet its core, prudent and fundamental service as a regulated water utility. While such a process is unique, PEU 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 PEU would ultimately obtain, through the general ratemaking process,

the rates necessary to repay new loans. Because PEU 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 PEU's regular and recurring capital expenditures. The QCPAC process was intentionally designed to address these potential concerns by lenders and to enable PEU to access debt capital between general rate cases.

20. Pursuant to Order No. 26,179, in order to include the costs associated with PEU's capital projects in the calculation of the QCPAC, capital projects must meet the following criteria: (1) the capital project proposed by PEU 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 projects must correspond with a capital budget which has been previously submitted by PEU, as updated quarterly during the year and approved by the Commission.

21. Order No. 26,179 describes what should be contained in PEU's annual QCPAC petition as follows:

Within its annual filing, PEU 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.

22. 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 2020 Completed Projects and 2020 QCPAC

23. The Settling Parties agree that the amount of the Company's 2020 Qualified Capital Projects ("QCP") was \$5,142,555, the list of which is included in Attachment A (Exhibit DLW-1), Page 2 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. 26,546 (November 9, 2021) in Docket No. DW 20-019. See *Pennichuck East Utility, Inc.*, Order No. 26,546 (November 9, 2021) at 7, 10. The Settling Parties also agree that these projects were audited by the Department's Audit Staff with no exceptions noted (See Attachment B) and were also reviewed by the Department's Staff, including its Engineering Consultant, Douglas W. Brogan. The Settling Parties further agree that each project was completed, in service and used and useful in 2020; and a Commission order was previously issued approving the debt financing associated with each financed project<sup>1</sup>.

24. The Settling Parties recommend that the Commission approve these 2020 projects for recovery under the Company's QCPAC mechanism for 2021. The Settling Parties recommend that the Commission find that these projects were prudent, used and useful as of

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<sup>1</sup> A total of \$5,142,555 of PEU's capital projects were financed through previously approved debt financing. This consists of a 2021 CoBank loan of \$1,135,409 approved in Commission Order No. 26,507 (August 10, 2021) in Docket No. DW 21-102, and \$4,007,147 funded through an NHDES State Revolving Fund (SRF) loan previously approved by the Commission in Order No. 26,189 (November 16, 2018) in Docket No. DW 18-132. The Petition initially estimated the CoBank loan to have a 5.0% interest rate with a term of 25 years; however, upon closing the loan on September 29, 2021, the interest rate was set at 4.18%. The total amount of the NHDES SRF loan is \$4,240,000 with a 2.704% interest rate and a term of 30 years. The closing on the loan occurred on January 9, 2019 and the Company borrowed money from this loan on a short-term basis during the construction phase of the projects. The SRF loan converted from a short-term loan to a long-term loan in June 2021. The final loan will be \$4,240,000, of which \$4,007,147 financed assets that were used and useful prior to December 31, 2020. The remaining \$232,853 of the loan financed assets that became used and useful between January 1 - May 31, 2021.

December 31, 2020, and that the Commission approve those projects as eligible for recovery under the QCPAC mechanism.

25. 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, 2020, as well as recovering the projected property taxes on the completed slate of 2020 qualified capital projects.

26. The Settling Parties agree that the calculation of the debt service component of the 2021 QCPAC, is as follows:

- A. CoBank Loan: PEU utilized proceeds of \$1,135,409 from a 25-year loan from CoBank at an interest rate of 4.18%, resulting in annual debt service of \$74,069 (See Attachment A, Page 2, Cell P58).
- B. NHDES SRF Loan: PEU utilized \$4,007,147 of the total loan proceeds of \$4,240,000 from a 30-year SRF loan at an interest rate of 2.704%, resulting in annual debt service of \$196,697 (See Attachment A, Page 2, Cell P60).
- C. The total annual debt service associated with the two financings is \$270,766 ( $\$74,069 + \$196,697$ ) (See Attachment A, Page 2, Cell P62). After application of the 1.1 Principal and Interest Coverage Requirement, the resulting Debt Service Component of the 2021 QCPAC becomes \$297,843 ( $\$270,766 \times 1.1$ ).

27. The Settling Parties agree that the property tax expense calculated for PEU's 2021 QCPs is \$137,255 (See Attachment A, Page 2, Cell T53). The Settling Parties further agree that for purposes of calculating the 2021 QCPAC, PEU's property tax expense should be reduced by \$28,000 to reflect the reduction in arsenic treatment costs associated with the completion of the

Locke Lake raw water well line to the Peacham Road treatment plant as indicated on Attachment A, Page 1, Note 11 and further explained on Page 11 (Bates Page 45) of the Pre-filed Direct Testimony of John J. Boisvert, Chief Engineer of Pennichuck Water Works, Inc. As such, the Settling Parties agree that the property tax expense component of PEU's 2021 QCPAC is \$109,255 (\$137,255 - \$28,000) (See Attachment A, Page 1, Cell D13).

28. The Settling Parties further agree that the inclusion of the calculated debt service component of \$297,843 and property tax expense component of \$109,255 to PEU's QCPAC calculation results in a 2021 QCPAC of 4.02% (See Attachment A, Page 1, Cell F25).

29. Based on the above-described calculations that are depicted in Attachment A, Pages 1 and 2, the Settling Parties agree and recommend that the Commission approve a 2021 QCPAC of 4.02%, above the rates sought in PEU's general rate case in Docket No. DW 20-156.

30. The Settling Parties agree that for an average single family residential customer, the calculated 4.02% 2021 QCPAC, when applied to the base rates sought in Docket No. DW 20-156, where an average monthly single-family bill is projected to be \$84.31 (based on 6.50 hundred cubic feet (ccf) of monthly usage), will result in a QCPAC of \$3.39 per month, thereby resulting in a total average monthly bill of \$87.70 (\$84.31 + \$3.39).

31. The Settling Parties agree and recommend that the Commission approve recoupment of the 2021 QCPAC effective for service rendered as of the date of closing of the CoBank loan of September 29, 2021 until the date of the Commission's order approving the 2021 QCPAC. The Settling Parties agree that this recoupment is necessary because absent the ability to recoup all the cash necessary to pay the accrued interest, as well as the first principal payments on the CoBank and SRF 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 2021 QCPAC as of the time that interest began accruing on the loans, and the payment obligation starts to run for principal repayments on these loans.

32. The Settling Parties further agree and recommend that, based on an anticipated order issuance date in this proceeding of May 1, 2022, the Commission approve a recoupment period of 5 months, which will result in a monthly recoupment charge for an average single-family residential ratepayer of \$4.75 per month ( $\$3.39 \times 7 \text{ months} = \$23.73 \div 5 \text{ months} = \$4.75$ ).

33. 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 assessing the 2021 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 2021 QCPAC recommended to the Commission results in an adjustment for PEU's customers that are just and reasonable.

**B. Preliminary Approval of the 2021 Capital Projects Budget**

34. The Settling Parties agree and recommend that the Commission approve, on a preliminary basis, PEU's proposed 2021 projects as being appropriate for recovery through the QCPAC mechanism, subject to the Commission's audit and prudence review of the final costs associated with those projects as part of PEU's 2022 QCPAC proceeding; and subjected 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 2021 projects (to be filed as determined by the Commission pursuant to Section D below) and further subject to the Commission's review of the Company's 2022 QCPAC filing.

35. The Settling Parties agree that PEU's 2021 capital projects budget is contained in Attachment A, Page 3 to this Settlement Agreement and totals \$1,171,950. The individual capital projects contained in Attachment A, Page 3 were thoroughly reviewed by the Department's Staff, including its Engineering Consultant, Douglas W. Brogan. The Settling Parties agree that the proposed 2021 capital project budget of \$1,171,950 is currently anticipated to result in a 1.13 percentage point increase (Attachment A, Page 1, Cell I25) in PEU's cumulative QCPAC to 5.15% (Attachment A, Page 1, Cell I26). The Settling Parties further agree that based on the base rates sought in DW 20-156, where an average monthly single-family bill is estimated to be \$84.31, the projected 5.15% cumulative QCPAC translates to a \$4.34 per month surcharge (Attachment A, Page 1, Cell I27), which, when added to the rates sought in PEU's rate case in Docket No. DW 20-156, results in a monthly bill of \$88.65 (Attachment A, Page 1, Cell I28).

36. The Settling Parties therefore agree and recommend that the Commission preliminarily find that PEU's 2021 capital expense budget contained in Attachment A, Page 3 totaling \$1,171,950 (Cell N49) is appropriate subject to the Commission's subsequent audit and prudence review of the final costs associated with those projects as part of PEU's 2022 QCPAC proceeding; and subjected to further refinement through updates filed with the Commission. Preliminary approval will allow for recovery of debt service and associated operating expenses for those projects that are prudent, used and useful by the end of December 31, 2021, as consistent with the QCPAC process set forth in Commission Order No. 26,179.

**C. Informational Review of 2022-2023 Capital Projects Budget**

37. The Company provided the details regarding its 2022 and 2023 project budgets in accordance with Order No. 26,179 for informational purposes only, which were updated as of

December 29, 2021, in response to required updates and discovery between the Settling Parties. Updated lists of PEU's 2022 and 2023 capital project budgets are contained in Attachment A, Pages 4 and 5 to this Settlement Agreement. PEU's 2022 capital projects budget is currently anticipated to be \$2,828,500 (Attachment A, Page 4, Cell L34) and its 2023 capital projects budget is currently anticipated to be \$2,343,500 (Attachment A, Page 5, Cell L36).

38. The Settling Parties, for the reasons set forth above, agree and recommend that the Commission accept for informational purposes, the proposed 2022 and 2023 capital expense budget projects, as consistent with the QCPAC process approved in Commission Order No. 26,179.

**D. Modifications to PEU's QCPAC Mechanism**

39. The Commission's approval of the QCPAC Mechanism in Order 26,179, and subsequent approvals (Order 26,313 in DW 19-035), included a requirement that the Company provide quarterly updates with the Commission on August 15, November 15, and January 15 (following the end of the fiscal year) detailing known or expected capital expenses for Capital projects based on the periods ending June 30, September 30, and November 30, respectively.

40. The Settling Parties, recognize that ongoing discovery and updates during the review of the projects eligible for QCPAC recovery result in a number of updates to the capital projects under review. However, the quarterly updates (as set forth above) result in one-time snapshots of the respective capital project budgets, property tax expenses, and project debt service that overlap with updates resulting from the ongoing discovery, as well. To avoid unnecessary confusion or overlap of reporting, the Settling Parties propose to reduce the reports to November 15 for the period ending September 30 and January 15 for the period ending November 30. Allowing this modification will result in reduced time, effort and expense by the

Company's staff and the Department's staff and reduce legal costs related to review of these updates, thereby ultimately benefiting the ratepayers. The Settling Parties agree that while the November 15 update, for the period ended September 30, will cover a longer time period, it nevertheless will provide the Commission with a more full and complete update of the capital project budgets, by also accounting for updates related to discovery between the Settling Parties during the course of the annual QCPAC proceedings.

41. The Settling Parties agree and recommend that the Commission approve the modified reporting requirements as set in the above paragraphs of this Settlement Agreement.

#### **IV. SETTLEMENT CONDITIONS**

42. 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.

43. 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.

44. 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.

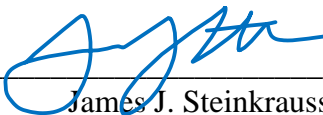
45. This Agreement may be executed in counterparts.



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

PENNICHUCK EAST UTILITIES, INC.  
By its attorneys  
Rath, Young and Pignatelli, P.C.

Dated: February 18, 2022

By:  \_\_\_\_\_  
James J. Steinkrauss

THE NEW HAMPSHIRE DEPARTMENT OF  
ENERGY

Dated: February 18, 2022

By: /s/ Suzanne G. Amidon \_\_\_\_\_  
Suzanne G. Amidon  
Staff Counsel