

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 21-022

PENNICHUCK EAST UTILITY, INC.

Petition for Approval of 2021 Qualified Capital Project Adjustment Charge

Order Granting Petition

O R D E R N O. 26,608

April 8, 2022

In this order, the Commission approves the request of Pennichuck East Utility, Inc. (PEU, or the Company) to implement a 2021 Qualified Capital Project Adjustment Charge (QCPAC) in the amount of 4.02 percent of base revenue for capital projects placed in service in 2020, to be applied to the rates approved in Docket DW 20-156 by Order No. 26,586 (February 18, 2022). Order No. 26,586 also reset the QCPAC to zero upon approval of PEU's new base rates. The 2021 QCPAC is approved effective September 29, 2021, with billing of this charge to begin on the effective date of this order. The cumulative QCPAC incorporating the proposed 2021 capital project budget of \$1,171,950 will be 5.15 percent, which will increase the average residential customer's monthly bill by \$4.34, resulting in an average single-family residential bill of \$88.65 per month when added to the rates approved in Order No. 26,586. The petition and subsequent docket filings, other than information for which confidential treatment is requested of, and granted by, the Commission, are posted on the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2021/21-022.html.

I. PROCEDURAL HISTORY

PEU is a regulated public utility that provides water service to approximately 8,000 customers in the Towns of Litchfield, Pelham, Windham, limited areas of Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee,

Londonderry, Middleton, Plaistow, Raymond, Sandown, Tilton, and Weare. On February 11, 2021, PEU filed a petition to increase its QCPAC for projects completed in 2020 and for preliminary approval of its 2021 budget for capital improvements. The Company's petition included the direct testimonies of Donald L. Ware, PEU's Chief Operating Officer, and John J. Boisvert, Chief Engineer of Pennichuck Water Works, Inc., which provides services to PEU pursuant to a management allocation agreement. PEU's filing also included for approval an estimated QCPAC budget for 2021 and, for informational purposes, forecasted capital project expenditures for 2022 and 2023. PEU's 2022 capital projects budget is currently anticipated to be \$2,828,500, and its 2023 capital projects budget is presently anticipated to be \$2,343,500. The Company filed quarterly updates for its 2021 QCPAC in August 2021, November 2021, and January 2022. The NH Department of Energy (Energy) Audit Staff filed an audit report of PEU's 2020 qualified capital projects dated June 7, 2021.

On February 18, 2022, PEU filed a settlement agreement reached by PEU and Energy (Settlement). No petitions to intervene were filed, and the Office of the Consumer Advocate did not file a letter of participation. A hearing on the Settlement was held on March 21, 2022.

II. PETITION

PEU filed its petition in accordance with the QCPAC mechanism approved by the Commission in Docket DW 17-128. *Pennichuck East Utility, Inc.*, Order No. 26,179 (October 4, 2018). In its petition, PEU requested approval of its 2020 capital projects for recovery through a 2021 QCPAC and authorization to bill and collect from customers a total surcharge estimated to be 4.08%. PEU further requested preliminary approval of its proposed 2021 capital projects as eligible for recovery through the

QCPAC surcharge mechanism, subject to audit and a prudence review of the final costs associated with those projects as updated through quarterly updates filed with the Commission.

III. SETTLEMENT AGREEMENT

1. Eligible 2020 Capital Projects

PEU and Energy (the Settling Parties) reached an agreement that capital costs for QCPAC-eligible projects completed in the calendar year 2020 totaled \$5,142,555, based on the audit conducted by Energy's Audit Staff and reviewed by Regulatory Staff and its engineering consultant. Those projects, listed on page 2 of Attachment A to the Settlement, are associated with the 2020 capital budget preliminarily approved by the Commission in Order No. 26,546 on November 9, 2021, in Docket DW 20-019. The Settling Parties recommended approval of the 2020 projects as prudent, used, and useful as of December 31, 2020, and therefore eligible for recovery under the Company's 2021 QCPAC mechanism.

2. 2021 QCPAC

The Settling Parties further reached an agreement on a 2021 QCPAC of 4.02 percent above the rates approved in Docket DW 20-156. The surcharge is calculated to recover 1.1 times the principal and interest payments for long-term debt incurred to fund: (1) capital expenditures on projects that were used and useful on or before December 31, 2020; and (2) projected property taxes on the completed slate of 2020 qualified capital projects.

The debt service component of PEU's 2021 QCPAC includes: (1) an annual debt service of \$74,069 related to the proceeds of \$1,135,409 from a 25-year CoBank loan at an interest rate of 4.18 percent; and (2) an annual debt service of \$196,697 related

to the utilization of \$4,007,147 of total loan proceeds of \$4,240,000 from a 30-year NH Department of Environmental Services State Revolving Fund loan. The total annual debt service associated with the two financings is \$270,766,843. The application of the 1.1 principal and interest coverage requirement results in a debt service component of \$297,843 for the 2021 QCPAC.

The Settling Parties further agreed that the property tax expense component of PEU's 2021 QCPAC totals \$137,255, less \$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, added to the calculated debt service component of \$297,843, resulting in a 2021 QCPAC of 4.02%. Accordingly, the Settling Parties agreed that the QCPAC of 4.02% requested in this docket would result in an increase of \$3.39 per month above the current average single-family residential bill of \$84.31 for a total average monthly bill of \$87.70.

3. 2021 Capital Budget

As part of its petition filing, PEU requested Commission approval of its 2021 capital projects budget of \$1,171,950. Under the terms of the Settlement, the Settling Parties agreed to recommend preliminary approval of PEU's proposed 2022 projects as appropriate for recovery through the QCPAC mechanism. The Settling Parties further agreed that final costs of the proposed 2021 projects, as further refined through quarterly updates filed with the Commission, will be subject to an audit and prudence review¹ as part of PEU's 2022 QCPAC proceeding.

¹ The Settlement refers to the 2021 projects as "subject to the Commission's audit and prudence review of the final costs." Settlement at Bates Page 012, ¶29. However, the Commission notes that the proposed audit and prudence review would be conducted by Energy and filed with the Commission for consideration.

4. Modification of PEU QCPAC Filing Requirements

The Settling Parties proposed to modify the quarterly update filing requirements approved by Order No. 26,179 (October 4, 2018) in Docket DW 17-128 and Order No. 26,313 (December 6, 2019) in Docket DW 19-035 by reducing the number of filings each year from three to two and modifying the dates on which the updates are due. Accordingly, the Company would file the required financial updates on November 15 for the period ending September 30, and on January 15 for the period ending November 30, rather than filing on August 15, November 15, and January 15 for the financial periods ending June 30, September 30, and November 30, respectively. The recommended modifications are intended to provide the Commission with more complete reports of capital project budgets while incorporating updated information, as provided through discovery conducted in the annual QCPAC proceedings. *See, e.g.*, Hearing Transcript (3-21-22) at 45, lines 8-14 (statement of Donald L. Ware, PEU) and at 56, lines 16-24 through 57, lines 1-15 (statement of Jayson LaFlamme, Energy).

5. Effective Date of the Approved 2021 QCPAC

The Settling Parties further recommended that the Commission approve the 2021 QCPAC effective for service rendered as of September 29, 2021, the date of the CoBank loan closing, until the date of an order approving PEU's 2021 QCPAC. The Settling Parties further recommended a recoupment period of 5 months, based on an order date of May 1, 2022.

6. Forecasted Capital Project Budgets for 2022 and 2023 for Informational Review

The Settling Parties also submitted, for informational purposes only, forecasted capital project expenditures for 2022 and 2023, as noted above.

7. Motion for Confidential Treatment

On October 28, 2021, PEU filed a motion for confidential treatment of the Promissory Note executed with CoBank on September 29, 2021, as addressed in its petition filings and in the Settlement submitted in this proceeding. The Company asserts that CoBank has identified these documents as confidential and containing confidential commercial or financial information, and that the identified information warrants protective treatment pursuant to RSA 91-A:5, IV. In support of its motion, PEU states that “the terms and conditions remain subject to confidentiality and CoBank provided and executed the terms of [the] Promissory Note with a request and expectation that they remain confidential...consistent with the confidentiality terms of the Master Loan Agreement between PEU and CoBank.” PEU further asserts that disclosure of these terms would create a disadvantage to PEU in future negotiations with lenders.

The Commission applies a three-step balancing test to determine whether documents should be kept from disclosure as “confidential, commercial, or financial information” under RSA 91-A:5, IV. *Pennichuck Water Works, Inc.*, Order No. 26,121 at 6 (April 20, 2018) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)). Applying this test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* at 7. Finally, the Commission must balance “those competing interests and decide whether disclosure is appropriate.” *Id.*

We find that PEU and CoBank have a privacy interest in the documentation of the terms and conditions of the loan documents. While the public certainly has an interest in knowing the terms of the loan and its financial impact on the Company and

its customers, we find that the interest of PEU in maintaining confidentiality of the detailed terms outweighs the public's interests, which have been addressed through the disclosure under confidential cover of the terms of the loan and potential financial impacts in the petition, as addressed in this order. Therefore, we find that the identified documents should remain confidential, and we grant PEU's motion for confidential treatment of the applicable details contained in the loan documents.

IV. COMMISSION ANALYSIS

Pursuant to RSA 374:2, RSA 378:7, and RSA 378:28, the Commission is authorized to determine the just and reasonable rates to be charged by PEU. The Commission approved the QCPAC mechanism to replace the previously approved Water Infrastructure and Conservation Adjustment rate mechanism. See Order No. 26,070 (November 7, 2017) at 17, and Order No. 26,179 (October 4, 2018) at 11-12. The QCPAC mechanism enables PEU to make necessary capital improvements to its systems while maintaining sufficient cash flow to meet debt service and operating requirements.

PEU has filed data regarding its capital projects placed in service during 2020. Energy's Regulatory and Audit Staff have reviewed those projects and determined that they are used and useful in service to PEU customers. Accordingly, we find that the 2020 capital project expenditures of \$5,142,555 were prudently incurred and are used and useful. We further preliminarily approve the proposed 2021 capital budget of \$1,171,950 and will review the prudence of those projects in the next QCPAC filing, as docketed in DW 22-005. We accept, for informational purposes, the 2022 and 2023 capital budgets of \$2,828,500 and \$2,343,500, respectively.

Based on our review of the filings and the Settlement reached between PEU and Energy, we approve the Settlement and the conditions contained therein. Accordingly, we approve a 2021 QCPAC of 4.02 percent above the rates sought in Docket No. DW 20-156. We approve adding the proposed 2021 QCPAC surcharge to customer bills so that PEU may begin recovery of debt and property tax expenses associated with the completed projects on the effective date of this order.

We also approve the recoupment of revenues from the date of PEU's 2021 CoBank loan closing on September 29, 2021, until the 2021 QCPAC is approved for inclusion in customer rates on the effective date of this order. The recoupment amount shall be calculated over the approximately seven months between September 29, 2021, and the effective date of this order. That recoupment amount shall be recovered over the five-month period recommended by the Settling Parties. Accordingly, the Commission approves a monthly recoupment surcharge as described herein as of the effective date of this order. For an average residential customer, this will result in an estimated surcharge of \$4.75 per month for five months, as recommended by the Settling Parties.

The Commission also approves the Settling Parties' recommendation to modify the QCPAC quarterly financial filing requirements. Accordingly, the Company shall file capital project updates on November 15 for the period ending September 30, and on January 15 for the period ending November 30. The filing modifications are intended to provide the Commission with more complete updates on the capital project budgets while balancing the Company's desire for additional administrative efficiency. Such updates will account for additional information that may arise through discovery between the Settling Parties in the annual QCPAC proceedings.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement reached between Pennichuck East Utility, Inc. and the Department of Energy and filed on February 18, 2022 in this proceeding is **APPROVED**; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc.'s request to recover a 2021 QCPAC for projects placed in service in 2020, effective on the date of this order, in the amount of 4.02 percent of base revenue, as described in this order, with billing of this charge to begin on the effective date of this order is **APPROVED**; and it is

FURTHER ORDERED, that the proposal to recoup 2021 QCPAC surcharges, from September 29, 2021 through the effective date of this order, through an additional customer surcharge to be collected over a five-month period is **APPROVED**; and it is

FURTHER ORDERED, that the modifications to Pennichuck East Utility, Inc.'s annual financial reporting to require updates to be filed on November 15 for the period ending September 30, and on January 15 for the period ending November 30 are **APPROVED**; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc.'s proposed 2021 capital budget is **APPROVED** on a preliminary basis and subject to further audit and review; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc.'s preliminary 2022 and 2023 capital budgets are **ACCEPTED** for informational purposes only; and it is

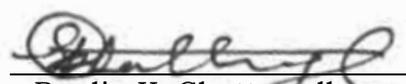
FURTHER ORDERED, that Pennichuck East Utility, Inc.'s motion for confidential treatment of certain loan documents is **GRANTED**; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall cause a copy of this order to be published on the Company's website within two business days of the issuance of this order, to be documented by an affidavit filed with the Commission on or before May 4, 2022; and it is

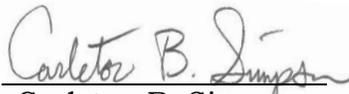
FURTHER ORDERED, that this order shall be effective May 8, 2022, unless Pennichuck East Utility, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall file a compliance tariff with the Commission on or before April 22, 2022, in accordance with N.H. Code Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 2022.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 21-022

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