

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-101

**PENNICHUCK EAST UTILITY, INC., PITTSFIELD AQUEDUCT COMPANY, AND
PENNICHUCK WATER WORKS, INC.**

**Joint Petition for the Approval of a Consolidation of Pennichuck East Utility,
Inc. and Pittsfield Aqueduct Company with Pennichuck Water Works, Inc.**

Order *Nisi* Approving Recovery of Rate Case Expenses

ORDER NO. 28,149

May 23, 2025

In this order, the Commission authorizes Pennichuck Water Works, Inc. (PWW, the Company, or the Surviving Corporation) to recover rate case expenses in the amount of \$194,365.05 through a monthly surcharge of \$0.41 per customer charged over a period of 12 months. The Commission also grants PWW's motion for confidential treatment. PWW's petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website <https://www.puc.nh.gov/VirtualFileRoom/Docket.aspx?DocketNumber=DW%2023-101>.

I. BACKGROUND AND PROCEDURAL HISTORY

Pennichuck East Utility, Inc. (PEU) and Pittsfield Aqueduct Company (PAC) with PWW (collectively the Petitioners) filed a merger petition in this docket on December 15, 2023. The Office of Consumer Advocate (the OCA) and the Department of Energy (DOE) filed appearances in this matter. The Commission granted Petitions to Intervene for the Towns of Londonderry, Bedford, Litchfield, and the City of Nashua. On March 8, 2024, the Petitioners filed a motion to amend their petition to include a consolidated rate-making structure. The Commission granted the motion on March

29, 2024. On September 26, 2024, the Petitioners filed supplemental testimony, and on December 11, 2024, the parties filed a fully executed settlement agreement. The parties appeared for a final hearing on January 14, 2025. On January 28, 2025 the Commission approved the settlement agreement and resulting merger and permanent rates. *See* Order No. 27,098. Order No. 27,098 authorized PWW to file its request to recover rate case expenses pursuant to Puc 1905.02 within thirty days of the final order approving the permanent rate. *See* Order No 27,098 at 25.

II. REQUEST FOR RATE CASE EXPENSES

On February 28, 2025, PWW filed its request to recover \$209,199.87¹ in rate case expenses through a monthly customer surcharge of \$0.44 applied over a one-year period. PWW also filed a motion for confidential treatment and protective order.

On April 29, 2025, the DOE filed the technical statement of Utility Analyst Anthony Leone. After reviewing PWW's filing and engaging in discovery, the DOE concluded that certain invoiced charges, that were incurred during Docket No. DW 23-088, should not be recovered as rate expenses in Docket No. DW 23-101. Specifically, Docket No. DW 23-088 involved the Surviving Corporations initial filing for consolidated rates related to the proposed merger of PWW, PEU, and PAC. That case was ultimately dismissed by the Commission in Order No. 26,942 dated February 6, 2024. Upon review, the DOE determined that a number of charges contained in PWW's request for rate case recovery in Docket No DW 23-101, were solely related to the dismissed docket, DW 23-088, and, therefore, should be eliminated from the recovery of rate case expenses in DW 23-101. During discovery, the DOE and PWW reached an

¹ During the DOE's discovery, PWW submitted additional charges totaling \$2,092.50, which increased the grand total of the recovery request to \$211,292.37. *See* April 29, 2025 Technical Statement of Anthony Leone at 1.

agreement that the following charges should be eliminated from the Company's request due to their relation to the dismissed docket.

Vendor	Proposed	Eliminations	Agreed To
Concentric Energy Advisors, Inc.	\$ 56,902.71	\$ 0.00	\$ 56,902.71
DMM	41,550.09	(3,986.32)	37,563.77
NH Brown Law, PLLC	111,179.07	(12,259.25)	98,919.82
Steven E. Patnaude, LCR	681.75	(681.75)	0.00
eScribers	978.75	0.00	978.75
Totals	<u>\$211,292.37</u>	<u>\$(16,927.32)</u>	<u>\$194,365.05</u>

In total, the parties agreed to the elimination of \$16,927.32 in charges.² The resulting recoverable rate expenses totaled \$194,365.05 (\$211,292.37 - \$16,927.32).

The DOE concluded that the expense total of \$194,365.05 complies with Puc 1906.01, wherein these expenses are actual, known, and measurable, were incurred relative to a rate case and its required filings, as further defined in Puc 1604, and in addition, are not otherwise included in the Company's authorized revenue requirement pursuant to 1907.01(b). The DOE opined that the expense total of \$194,365.05 represents just and reasonable expenses and are in the public interest, as required by Puc 1904.01 and the DOE recommended the Commission approve the recovery by the Company of rate expenses totaling \$194,365.05 through a monthly surcharge of \$0.41 per customer per month, over a twelve-month period.

III. MOTION FOR CONFIDENTIAL TREATMENT

In its motion, PWW requests confidential treatment of legal invoices. PWW asserts that these invoices are exempt from disclosure because they contain information protected under the attorney-client privilege and confidential information. Furthermore, disclosure would cause competitive harm to its legal counsel.

² The DOE provided a copy of this Technical Statement to the Surviving Company for its review prior to the filing of the technical statement with the Commission. The Surviving Company indicated to the DOE that it concurred with the DOE's reduction in expenses. See April 29, 2025 Technical Statement at 3.

IV. COMMISSION ANALYSIS

Rate Case Expenses

The Commission treats prudently incurred rate case expenses as a legitimate cost of service appropriate for recovery through rates, consistent with N.H. Code Admin. Rules Puc Chapter 1900. Puc 1904.02 sets forth the criteria for determining allowed rate case expenses, including that such expenses are consistent with the Chapter 1900 requirements, the costs are actual, known, and measurable expenses associated with a full rate case proceeding, and that recovery of the expenses is just, reasonable, and in the public interest, pursuant to the standards of RSA 378:7. *See, e.g., Hampstead Area Water Company, Inc.*, Order No. 26,185 (Oct. 30, 2018), at 4.

The rate case expenses in this matter were anticipated in the 2024 proposed settlement concerning the merger and consolidated rates. The Commission held a duly noticed hearing on the Settlement Agreement, and resultant proposed rates, on January 14, 2025. Section 6.17 of the Settlement Agreement is entitled Rate Case Expense Surcharge. *See* Hearing Exhibit 5 at 27.

The Commission has reviewed the request for rate case expenses, the Company's responses to data requests from the DOE, as well as the technical statement provided by the DOE. Furthermore, the Commission notes that the Company did not object to the requested amendment to its rate case expenses in the DOE technical statement.

The Commission finds that the Company has adequately supported, and supplemented where required, its request with expense documentation and thorough responses to inquiries by the DOE. The Commission also finds the DOE's adjustments to be in the public interest and agrees that the reduction in expenses to exclude the expenses that were solely related to Docket DW 23-088 to be just and reasonable.

Accordingly, the Commission finds the Company's request to recover its rate case expenses in the amount of \$194,365.05, which when divided by the customer base of 39,255 yields a surcharge of \$.41 per month for 12 months, is just and reasonable pursuant to RSA 378:7.

Motion for Confidential Treatment

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(IV) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.12, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of

the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. *See* Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." *See Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case the Company seeks protection for information contained in its legal bills. The Company argues that disclosure of the information contained in the legal billing would put PWW's attorneys at a competitive disadvantage by divulging the rates they charged for work. PWW argues that attorney billing rates are "confidential, commercial, or financial information" and that confidential treatment of that information would be consistent with RSA 91-A and prior Commission orders. The Commission has previously held such hourly billing rate information exempt from disclosure. *See, e.g., Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,586 at 4–5 (October 22, 2013) (citing *Unitil Energy Systems, Inc.*, Order No. 24,746 (2007)); and DW 17-128 *Pennichuck East Utility, Inc.*, Order No. 26,222 (February 26, 2019). We find that the information PWW seeks us to protect is confidential information. Disclosure of billing rates could result in a competitive disadvantage to attorneys hired by PWW. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. PWW has provided total invoice amounts from its attorney to inform the public of its expenses

and we deem this sufficient for purposes of informing the public. We therefore grant the Company's motion to protect the attorney billing information.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, PWW is authorized to recover \$194,365.05 in rate case expenses over a 12-month period through a monthly surcharge of \$.41 per customer; and it is

FURTHER ORDERED that PWW shall post a copy of this order on the Company's website within two business days of the date of this order, with an affidavit of publication to be filed with this office on or before May 30, 2025; and it is

FURTHER ORDERED, that PWW's motion for confidential treatment is **GRANTED**; and it is

FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than June 3, 2025 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 13, 2025; and it is

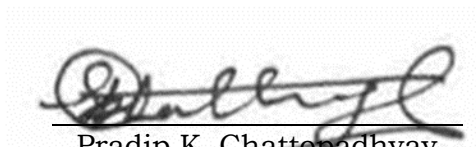
FURTHER ORDERED, that this order shall be effective June 23, 2025, unless the PWW fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the PWW shall file a compliance tariff with the Commission on or before July 8, 2025, in accordance with New Hampshire Code of Administrative Rules, Puc 1603.03(b).

By Order of the Public Utilities Commission of New Hampshire this twenty-third day of May, 2025.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Mark W. Dell'Orfano
Commissioner

Service List - Docket Related

Docket#: 23-101

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