

**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 Approval of Consolidation of Pennichuck East Utility, Inc. and
Pittsfield Aqueduct Company with Pennichuck Water Works, Inc. and Approval of
Consolidated Rates**

Order *Nisi* Approving Recovery of Merger Expenses

O R D E R N O. 28,173

August 5, 2025

In this order, the Commission authorizes Pennichuck Water Works, Inc. (PWW or the Company) to recover merger expenses in the amount of \$400,000.00 through a deferred debit annually over ten (10) years. 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 (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 for recovery of merger-related costs for an amount not to exceed \$400,000. Furthermore, PWW was authorized to create a deferred debit account to recover an annual portion of the final approved merger costs over a ten (10) year period. *See* Order No. 27,098 at 23.

II. REQUEST FOR RATE CASE EXPENSES

On April 30, 2025, PWW filed its request to recover \$400,000.00¹ in merger-related expenses through a deferred debit account to recover an annual portion of the final approved costs over a ten (10) year period. The merger expenses were composed primarily of legal expenses with the firm, Rath, Young and Pignatelli, P.C. related to strategic planning for the planned merger, preparation of the merger petition, representation of the Company before the Commission, and transactional work related to negotiation with lenders, revised corporate documents, updated loan documents, and preparation of required closing documents, filing fees, and legal advice to the Company related to the merger approval and closing. *See* April 30, 2025 Merger Expense Motion at ¶ 8. PWW notes, the cap on merger expenses, as well as the means of recovery, were outlined in specificity by the terms of the Settlement Agreement that were approved via Order 27,098. In addition to the merger expenses PWW also filed a motion for confidential treatment and protective order.

¹ The Company's total merger-related expenses have been calculated at \$441,820.88. *See* April 30, 2025 Merger Expense Motion at ¶ 14. Pursuant to the terms of the Settlement Agreement, the request for merger expenses is capped at \$400,000.

On July 16, 2025, the DOE filed the technical statement of Utility Analyst David Goyette. After reviewing PWW's filing and engaging in discovery, the DOE concluded that all proposed merger-related expenses should be approved as recommended by the Company. In making this recommendation, the DOE noted that unlike rate case expenses, criteria for approval of merger-related expenses are not specified by rule or statute. The DOE proposed the following criteria for examining merger-related expenses:

- (1) Would the expense be approved as a rate case expense per Puc 1904.02;
- (2) Would a reasonable person conclude that a particular charge should be recoverable based on the description, time, and amount of the charge; and
- (3) Is the requested expense actual, known, and measurable.

See July 16, 2025 Technical Statement at 2. Using the criteria outlined, the DOE confirmed that upon review the expenses should qualify as recoverable merger-related expenses. The DOE recommended recovery, as described in Order 27,098, by the Company via withdrawals from PWW's 0.1 Debt Service Revenue Requirement bank account over a 10-year period. *Id* at 3.

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.

IV. COMMISSION ANALYSIS

Merger-Related Expenses

In Order No. 27,038 the Commission approved the recovery of the Petitioners' merger costs totaling no more than \$400,000.00 from the actual finance and regulatory savings to customers, if any, realized from the merger. See Hearing Exhibit 5 at ¶5.2.1. The Settlement Agreement allowed PWW to create a deferred debit account

to recover an annual portion of the final, approved merger-related costs over the next ten (10) years. Said annual recovery of funds would be transferred from PWW's 0.1 DSRR bank account and would not be collected as an amortization expense included in PWW's revenue requirement for future rate cases. Order 27, 098 at 9-10.

The Commission agrees with the DOE that the merger expenses should be reviewed similarly to prudently incurred rate case expenses consistent with the criteria outlined in 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 Commission will hereby analyze the merger expenses under the standard of being just, reasonable, and in the public interest.

The merger-related 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 5.2 of the Settlement Agreement is entitled Recovery of Merger Related Expenses. *See* Hearing Exhibit 5 at 15.

The Commission has reviewed the request for merger expenses, the attached invoices, as well as the technical statement provided by the DOE. Furthermore, the Commission notes that no other party besides the DOE has filed a responsive pleading or objection to the requested expenses.

The Commission finds that the Company has adequately supported its request for merger-related expenses. The Commission also finds the DOE's technical

statement and review of the proposed expenses to be persuasive. Accordingly, the Commission finds the Company's request to recover its merger-related expenses in the amount of \$400,000.00 to be just and reasonable and in the public good.

Furthermore, as outlined in Order No. 27,038 recovery by the Company of the approved merger-related expenses shall be made via withdrawals from PWW's 0.1 Debt Service Revenue Requirement bank account over a 10-year period, as described in the Settlement.

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 203.12(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. *See* April 30, 2025 Motion for Confidential Treatment. 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 \$400,000.00 in merger-related expenses; and it is

FURTHER ORDERED, that PWW is authorized to create a deferred debit that will recover the approved merger-related expenses annually over ten (10) years; and it is

FURTHER ORDERED, that the annual recovery of funds, over ten years, will be transferred from the Company's 0.1 DSRR bank account and will not be collected as an amortization expense included in the revenue requirement of future rate cases; 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 August 11, 2025; and it is

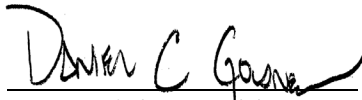
FURTHER ORDERED, that PWW's motion for confidential treatment is **GRANTED**; and it is

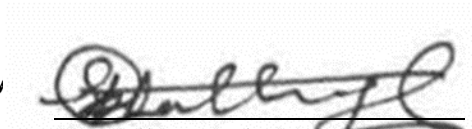
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than August 20, 2025 for the Commission's consideration; and it is

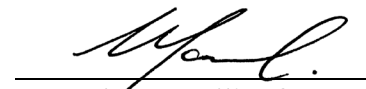
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 27; and it is

FURTHER ORDERED, that this order shall be effective September 4, 2025, unless 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.

By Order of the Public Utilities Commission of New Hampshire this fifth day of August, 2025.



Daniel C. Goldner
Chairman

Pradip K. Chattopadhyay
Commissioner

Mark W. Dell'Orfano
Commissioner

Service List - Docket Related

Docket#: 23-101

Printed: 8/5/2025

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