

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
PENNICHUCK WATER WORKS, INC.

| | |
|-------------------------|-----------|
| ORIGINAL | |
| N.H.P.U.C. Case No. | DW 10-091 |
| Exhibit No. | #13 |
| Witness | Panel 2 |
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DW 10-091

Permanent Rate Proceeding

DW 11-018

Approval of Special Contract with Anheuser-Busch, Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

This Agreement is entered into this 19th day of May, 2011, between Pennichuck Water Works, Inc. (Pennichuck or Company), Staff (Staff) of the New Hampshire Public Utilities Commission (Commission), the Office of Consumer Advocate (OCA) and Anheuser-Busch Incorporated (AB) with the intent of resolving issues in the above-captioned dockets. Pennichuck, Staff, OCA and AB are referred to collectively in this Agreement as the Settling Parties.

II. TERMS OF AGREEMENT

The Settling Parties have reached agreement on the issues as specified below.

A. Revenue Requirement; Rate Base; Rate of Return; Capital Structure

The Settling Parties agree that the Commission should authorize a revenue requirement of \$26,997,164 for Pennichuck based on a total test year rate base of \$92,219,994, operating expenses of \$17,209,913 and an overall rate of return of 7.98%. The overall rate of return is based on a cost of equity of 9.75%, a cost of long-term debt of 6.19%, and a capital structure of

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49.55% debt and 50.45% equity. The revenue requirement agreed to by the Settling Parties results in an increase of \$2,880,738, or 11.95%, over pro forma test year water revenues of \$24,116,426. (See schedules included as Attachment A.)

The Company has agreed as part of a comprehensive settlement to forego the step increase of 3.38% requested in this case which would have resulted in an additional revenue requirement of approximately \$900,000 for certain non revenue producing assets placed in service during 2010.

The Settling Parties agree that the foregoing revenue requirement represents a reasonable compromise of all issues relating to the revenue requirement pending before the Commission for purpose of permanent rates, including allowed overall rate of return, return on equity, capital structure, *pro forma* adjustments, capital additions to rate base, and operating expenses. As the sums expressed above are the result of compromise and settlement, they are liquidations of all adjusted net operating income requirement and revenue requirement issues. The Settling Parties agree that the revenue requirement recommended to the Commission in this Agreement results in permanent rates for Pennichuck's customers that are just and reasonable. The permanent rate increase described in this Section II.A. shall be reconcilable to the first effective date of temporary rates in this case, in accordance with Section II. E. below.

B. Deferred Revenue from the Sale of Cell Tower Leases

The Settling Parties agree that 50% of the net income recognized on Pennichuck's sale of the income stream from seven cell tower leases in 2007 (\$307,818) will be shared with ratepayers, and that this amount should be recorded as a deferred credit in Pennichuck's rate base

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and shared with ratepayers over time through operating revenues. The Settling Parties also acknowledge that Pennichuck has recognized imputed income in the amount of \$98,373 through rates in accordance with Order No. 25,006, and will continue to recognize annual imputed income of \$52,189 for rate-making purposes on a going-forward basis until such time as the deferred credit is fully amortized; provided, however, that the Company shall recognize an additional \$52,189 in annual imputed income upon the full amortization of the deferred credit in recognition of the sales commission paid to The Southwood Corporation for its services rendered to obtain the sale of the cell tower leases. Therefore, the Settling Parties agree that the initial amount of the cell tower lease sales income deferred credit should be \$157,256.¹

C. Special Contract with Anheuser-Busch

On January 20, 2011, Pennichuck filed for approval of a special contract (the Fourth Contract) with AB, which would supersede the special contract approved by Order No. 24,441 in Docket DW 04-228. The Settling Parties agree that the Fourth Contract, which is attached as Attachment B, should be approved in its entirety. The Fourth Contract provides, in part, that:

1. Pennichuck will maintain facilities capable of delivering water to AB continuously at a rate of 1.0 million gallons per day;
2. The maximum quantity of water taken by AB on a daily basis will be limited to 1.5 million gallons, with a maximum hourly flow rate of 2.0 million gallons per day; and

¹ \$307,818 in income recognized on the sale of the cell tower leases less the \$98,373 in income previously recognized in rates by Pennichuck and less \$52,189 in income that is recognized as a pro forma adjustment in the Settlement Agreement revenue requirement.

3. AB will pay a monthly bill consisting of three parts: a monthly meter charge equal to the standard general metered monthly charge for a six inch meter approved by the Commission in the Pennichuck tariff for each of AB's 6" water meters during the term of the Fourth Contract; a base monthly fixed fee of \$30,952.54 per month; and a monthly volumetric charge initially set at \$0.9178 per hundred cubic feet based on the actual volume of water used during the month; provided, however, that such volumetric charge shall be revised to include AB's proportionate share of the Company's payroll taxes as described in Section II (D) of the Agreement.

The Company will provide the actual volumetric rate to the Commission and parties no later than May 24 based on an updated cost of service study which takes into account the provisions of this Agreement. In the event that AB's average annual usage is less than 86,900 cubic feet (approximately 650,000 gallons) per day, AB will be required to make a payment at the end of the contract year known as the Annual Volume Shortfall Charge. The Annual Volume Shortfall Charge will be calculated by multiplying the volumetric rate in effect for AB at the end of the contract year by the difference between the minimum annual usage required by the Fourth Contract and the actual annual usage for the contract year. The term of the Fourth Contract will be ten (10) years commencing on the date of its approval by the Commission. The rates set forth in the Fourth Contract shall be reconcilable to the effective date of the permanent increase and first effective date of temporary rates in this case, in accordance with Section II. E. below.

D. Rate Design

The Settling Parties agree to adopt the Company's proposed cost of service study in this docket subject to the following exceptions:

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1. The proposed shift of revenues from the volumetric rate to the fixed charge for metered customers shall not be adopted, and the proposed increase in revenues and rate design for the metered class shall be in accordance with a revision to the Company's cost of service study which does not reflect the proposed shift of certain costs to the customer charges;
2. In no event shall the increase to the customer charge exceed 11.95%;
3. The number of customers taking service will be reduced as follows: 5/8" meters will be reduced by 15 customers, 3/4" meters will be reduced by 1 customer, 2" meters will be reduced by 3 customers, and 8" private fire service will be reduced by 1 customer, all in recognition of the Company's reasonable expectation that it will not recover any revenues from those accounts in the near future; and
4. To revise the cost of service study to allocate AB's proportionate share of the Company's payroll taxes to AB through the Company's Administrative and General expense. AB accepts the Company's proposed cost of service study as a matter of compromise, and subject to the Commission's approval of the Fourth Contract.

E. Effective Date for Permanent Rates and Recoupment

The permanent rate increase agreed to in Section II.A. shall be effective for all service rendered on and after June 16, 2010, in accordance with Order No. 25,153. In order to reconcile the difference between temporary rates and permanent rates, the Settling Parties agree that the Company should be authorized to implement a surcharge designed to collect, over a twelve month period, an amount equal to the difference between the revenues the Company would have collected had the agreed upon level of permanent rates been in effect for service rendered on and after June 16, 2010 and the actual revenues collected at the temporary rate levels actually in effect. Upon the issuance of a final order in this proceeding, Pennichuck agrees to submit its

calculation of the temporary – permanent rate recoupment and its surcharge recommendation for Commission review. The Company shall also provide a copy of such calculation to the OCA. This equal monthly surcharge shall be calculated based on each customer's actual usage and reflected as a separate item on all customer bills.

F. Rate Impact

The Company is updating its cost of service study to take into account the provisions of this Agreement. As soon as the Company receives this updated study but no later than May 24, 2011, it will provide to the Commission and parties the study and information on the rate impact of this Agreement by customer class, including the impact on the average residential customer with a 5/8 meter. The OCA reserves the right to examine the rate impact analysis for compliance with the terms of this Agreement.

G. Rate Case Expense Surcharge

The Settling Parties agree that Pennichuck should be allowed to recoup its reasonable and prudent rate case expenses for this docket through a surcharge, which shall be included with the temporary rate reconciliation surcharge described in Section II.E. Rate case expenses are estimated to be approximately \$5.50 per customer and may include, but shall not be limited to, Pennichuck's legal expenses and consultant expenses, and incremental administrative expenses such as copying and delivery charges. Pennichuck agrees to submit its final rate case expense request to Staff and OCA for review and for Staff's recommendation to the Commission regarding recovery of such expense. The OCA may file its own response to the Company's request for recovery of rate case expenses.

Upon receipt of the Commission's final order, the Company agrees to file a compliance tariff supplement including the approved surcharge relating to the total recoupment of the difference between the level of temporary rates and permanent rates, the average monthly surcharge for each customer class based on customers individual usage, and the recovery of rate case expenses.

H. Water Infrastructure and Conservation Adjustment Charge (WICA) Pilot Program

The Company, Staff, and AB agree that the Company's proposal to implement a WICA has merit and should be adopted on a pilot basis as modified herein. The Company, Staff, and AB have agreed to implementation of the WICA on the understanding that it will be re-evaluated at the time of the Company's next rate case and that because the WICA is to be implemented on a pilot basis only, it is not intended to constitute precedent for a future proceeding involving the Company or any other utility. The OCA reserves the right to litigate the merits of the proposed WICA.

Specifically, the Company agrees to file a compliance tariff provision adopting a WICA consistent with the following:

1. WICA eligible projects are restricted to the replacement or rehabilitation of water mains, services, gate valves, and hydrants in Pennichuck's "Core" system and that any surcharge associated with any approved projects shall be limited to a 2% increase in rates in any one year with a maximum increase in rates of 7.5% between full rate cases. The Company shall

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coordinate with municipalities within Pennichuck's "Core" system on any projects in the event the municipality is planning street paving or rehabilitation.

2. The Company agrees to file a three-year capital budget for proposed WICA eligible projects no later than December 31, 2011 for the annual WICA replacement program. Each such budget shall show projects broken down into three years. Year 1 projects are those proposed to be constructed in the succeeding twelve month period and shall be provided for final review and informational purposes. Year 2 projects are those proposed to be constructed in the next twelve month period and are provided for review and approval by the Commission. Year 3 projects are those proposed to be constructed in the twelve months following Year 2 and are provided for advisory purposes and discussion. The Company shall provide a copy of this filing to the OCA.

3. Staff or any party may request a hearing prior to the Commission's granting approval for a project to become eligible for cost recovery through the WICA. The determination as to whether to hold a hearing on the eligibility of any project for WICA cost recovery shall be at the discretion of the Commission. The Company agrees to file the final project costs, supporting documentation and proposed WICA adjustment for completed projects previously determined to be WICA eligible. This filing will be made no later than December 31 of each year along with the Company's next three year WICA capital budget. The Company shall provide a copy of this filing to the OCA.

4. The WICA rate shall become effective on a service rendered basis on April 1 following the Company's filing with the Commission seeking implementation of a WICA rate change; provided, however, that if the Commission determines that further investigation or

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consideration of any proposed WICA is needed, it may order that the proposed WICA rate become effective on a temporary basis, in which case the rate shall be subject to reconciliation pending final determination by the Commission. (In such case, reconciliation shall be only for final determination of the costs to be included in the WICA, not for any positive or negative variances in actual revenues collected versus projected revenues.) No project shall be included for recovery in the WICA unless the project is used and useful in providing service to customers or will be used and useful by the effective date of the WICA.

5. In the first year in which a WICA is implemented for any given project or projects, the property taxes included for recovery shall be prorated to reflect the portion of the year that the Company will actually be assessed for such increased taxes. The amount of such taxes, if not known based on a tax bill issued by the relevant taxing authority, shall be estimated using the most recently effective tax rate applicable to the property in question. In the second year in which the WICA is in effect for such project(s), the WICA shall be adjusted to reflect a full twelve months of property taxes, based on the most recent actual tax bill for the relevant property. There shall be no reconciliation for the difference between such tax bill and the estimated tax used for the prior year. After the second year that a WICA for a particular project has been in place, there shall be no further adjustment to the charge.

6. The budget showing proposed WICA eligible projects and the proposed WICA rate adjustment filings shall be filed with the Commission, along with all documentation necessary for Staff, OCA and the parties to verify the costs of the completed projects, proposed tariff

pages, and testimony that summarizes the WICA budgets and the calculation of the surcharge requested.

7. The Company shall provide notice to its customers at least thirty (30) days in advance of its WICA filings.

8. The WICA would be reflected on the customers' bills as a WICA Surcharge Amount. The charge would be expressed as a percentage and applied to the effective portion of the total amount billed to each customer under the Company's approved tariff rate and charges with the exception of miscellaneous charges. Any WICA rate adjustment shall be applied equiproportionally to all classes of customers on a service rendered basis. Notwithstanding the Settling Parties' agreement that implementation of the WICA is on a pilot basis and may be modified or discontinued by the Commission, the inclusion of any project in the WICA shall constitute authorization for the Company to continue to collect such amount through its rates on a continuing basis without regard to any subsequent decision by the Commission to discontinue or modify the WICA process. The WICA process shall automatically terminate at the time of a final order in the Company's next general rate case, unless it is extended by the Commission in such order or prior to such order.

III. CONDITIONS

The Company, Staff, and AB expressly condition their support of this Agreement upon the Commission's acceptance of all its provisions, without change or condition. The OCA expressly conditions its support of this Agreement upon the Commission's acceptance of all of the provisions except those related to the proposed WICA (Section II. H.). If the Commission

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does not accept the provisions in their entirety, without change or condition, any party hereto, at its sole option exercised within thirty 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 Staff or any party to this proceeding or by the Commission for any purpose.

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 that the revenues contemplated will be just and reasonable under the circumstances.

The Commission's approval of the recommendations in this Agreement shall not constitute a determination or precedent with regard to any specific adjustments, but rather shall constitute only a determination that the income requirement, rates, rate base and rate of return, as specified in Section II.A., and the other provisions of this Agreement, when considered as a whole, are just and reasonable.

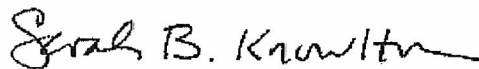
The discussions that produced this Agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

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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

McLane, Graf, Raulerson & Middleton,
Professional Association

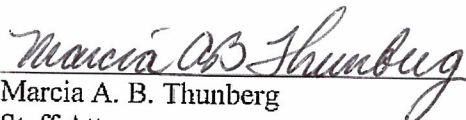


Dated: May 19, 2011

By: _____
Sarah B. Knowlton

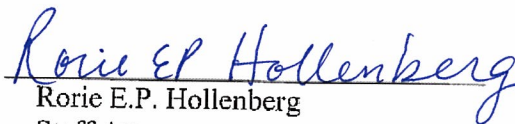
STAFF OF THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Dated: May 19, 2011

By: 
Marcia A. B. Thunberg
Staff Attorney

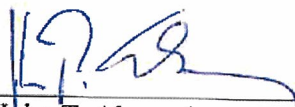
OFFICE OF THE CONSUMER ADVOCATE

Dated: May 19, 2011

By: 
Rorie E.P. Hollenberg
Staff Attorney

Anheuser-Busch Incorporated
By its attorneys
Ransmeier & Spellman

Dated: May 19, 2011

By: 
John T. Alexander