

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

PENNICHUCK WATER WORKS, INC.

DOCKET NO. DW 19-091

**Petition for Mediation or Arbitration**

**REPLY BRIEF OF PENNICHUCK WATER WORKS, INC.**

Pursuant to the approved procedural schedule in the proceeding, Pennichuck Water Works, Inc. (“PWW”) hereby submits the below reply to the Town of Hudson’s (“Town”) brief.

**Areas of Apparent Agreement Between PWW and the Town**

Having read the Town’s brief, PWW believes there is apparent agreement between PWW and the Town on the following facts: (1) The Commission approved the PWW-Town special contract by Order No. 24,611 in Docket No. DW 05-143, on March 31, 2006; (2) That special contract describes when the Town will be liable for additional rate adjustments:

Section 7(b), Volumetric Charge. In addition to the Demand Charge, the Town shall pay the Company \$1.116 per 100 cubic feet (748 gallons), the Company’s production cost excluding administrative and general cost for all water taken by the Town (the “Volumetric Charge”). The Volumetric Charge **shall be adjusted from time-to-time by the same percentage and effective as of the same dates as any adjustment in the rates paid by residential customers in Nashua pursuant to the Company’s tariff on file with the NHPUC.**” See, Commission Docket Book Tab 1, Attachment A, Special Contract, paragraph 7(b);

(3) The special contract represents the entirety of the agreement between the parties; (4) PWW and the Town have themselves not amended the special contract; (5) the special contract is clear and unambiguous; and (6) Since the special contract was approved, PWW has received additional rate approvals from the Commission which PWW has billed the Town.

Because the Town objects to the QCPAC and rate case expenses, the crux of the dispute, therefore, turns on whether the QCPAC and rate case expenses constitute “**any adjustment in**

**the rates paid by residential customers in Nashua.**” (emphasis added). As noted in PWW’s brief and further noted below, resolution of this dispute is heavily reliant on prior facts determined by the Commission.

### **Town Arguments**

The Town’s main arguments in this dispute are that the special contract does not expressly obligate the Town to pay surcharges, that the definition of Volumetric Charge controls what constitutes “any adjustments in the rates paid by residential customers”, and that prior Commission orders do not support payment of any surcharges. PWW disagrees with each of these arguments and directs the Commission’s attention to the lengthy Commission history interpreting this special contract and approving rates that the record reflects were intended to apply to the Town. Also contrary to the Town’s assertion, PWW avers that the very language of Section 7(b) reflects that the parties intended that other adjustments would be allowed. Further, PWW disagrees that Section 7(b) limits “any adjustment in rates” to “production cost excluding administrative and general costs”. Again, the Commission’s multiple orders are contrary to the Town’s propositions and in fact interpret “any adjustment in rates” to include the very charges (QCPAC and rate case expenses) to which the Town objects. The Commission’s interpretation of such adjustment clauses in this manner predated the PWW-Hudson special contract.<sup>1</sup>

### **Commission Approval of the Specific Charges in Question**

The two charges spurring the Town’s objection are: (1) “PWW/CWS Rate Case Expense 2018”; and (2) “PWQCPAC Recoupment”<sup>2</sup>. The Commission approved these surcharges

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<sup>1</sup> See Order Nos. 24,465 and 24,469 in Docket No. DW 04-056, PWW rate case, whereby the Commission approved rate case expenses for all customers, including Anheuser-Busch whom PWW served pursuant to a special contract with a similar adjustment clause.

<sup>2</sup> See Town 12/27/18 objection and bills included as Attachment B to PWW initial petition.

following duly-noticed and un-appealed adjudicative proceedings: PWW's general rate case, Docket No. DW 16-806; and PWW's subsequent Qualified Capital Project Adjustment Charge ("QCPAC") dockets.

In Docket No. DW 16-806, on October 25, 2016, the Commission issued Order No. 25,957 notifying the public of its intent to investigate PWW's proposed general rate increase and QCPAC. After a year-long proceeding to investigate the proposed rate changes and QCPAC and after a hearing on the merits, on November 7, 2017, the Commission approved new permanent rates and the QCPAC program and made the QCPAC program applicable to all of PWW's customers. See Docket No. DW 16-806, Order No. 26,070 at 10. On October 29, 2018, by Order No. 26,183 in Docket No. DW 18-022, the Commission approved the QCPAC rate that appears in the Town's bill. PWW's QCPAC tariff expressly reflects its applicability to the Town and how it is calculated:

"The QCPAC will be applied to all bills rendered after May 4,2018. The QCPAC will be applied uniformly to all customer classes and charges with the exception that the QCPAC will not be applied against the monthly fixed contract charges associated with Anheuser-Busch, Town of Milford and Town of Hudson special contracts." Source: PWW Tariff-Original Page 52, See Attachment PWW-A, PWW QCPAC Tariff.

Further, the QCPAC describes the volumetric nature of the charge:

The "charge will be expressed as a percentage carried to two decimal places and will be applied to the effective portion of the total amount billed to each customer under the Company's otherwise applicable rates and charges." *Id.* at Original Page 53. The charge "will be calculated based on actual charges incurred between the effective date of [the] tariff and the issued date of this tariff and shall be collected as a lump sum on the first bill rendered after the issuance date of this tariff". *Id.*

With respect to the rate case expense, on February 23, 2018, the Commission Staff recommended the Commission approve PWW's recovery of rate case expenses from all of its

28,354 customers at a rate of \$0.43 per customer per month. See Attachment B, at 3. Staff did not carve-out the Town or any of PWW's special contract customers, from this charge. On March 20, 2018, the Commission approved the \$0.43% surcharge on all customers' bills. See Order No. 26,114 at 5. This history of Commission approval of the surcharge and application to the Town makes it clear that the Commission interpreted Section 7(b) to allow such charges to the Town. Also, while the Volumetric Charge itself is based on "production costs", the Commission did not limit the "adjustment in the rates" to "production costs". The Commission further, clearly, did not view the itemization or labeling of the rate adjustments into separate surcharges as contrary to Section 7(b).

### **Precedence**

Commission approval of these two surcharges is not an anomaly in the Commission's interpretation of Section 7(b). Although rate case expenses and the QCPAC are not noted by name, over the past thirteen years, the Commission has issued no fewer than sixteen orders finding that the adjustable portion of the Town's special contract allowed such surcharges:

Docket No. DW 06-073, PWW Rate Case, NHPUC Order No. 24,751.

Docket No. DW 08-073, PWW Rate Case, NHPUC Order No. 25,006, NHPUC Order No. 25,018.

Docket No. DW 10-091, PWW Rate Case, NHPUC Order No. 25,153, NHPUC Order No. 25,230, and NHPUC Order No. 25,278.

Docket No. DW 12-359, PWW WICA, Order No. 25,510 (no rate change).

Docket No. DW 13-130, PWW Rate Case, NHPUC Order No. 25,598, NHPUC Order No. 25,693, NHPUC Order No. 25,752.

Docket No. DW 13-358, PWW WICA, NHPUC Order No. 25,661

Docket No. DW 15-043, PWW WICA, NHPUC Order No 25,784

Docket No. DW 16-220, PWW QCPAC, NHPUC Order No. 25,896

Docket No. DW 16-806, PWW Rate Case, NHPUC Order No. 25,990, NHPUC Order 26,070, NHPUC Order No. 26,114.

The filed tariffs implementing these rate changes are attached as Attachment Hudson 1-2, Parts 1, 2, and 3, PWW's Filed Tariffs. It is important to note that the Town did not appeal any of the Commission's determinations of fact or interpretations of Section 7(b). Nor did the Town argue that the authority for the surcharges were not "clearly delineated", per Puc 1606.03(e).

### **Conclusion**

For the foregoing reasons, PWW respectfully requests that the Commission affirm that PWW is charging the Town lawful rates under the terms of the special contract.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By Its Attorney

Date: November 5, 2019

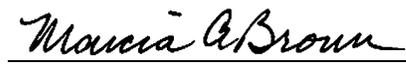


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### CERTIFICATE OF SERVICE

I hereby certify that a copy of this reply brief has been emailed this day to the Commission's Docket-Related service list for this proceeding.

Dated: November 5, 2019

  
Marcia A. Brown, Esq.