

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-071

PENNICHUCK WATER WORKS, INC.

Petition for Approval of Special Contract With Pennichuck East Utility, Inc.

Order Granting Special Contract and Motion for Confidential Treatment

ORDER NO. 26,049

August 23, 2017

This order approves a special contract between Pennichuck Water Works, Inc. (PWW or the Company), and Pennichuck East Utility, Inc. (PEU), for PWW to provide wholesale water service to PEU at a non-tariffed rate plus other charges to be paid for by PEU. It also grants a motion for confidential treatment filed by PWW in connection with certain customer water consumption data.

I. BACKGROUND

On April 25, 2017, PWW filed a petition seeking approval of a special contract to provide wholesale water service to PEU for a period of twenty years at a special non-tariffed rate, and for PEU to pay PWW for the costs associated with the interconnection needed to supply PEU with the requested water and other related charges associated with the special contract.

In support of its petition, PWW submitted the pre-filed testimony and attachments of its Chief Operating Officer, Donald L. Ware. As part of its filing, PWW requested confidential treatment of information included in its filing regarding water usage and customer allocation data of PWW's special contract customer, Anheuser-Busch. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by

the Commission, are posted to the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2017/17-071.html>.

II. SUMMARY OF SPECIAL CONTRACT AND POSITIONS OF THE PARTIES

Under the proposed special contract, PWW would supply PEU with water for PEU to provide retail water service to PEU's customers in the Town of Litchfield and to some of PEU's customers in the Towns of Londonderry, Pelham, and Windham. Those areas are currently served with water PEU purchases from the Town of Hudson. According to the filing, the supply from Hudson may not be sufficient in the future to meet PEU's calculated daily demand for a number of reasons. For example, new permitting requirements imposed by the New Hampshire Department of Environmental Services have decreased the allowable production from the Hudson wells. Further, PEU is adding over 400 new customers in the Town of Litchfield as a result of Perfluorooctanoic Acid (PFOA) contamination in the groundwater there. This additional demand will exceed PEU's existing water sources and make it increasingly likely that PEU will be unable to meet its calculated daily demand. The connection at PWW's pump station in the Town of Merrimack is intended to address PEU's water supply issues.

The proposed contract is attached to the pre-filed testimony of Mr. Ware. Under the terms of the contract, PEU will pay all costs associated with the installation of the interconnection. Those costs are estimated to be in the range of \$2.7 million. PEU will also purchase from PWW the existing unused chlorination station for \$15,000 and will use it as the pumping station for the service interconnection. In addition, PEU will be responsible for all legal costs associated with the special contract as well as preparing the cost of service study submitted to the Commission. The cost of service study is a report used to determine the actual costs associated with providing wholesale water service to PEU.

Under the terms of the contract, PEU will guarantee the purchase of a minimum of 146,390 centum cubic feet of water (CCF) (approximately 300,000 gallons per day (GPD)) from PWW over the course of a calendar year. PEU will pay PWW a base monthly fixed fee of \$10,101 and a volumetric rate of \$1.2635 per CCF. The contract is take or pay, meaning that PEU must pay the minimum volumetric charge even if it takes less than the minimum called for under the terms of the special contract. In addition, PEU will pay a monthly fixed meter charge of \$38.75 to cover the costs of reading the meter, billing, and meter testing. PEU will also purchase the six inch turbine meter required to meter the water sold to it and contribute the meter to PWW.

If there is a change in PWW's volumetric rates for its core system customers in the City of Nashua, the volumetric rate charged to PEU will be adjusted by the same percentage and at the same time. PEU will also limit its maximum daily demand to 700,000 GPD and a maximum peak demand of 625 gallons per minute. Non-training firefighter use and other declared emergencies will not be counted toward the daily maximum.

PWW filed a statement of special circumstances pursuant to Puc 1606.02(a) that justifies the departure from its existing tariff. PWW stated that PEU will become its second largest user with the guaranteed purchase of 300,000 GPD and that the rates to be charged more closely reflect PWW's actual costs to serve PEU. PWW also stated that the twenty-year term of the contract reduces the risk of revenue instability and is similar to other wholesale agreements it currently has in force. In addition, PEU has its own storage capability reducing the high peaking factors that most customers create.

PEU expects to take water service from PWW after it completes the installation of its new main across the Merrimack River between Litchfield and Merrimack. That crossing was

approved in Order No. 26,026 on June 16, 2017. PEU has stated that it does not expect to complete the main extension until 2018.

PWW also filed a motion for protective order relating to customer specific consumption data contained in its cost of service study. The cost of service study evaluated water usage from PWW's customers, including PWW's special contract customers. The study included usage data related to Anheuser-Busch, a PWW special contract customer. PWW sought confidential treatment of that consumption data pursuant to RSA 91-A:5, IV, which exempts from public disclosure "records pertaining to internal personnel practices [and] confidential, commercial, or financial information." PWW stated that disclosure of such consumption data could be harmful to and otherwise damage Anheuser-Busch's competitive position.

Commission Staff reviewed the filing and met with the parties in a technical session. The Office of the Consumer Advocate participated in the proceedings pursuant to RSA 363:28. The OCA issued one round of discovery and participated in the technical session. On August 2, Staff recommended approval of the terms of the special contract. The recommendation concluded that the special contract will help maintain stable revenues and is similar to that provided by PWW to its other wholesale contract customers, and that proposed rates were appropriate. In its recommendation, Staff stated that the OCA concurred.

II. COMMISSION ANALYSIS

Pursuant to RSA 378:18, a public utility may make a "contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest." The standards are further detailed in *Generic Discounted Rates*, 77 NH PUC 650, 654-55 (1992), and *Generic Discounted Rates Docket*, 78 NH PUC 316, 316-17 (1993).

Based on the record before us, we find that special circumstances exist that warrant deviating from tariffed rates. The connection with PWW mitigates the effects of the diminishing well capacity from PEU's source wells in the Town of Hudson and the increased capacity needs caused by the addition of 400 new customers in the Town of Litchfield because of PFOA in the groundwater supply there. The high monthly volume, reduced peaking risk, and twenty-year term support the proposed arrangement. The cost of service study demonstrates that the proposed rates cover the costs PWW will incur to provide service to PEU. The twenty-year term of the contract helps maintain revenue stability for PWW, which is beneficial to the Company as well as ratepayers. We approve the special contract at the rates proposed and find that they are just and reasonable and consistent with the public interest.

Because the crossing between the Towns of Merrimack and Litchfield has not yet been completed, *see Pennichuck Water Works, Inc.*, Order No. 26,026 (June 16, 2017), we conclude that the twenty-year term of the contract should not start until the interconnection is completed, the meter installed, and all other contract terms have been complied with by PWW and PEU.

We next address PWW's motion for confidential treatment. RSA 91-A:5, IV states, in relevant part, that records of "confidential, commercial, or financial information" are exempted from disclosure. *See Unital Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009). In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* Second, when a privacy interest is at stake, we assess the public's interest in disclosure. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy

interests in non-disclosure. *Id.* This is similar to the Commission's rule on requests for confidential treatment. *See* N.H. Code Admin. Rules Puc 203.08.

The Commission has previously found the categories of information for which PWW seeks protection to be exempt from disclosure. *See Pennichuck Water Works, Inc., Order No. 25,278* (October 21, 2011) (protecting from disclosure consumption data for Anheuser-Busch). Disclosure of the information at issue, water consumption and cost data relating to Anheuser Busch, could cause competitive harm to Anheuser Busch. Further, while disclosure of that information would inform the public about the workings of the Commission, in balancing the interests of Anheuser Busch in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public's interest in disclosure. *See Union Leader Corp. v. NH Housing Finance Auth., 142 N.H. 540, 545* (1997) (benefits of disclosure must be weighed against benefits of non-disclosure). Therefore, we grant PWW's motion. Consistent with Puc 203.08(k), our grant of this motion is subject to our ongoing authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination. This order is for the material outlined in PWW's motion for confidential treatment.

Based upon the foregoing, it is hereby


ORDERED, that the proposed special contract between Pennichuck Water Works, Inc., and Pennichuck East Utility, Inc., is approved, subject to the condition referenced in this order relating to the commencement date of the special contract; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc.'s, Motion for Confidential Treatment is granted.

By order of the Public Utilities Commission of New Hampshire this twenty-second day
of August, 2017

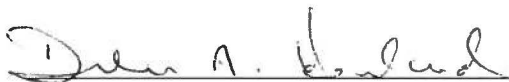


Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 17-071-1 Printed: August 23, 2017

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:** DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**