

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

Pennichuck Water Works, Inc.

Docket No. DW 19-091

Petition for Arbitration

SECOND STATEMENT OF AGREED UPON AND CONTESTED FACTS

NOW COMES the Town of Hudson, by and through its attorneys, Tarbell & Brodich, P.A., and respectfully submits the within Second Statement of Agreed Upon and Contested Facts, and in support thereof states as follows:

Statement of Agreed Upon Facts

The parties do not dispute the existence of the Special Contract, its terms and conditions, or that the fact that the Special Contract governs the relationship of the parties as it relates to this dispute. The parties agree that the Special Contract has never been amended. The parties agree that the Special Contract is a special contract within the meaning of RSA § 378:18.

Statement of Facts which may be Agreed Upon

On information and belief, it appears that the parties do agree that the appropriate dispute resolution process under the Special Contract is binding arbitration administered by the Commission.

Statement of Contested Facts

The parties dispute all other facts as they relate to the interpretation of the Special Contract and the intention of the parties with regard to the Special Contract. Hudson is unable, as a practical concern, to itemize each and every disputed fact. Rather, having itemized the facts which are

undisputed (above), all other facts are disputed. All disputed issues of fact set forth in the Town of Hudson's Memorandum and Rebuttal Memorandum are incorporated herein by reference.

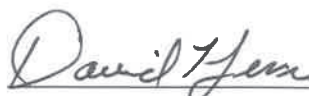
Hudson's inability to itemize every disputed fact is in part due to PWW's lack of granular specificity with regard to its claims. However, in response to the Secretarial Letter dated November 22, 2019, Hudson notes the following facts, without limitation, which it believes are disputed, some of which are in the alternative, depending on what position is ultimately taken by PWW:

- Whether the Special Contract requires Hudson to pay any fees, fares or charges in addition to the Annual Demand Charge and a Volumetric Charge. Hudson believes it is only required to pay the Annual Demand Charge and a Volumetric Charge. PWW believes Hudson is also required to pay surcharges, in addition to, the Annual Demand Charge and the Volumetric Charge.
- Whether the surcharges are included within the Volumetric Charge. Hudson believes the surcharges are not included within the Volumetric Charge ("production cost excluding administrative and general costs"). PWW believes the Volumetric Charge includes surcharges.
- Whether surcharges are volumetric charges. Hudson believes surcharges are not volumetric charges. PWW believes surcharges are volumetric charges.
- Whether Hudson has to pay any "tariff-rate" fees, fares or charges. Hudson believes it is only required to pay the fees, fares or charges required by the Special Contract, which are "non-tariff rate." PWW believes Hudson is required to pay both the non-tariff rate charges under the Special Contract, and tariff rate surcharges.
- Whether the Volumetric Charge may be adjusted by surcharges. Hudson believes surcharges are not adjustments to the Volumetric Charge, but a separate charge in addition to the Volumetric Charge. PWW believes surcharges are an adjustment of the Volumetric Charge.
- Whether the Volumetric Charge is "adjustable" by surcharges. Hudson believes the Volumetric Charge is only adjustable by the same percentage as any adjustment in the volumetric rates paid by residential customers in Nashua. PWW believes the Volumetric Charge is adjustable as aforesaid, and also adjustable by surcharges.
- Whether the Special Contract, by its express terms, requires Hudson to pay surcharges. Hudson believes the Special Contract does not, by its express terms, require payment of any surcharges. PWW believes the Special Contract expressly requires payment of surcharges.

- Whether the parties intended Hudson to pay surcharges. Hudson believes the parties never intended Hudson to pay surcharges. *See* Town of Hudson's Memorandum for specific facts relative to the parties' intent and/or lack of intent. PWW believes the parties intended Hudson to pay surcharges.
- Whether Hudson's payment of prior surcharges means that surcharges are proper under the Special Contract. Hudson believes its payment of prior surcharges does not suggest any agreement on Hudson's part that it is required to pay surcharges or that surcharges are includable under the Special Contract, but rather, merely reflects a business decision not to contest the surcharges in light of the amount of money in controversy. PWW believes Hudson's payment of prior surcharges means Hudson agrees that the surcharges are included within the Special Contract.
- Whether Hudson's non-participation in prior proceedings before the Commission (other than the proceeding in which the Special Contract was approved) is grounds for requiring Hudson to pay surcharges. Hudson does not believe it was required to participate in any prior proceedings because it was entitled to rely on the Special Contract, which does not require payment of surcharges, and which could not be amended or modified without its agreement. PWW believes Hudson's non-participation in prior proceedings of the Commission is grounds for requiring Hudson to pay the surcharges complained of.
- Whether the Special Contract represents the entire agreement between the parties. Hudson believes it does. PWW believes the parties' agreement is represented by the Special Contract, as well as, other terms and conditions, such as payment of surcharges.
- Whether the Special Contract can be modified other than by mutual agreement, with said mutual agreement being approved by the Commission in a proper proceeding administered by the Commission pursuant to its rules applicable thereto. Hudson believes is cannot be so modified. PWW believes is can be so modified.

Respectfully submitted,  
Town of Hudson,  
By and through its attorneys,  
TARBELL & BRODICH, P.A.

Dated: December 2, 2019




By: David E. LeFevre, Esq., BNH #13811  
45 Centre Street  
Concord, NH 03301  
(603) 226-3900

CERTIFICATION

I hereby certify that a true and accurate copy of the foregoing has been forwarded by e-mail to all parties on the docket service list.

Dated: December 2, 2019

  
\_\_\_\_\_  
David E. LeFevre, Esq.