

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Pennichuck Water Works, Inc.

Docket No. DW 22-085

Petition for Approval of Special Contract with Merrimack Village District

SETTLEMENT AGREEMENT

April 26, 2023

SETTLEMENT AGREEMENT

A. BACKGROUND

Pennichuck Water Works, Inc. (PWW) is a regulated public utility under RSA 362:2 and RSA 362:4. PWW is authorized by the Commission, under RSA 374:22 and 26, to provide water service in the City of Nashua and the towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Plaistow, and Salem, New Hampshire as well as in Tyngsborough, Massachusetts, at rates filed or approved under RSA Chapter 378. PWW also has, pursuant to RSA 378:18, Commission-approved special contracts with the Town of Hudson, Anheuser-Busch, LLC, Tyngsborough Water District, Pennichuck East Utility, Inc., and the Town of Milford.

Merrimack Village District (MVD) is a village district established and operating under the authorities of RSA 38 and RSA 52. MVD manages over 7,500 service connections that include residential, municipal, commercial and industrial properties. MVD's service area covers more than 87% of the Town of Merrimack. MVD owns, services, and maintains approximately 930,800 feet (or roughly 176 miles) of water mains, 930 fire hydrants, six wells (Wells 2, 4, 5, 7, 8, and 9), three water storage tanks, an Iron & Manganese treatment plant, three booster stations and three Per- and Polyfluoroalkyl Substances (PFAS) Treatment Plants.

PWW and MVD's systems are interconnected. The interconnection point between the two systems (Interconnection Point) is at MVD's existing water booster station located along Route 101A in Merrimack.

As noted in PWW's petition for authority for approval of the proposed special contract with MVD, both PWW and MVD have made investments in plant to support the interconnection of the respective water systems. Petition at 2, para. 4. MVD has historically used the

Interconnection Point on an as-needed basis to supplement its water supply, at retail rates, when one or more of the wells are out of service or during periods of heavy summer usage by MVD customers. *See* Testimony of Ronald Miner, Jr., at page 2, lines 17-19. In Docket No. DW 21-134, Order No. 26,597 (dated March 25, 2022), the Commission approved an emergency special contract for PWW to provide water supply while MVD constructed PFAS treatment facilities for wells 2, 7 and 8, and well 9 which replaced the now inactive well 3. That emergency contract expired December 31, 2022. The proposed special contract will allow MVD to meet its maximum daily demands, while MVD develops other sources of water supply within its system. MVD desires a special contract arrangement because it will provide a more reliable option for water supply than currently is available. *See* Testimony of Ronald Miner, Jr. at page 6, lines 6-9.

In its petition, PWW averred that deviating from PWW's general tariff for MVD is in the public interest because of the following reasons:

- a. MVD has its own water storage facilities, which results in MVD's usage being steady and consistent, without troublesome hourly or daily peaks during seasonal peaking periods (which are inefficient for the overall delivery of water by PWW into its distribution system).
- b. MVD paid for the entire cost of constructing the existing Route 101A interconnection between MVD and PWW.
- c. MVD has six large wells capable of providing 100% of MVD's essential water supply.
- d. The rates proposed in the special contract were derived using a cost-of-service approach, which is appropriate under the circumstances because it is more reflective of the actual cost to serve MVD based upon the facts detailed above, as opposed to PWW's tariffed rate that would otherwise apply, absent a special contract.

- e. PWW currently provides MVD with a second source of water supply in the event that one or more of MVD's wells are not operational or have become contaminated. The existing interconnection between PWW and MVD provided about 32% of MVD's water over the past year while MVD completed the installation of water treatment facilities to remove Perfluorinated compounds from its well water.

B. PROCEDURAL HISTORY

On December 16, 2022, PWW filed its petition for approval of a special contract (Proposed Contract) with MVD. PWW supported the petition with the pre-filed testimony of PWW's Chief Operating Officer, Donald L. Ware, related schedules, a Statement of Special Circumstances justifying continued departure from PWW's general tariff schedules, a Cost of Service Study (COSS), as well as the pre-filed testimony of MVD's Superintendent, Ronald Miner, Jr., on behalf of MVD. The Proposed Contract would be for an initial three-year term (Initial Term), followed by three one-year renewal terms. Although the first Contract Year in the Initial Term would run September 1, 2023 to August 31, 2024, PWW and MVD requested Commission approval of the Proposed Contract effective June 1, 2023 so that MVD could avail itself of the water supply and rates in time for this summer's water demand.

On December 20, 2022, the Commission issued an acknowledgement letter.

On December 21, 2022, PWW filed a motion for protective order and confidential treatment for the live Excel workbook of the COSS filed in support of the petition.

On December 21, 2022, the N.H. Department of Energy (DOE) filed a notice of appearance.

On January 6, 2023, PWW, on behalf of itself and the DOE, filed a proposed procedural schedule for the Commission's review and approval.

On February 13, 2023, the Commission issued an order approving the proposed procedural schedule and opening an adjudicative proceeding and noticing of a prehearing

conference and technical session on March 9, 2023. On the same date, the Commission also issued its hearing guidelines.

On February 14, 2023, PWW filed an affidavit of publication of the Commission's order.

Also, on February 14, 2023, PWW filed an assented-to request to reschedule the prehearing conference. On February 16, 2023, the Commission granted that request and rescheduled the prehearing conference and technical session to April 5, 2023.

On April 5, 2023, the Commission held the prehearing conference that was immediately followed by a technical session attended by PWW, MVD, and the DOE.

Also on April 5, 2023, PWW filed revised versions of its petition, pre-filed testimony of Mr. Ware, and proposed special contract. PWW explained that during discovery with the DOE, certain inconsistencies among the documents were discovered and that the revised filings corrected those inconsistencies.

C. LEGAL AUTHORITY

Pursuant to RSA 378:14, no public utility "shall charge or receive a greater or different compensation for any service rendered to any person, firm, or corporation than the compensation fixed for such service by the schedules on file with the Commission and in effect at the time such service is rendered." Pursuant to RSA 378:18, however, the Commission may deviate from RSA 374:14 and approve special rates for utility service if it finds that "special circumstances exist which render such departure from the general schedules just and consistent with the public interest..." RSA 378:18.

The Commission has used the authority of RSA 378:18 broadly to approve just and reasonable rates to meet the unique needs of parties. See, e.g., *Aquarion Water Company of New Hampshire, Inc.*, Docket No. DW 16-804, Order No. 25,938 (August 22, 2016) at 4 (approving

retroactive special contract rates for water supply to the Wiggin Farm Homeowner's Association which was facing an emergency loss of its own water supply); and *Public Service Company of New Hampshire*, Docket No. DE 03-064, Order No. 24,151 (March 31, 2003) at 18 (in dicta, the Commission opined that "an appropriate reconciliation mechanism" may be needed ~~in another docket~~ to provide retroactive rate relief to an intervenor, Wausau Papers of New Hampshire, Inc., consistent with the applicable [just and reasonable] legal standards).

Cost causation is a traditional ratemaking policy. *Pennichuck Water Works, Inc.*, Docket No. DR 97-058, Order No. 22,883. This policy also gives the Commission authority to approve the relief requested in this proceeding. When faced with a review of respective subsidies among rate classes, the Commission has looked to the facts to determine what level of subsidy is being incurred and whether that subsidy is "beyond the zone of 'just and reasonable'". *Id.* Here, there is no subsidy because the COSS is a direct assessment of cost causation and PWW's costs to provide the service to MVD. The rates proposed in the proposed special contract reflect costs to ensure the rates charged MVD reflect current conditions and that no subsidies occur as a result of the PWW-MVD special contract.

Based on the statutory authorities, traditional ratemaking policy, and past Commission orders, PWW and the DOE believe the Commission has adequate authority to approve the relief requested in this Agreement.

D. TERMS OF THIS SETTLEMENT AGREEMENT

1. The DOE does not take exception to PWW and MVD's Proposed Contract which is included with this Agreement as Attachment A. In summary, the terms are as follows:

	Proposed Contract
Annual Demand Charge	\$15,143.13 monthly (or \$181,718 per annum)
Volumetric Rate	\$0.9403/CCF (base rate based on Cost of Service expenses and plant investment associated with DW19-084)
Minimum Monthly and Annual Purchase	121,992 CCF per Contract Year (250,000 GPD or 10,166 CCF per month)
Maximum Daily Demand¹	500,000 GPD
Peak Draw	347 Gallons Per Minute
Monthly Fixed Meter Charge (based on a 6" meter)	\$78.33 per month
Term	3-year Initial Term (9/1/23 to 8/31/26) and (3) one-year auto renewals
Stub Year	Refers to the term between the requested June 1, 2023 effective date and September 1, 2023 start of the first Contract Year of the Initial Term. Usage in the Stub Year will be counted toward the usage credit for the first Contract Year.

2. If MVD's actual usage for the month is less than the Minimum Monthly Usage of 10,166 CCF (250,000 GPD), the difference between the billed Minimum Monthly Usage and MVD's actual consumption shall be carried as a credit to MVD in the following month's bill. The credit will reduce the subsequent month's billable consumption should MVD's actual consumption during the subsequent month exceed its Minimum Monthly Usage. MVD will carry

¹ Water taken for non-training firefighting purposes will not be counted toward the Maximum Daily Demand limit. If MVD elects to have PWW wheel water from PWW through MVD's distribution system from the Interconnection Point to PWW's Bedford customers in Cabot Preserve, Greenfield Farms, and Parker Ridge subdivisions, the associated water supply will also not be counted toward the Maximum Daily Demand.

any credits from month-to-month until the end of each Contract Year. If, at the end of a Contract Year, MVD has a consumption credit, such credit will be reset to zero as of the start of the next Contract Year.

3. PWW, MVD, and the DOE agree that the Proposed Contract will have no detrimental effect on PWW's other ratepayers. There will be no recovery from, or refund to, other ratepayers as a result of the implementation of the Proposed Contract.

4. PWW, MVD, and the DOE agree that Attachment A supersedes all prior versions of the Proposed Contract filed with the Commission. The changes in Attachment A, as compared to the initially-filed version of the Proposed Contract were reflected in the track-change version filed with the Commission on April 5, 2023. Those changes were the result of discovery and relevant data responses provided by PWW and MVD to DOE's data requests and are attached hereto as Attachment B.

5. PWW agrees to file a fully signed version of the amendment within thirty (30) days from the Commission's order approving the Proposed Contract.

6. PWW, MVD, and the DOE request the Commission approve the Proposed Contract for an effective date of June 1, 2023 without a hearing. Under RSA 378:18,

“nothing herein shall prevent a public utility from making 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 and...the commission shall by order allow such contract to take effect.”

Adjudicative process and agency hearings are required when hearings are “required by law”. *In re Support Enforcement Officers I*, 147 N.H. 1, 7 (2001) (In determining whether a proceeding is a “contested case” thereby triggering RSA 541-A:31-36, the Court looks to “whether an agency hearing is ‘required by law’”). Here, no hearing is expressly required under RSA 378:18, and

PWW, MVD, and the DOE agree to the disposition of this docket by settlement agreement.

Because RSA 378:18 does not require a hearing, PWW, MVD, and the DOE recommend that the Commission approve the Proposed Contract without a hearing. *See, Pennichuck Water Works, Inc.*, Order No. 26,597 (March 25, 2022) (Commission approved special contract with Merrimack Village District without additional hearing).

7. PWW, MVD, and the DOE further contend that there is sufficient support in the record, which includes this Agreement and attachments, to find that special circumstances exist warranting departure from the general schedules to be just and consistent with the public interest.

PWW, MVD, and the DOE agree that the Proposed Contract is necessary to provide reasonably priced water service to MVD under the terms of the Proposed Contract, and that the Proposed Contract does not shift costs to ratepayers or effect PWW's current tariff rates.

E. CONDITIONS

The parties expressly condition their support of this Agreement upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept the provisions of this settlement in their entirety, without change or condition, any party hereto, at its sole option exercised within fifteen (15) 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 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 consistent with the public interest.

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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly signed by their respective fully authorized representatives.

Pennichuck Water Works, Inc.

By its attorney,

Date: April 26, 2023



Marcia A. Brown

Merrimack Village District

Date: April 26, 2023



Ronald Miner, Jr., Superintendent

New Hampshire Department of Energy

By its attorney,

Date: April 26, 2023



Suzanne G. Amidon