

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-085

PENNICHUCK WATER WORKS, INC.

**Petition for Approval of Special Contract
with Merrimack Village District, Inc.**

Order *Nisi* Approving Special Contract

ORDER NO. 26,848

June 14, 2023

In this order, the Commission approves a special contract for the wholesale supply of water from Pennichuck Water Works, Inc. (PWW) to Merrimack Village District Water Works (MVD).

On December 16, 2022, PWW filed a petition for approval of a special contract with MVD for the wholesale supply of water; on April 5, 2023, PWW filed an amended petition (Petition). The New Hampshire Department of Energy (DOE) filed an appearance on December 21, 2022. The Office of the Consumer Advocate did not enter an appearance in the docket, and no petitions to intervene were filed. A prehearing conference was held on April 5, 2023; a Post-Prehearing Conference Order was issued April 17, 2023 (Post-PHC Order). On April 26, 2023, PWW filed a settlement agreement (Settlement) between PWW, MVD and DOE (Settling Parties). No objections were filed to the Petition or Settlement.

All docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2022/22-085.html.

I. BACKGROUND

In its Petition, PWW requested approval pursuant to RSA 378:18 to deviate from its general tariff and to enter into a special contract with MVD for wholesale water supply. Amended Petition at 1. In support of its Petition, PWW prefiled the direct testimonies of PWW Chief Operating Officer Donald L. Ware and MVD Superintendent Ronald Miner, Jr., with supporting attachments, including a statement of special circumstances (DLW-3); financial information, including a cost-of-service study (COSS) prepared by PWW's consultant, Raftelis Financial Consultants (Raftelis) and provided in PDF and live workbook formats (DLW-1); and copies of both the existing 2004 contract and the proposed amended 2023 contract (DLW-2).

MVD, a village district governed by the provisions of RSA Chapter 38 and RSA Chapter 52, manages over 7,500 water service connections to residential, municipal, commercial, and industrial properties served by its own water facilities sourced from six large wells. Amended Petition at 1. MVD's service area covers more than 87 percent of the Town of Merrimack, and it owns, services, and maintains approximately 930,800 feet (roughly 176 miles) of water mains, and a per- and polyfluoroalkyl substances (PFAS) treatment plant. *Id.* MVD's system is interconnected with PWW's system to permit PWW to provide a second source of water supply in the event one or more of MVD's wells are not operational or become contaminated.

Through its existing interconnection with PWW's system, MVD has obtained approximately 50 percent of its water during the past year from PWW while MVD completed installation of water treatment facilities to remove PFAS from its well water. Amended Petition at 2. In Docket No. DW 21-134, the Commission approved an emergency special contract for PWW to provide water supply to MVD while MVD constructed PFAS treatment facilities for a number of its existing wells; that contract

expired on December 31, 2022. See Settlement at 3, citing Order No. 26,597 (March 25, 2022) issued in Docket No. DW 21-134.

MVD currently purchases water supply from PWW on an as-needed basis at General Metered Customer tariffed rates. See Direct Testimony of Donald Ware at 4, lines 17-21. The rates MVD paid under the now expired Emergency Special Contract approved by the Commission on March 25, 2022, in Order No. 26,597, recovered PWW's variable cost of water production, but did not include any contribution by MVD toward PWW's general and administrative costs or toward the capital invested by PWW to provide water to MVD.

As a result, PWW determined that continuing to charge MVD rates based on PWW's variable cost of producing water for MVD would not be just and reasonable and would result in the subsidization of MVD's usage by PWW's General Metered customers. *Id.* at 5, lines 16-24. The rates and terms proposed in the new special contract, are based on the COSS prepared for PWW by Raftelis. See Direct Testimony of Donald L. Ware at 7, lines 7-11.

II. SETTLEMENT TERMS

The terms of the proposed contract agreed to by PWW, MVD, and DOE in the Settlement include:

Term	Proposed Contract
Annual Demand Charge	\$15,143.13 monthly (or \$181,718 per annum)
Volumetric Rate	\$0.9403/CCF (base rate based on COSS expenses and plant investment associated with DW 19-084)
Minimum Monthly & Annual Purchase	121,992 CCF per Contract Year (250,000 GPD or 10,166 CCF per month)

Maximum Daily Demand ¹	500,000 GPD
Peak Draw	347 Gallons per Minute
Monthly Fixed Meter Charge (based on a 6-inch 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

The Settlement notes that the PWW and MVD systems are interconnected, and that both PWW and MVD have made investments in plant to support the interconnection. *See* Settlement at 2; *see also* Statement at ¶3 (MVD paid for the entire cost of constructing the existing interconnection). The interconnection permits PWW to provide MVD with supplemental water supply on an as-needed basis at retail rates when one or more of its wells are out of service or during periods of heavy summer usage by MVD customers. Settlement at 3, citing Testimony of Ronald Miner, Jr. at 2, lines 17-19. According to the Settlement, the proposed special contract will permit MVD to meet its maximum daily demands, while MVD develops other sources of water supply within its system, and thereby provide a more reliable option for water supply than is currently available. *Id.*, citing Testimony of Ronald Miner, Jr. at 6, lines 6-9.

The Settling Parties assert that, there is no subsidy from PWW's other customers caused by the terms of the proposed special contract. According to the Settling Parties, the COSS is a direct assessment of cost causation and PWW's costs to

¹ As noted above, water taken for non-training firefighting purposes or wheeled by PWW through MVD's system to PWW's Bedford customers in Cabot Preserve, Greenfield Farms, and Parker Ridge subdivisions will not be counted toward the Maximum Daily Demand.

provide the service to MVD. The rates in the proposed special contract reflect costs from current conditions and ensure that no subsidies occur between the entities. Settlement at 6.

III. COMMISSION ANALYSIS

Unless precluded by law, disposition may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to N.H. Admin. R., Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation if it determines that the result is just and reasonable and serves the public interest. The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Hampstead Area Water Company, Inc.*, Order No. 26,131 at 3 (May 3, 2018). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.*

Pursuant to RSA 378:18, the Commission may, by order, permit a utility to charge rates that depart from a utility's standard tariff when special circumstances exist "which render such departure from the general schedules just and consistent with the public interest". *See, e.g., Pennichuck Water Works, Inc.*, Order No. 26,756 (January 6, 2023) (approval of special contract for bulk water supply to the Town of Hudson to remedy lack of adequate supply and to account for costs to provide increased supply).

The statement of special circumstances (Statement) provided in support of the proposed contract highlights MVD's need for backup wholesale water supply in the event of contamination of its own wells or the potential inoperability of the wells. The

Settling Parties agree that special circumstances exist justifying a special contract for wholesale water supply to MVD. Settlement at 9. Based on these facts the Commission finds that special circumstances exist in support of a special contract with MVD.

The Settling Parties state that the proposed contract rates appropriately account for the updated cost of service study, the need for MVD's contribution to fixed costs, and the investments MVD made to establish the interconnection with PWW. *See, e.g.*, Direct Testimony of Donald L. Ware at 6-7 and 9-10; and Settlement at 2-4. The Commission therefore finds that the terms of the special contract are just and reasonable.

The Commission approves the special contract for effect from September 1, 2023, until August 2026, with three automatic renewals of one-year terms unless either party provides written notice to the other party of its intention to terminate consistent with the terms of the contract. The Commission further approves the use of a "stub year" for purposes of calculating carry-over credits for MVD from June 1, 2023, through August 31, 2023, in the event MVD requires wholesale water supply during that period, prior to the start of the Initial Term of the new contract. In the event MVD invokes this provision, it shall file notice in this docket within 10 days of such a decision, supported by an explanation for the requested supply. In approving this contract, we expect both PWW and MVD to seek and consider any further steps that may be warranted to lower costs.

Because we find that the contract meets applicable statutory requirements and the record is sufficient to support our approval, we issue this decision by order *Nisi*, effective July 13, 2023.

Based upon the foregoing, it is hereby

ORDERED NISI, that, subject to the effective date of this order, the new special contract between PWW and MVD, as presented and supported by the Settlement filed on April 26, 2023, is hereby **APPROVED** to take effect beginning September 1, 2023, with water delivery to begin for the stub year on the effective date, as set forth herein above; and it is

FURTHER ORDERED, that PWW shall file a fully signed version of the approved new contract within 30 days of the effective date of this Order *Nisi*; and it is


FURTHER ORDERED, that PWW shall cause a copy of this Order *Nisi* to be published on its company website no later than June 15, 2023, and once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than June 23, 2023, and to be documented by affidavit filed with the Clerk's Office on or before July 10, 2023; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than June 30, 2023, for the Commission's consideration; and it is

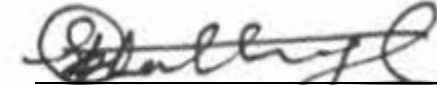
FURTHER ORDERED, that that any party interested in responding to such comments or request for hearing shall do so no later than noon on July 7, 2023; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective on July 13, 2023, unless the Petitioner fails to satisfy the publication and notice obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date, in which case the existing contract shall extend until all requirements and actions noted herein are effectuated.

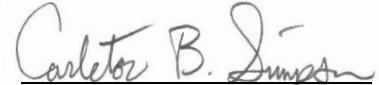
By order of the Public Utilities Commission of New Hampshire this fourteenth day of June, 2023.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-085

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