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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

April 5, 2023 - 9:04 a.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: DW 22-085
PENNICHUCK WATER WORKS, INC.:
Petition for Approval of Special
Contract with Merrimack Village
District. *(Prehearing conference)*

PRESENT: Cmsr. Pradip K. Chattopadhyay, *Presiding*
Lynn Fabrizio, Esq./PUC Legal Advisor
Tracey Russo, Clerk

APPEARANCES: **Reptg. Pennichuck Water Works, Inc.:**
Marcia A. Brown, Esq. *(NH Brown Law)*
Reptg. New Hampshire Dept. of Energy:
Suzanne G. Amidon, Esq.
Jayson Laflamme, Dir./Water Group
David Goyette, Water Group
(Regulatory Support Division)

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CMSR. CHATTOPADHYAY: Good morning, everyone. I'm Commissioner Pradip Chattopadhyay, in the presiding role today for this prehearing conference, pursuant to RSA 363:16.

We are here this morning in Docket 22-085, regarding the Petition filed by Pennichuck Water Works, Inc., on December 16th, 2022, for approval of a special contract with the Merrimack Village District for the wholesale supply of water. The Notice of Adjudicative Proceeding issued on February 13, 2023 noted the issues raised by the Petition, including whether special circumstances exist to support Commission approval of the proposed special contract between PWW and Merrimack Village District, as just and consistent with the public interest, as required by RSA 378:18.

Today's prehearing conference is intended to help to move matters forward, particularly with respect to the settlement agreement of the special circumstances and need for a special contract, and any additional issues that may arise in the review of the Company's

1 filing.

2 So, let's begin with the appearances.
3 So, I recognize Attorney Brown, for Pennichuck
4 Water Works, Inc.

5 MS. BROWN: Good morning, Commissioner
6 Chattopadhyay. Thank you very much for the
7 Commission's time today. My name is Marcia
8 Brown, and I'm with NH Brown Law, and
9 representing Pennichuck Water Works in this
10 matter. And with me, to my right, is Larry
11 Goodhue, who is the Chief Executive Officer of
12 Pennichuck; to his right is Donald Ware, who is
13 the Chief Operating Officer; and immediately
14 behind me is Jay Kerrigan, who is the Manager of
15 Regulatory Affairs; and then, to his right, is
16 George Torres, who is the Chief Financial
17 Officer.

18 And I would also just note for the
19 record that, on February 14th, the Company filed
20 its affidavit of publication for the prehearing
21 that was as required by the order on February 13.

22 Thank you.

23 CMSR. CHATTOPADHYAY: Thank you. Let's
24 go to Attorney Amidon.

1 MS. AMIDON: Good morning. Suzanne
2 Amidon, for the Department of Energy Water Group.
3 And with me today is Jayson Laflamme, who is the
4 Director of that Water Group; and an analyst from
5 that division, David Goyette.

6 CMSR. CHATTOPADHYAY: Thank you.

7 I don't see Office of Consumer
8 Advocate, I don't think they are participating in
9 the docket. Do you have anything to add?

10 MS. BROWN: Yes. Commissioner
11 Chattopadhyay, my apologies. I forgot to
12 introduce that Merrimack Village District is also
13 in attendance today. And two seats behind me is
14 Jill Lavoie, and to her right is Ron Miner.

15 I just wanted to introduce those folks
16 from Merrimack Village District. And my
17 apologies for overlooking them.

18 Thank you.

19 CMSR. CHATTOPADHYAY: And they're
20 certainly at least arm's length away from you, so
21 that's good. No, just kidding.

22 So, I'll just, for the context here,
23 I'll briefly talk about the Petition, as we
24 understand it. The Petition seeks approval of a

1 new special contract for wholesale water supply
2 between Pennichuck Water Works, Inc., and
3 Merrimack Village District, pursuant to RSA
4 378:18. The new contract is intended to more
5 accurately reflect the costs for PWW to provide
6 water to MVD. That's the understanding. And the
7 contract would have an initial three-year term
8 beginning on September 1st, 2023, and ending on
9 August 30th, 2026. Or is it "August 31st"? I'm
10 not sure. Okay. With three automatic one-year
11 extensions after that date, until August 30th --
12 actually, 31st, 2029. PWW seeks approval of the
13 new contract by June 1st, 2023, in order to meet
14 MVD's summer demand requirements.

15 So, let's go to preliminary matters. I
16 think we -- Attorney Brown, you already talked
17 about the affidavit of publication. So, I won't
18 go there. I know that it was taken care of.

19 There was a Motion for Confidential
20 Treatment. On December 21st, 2022, PWW filed a
21 live cost of service study in support of its
22 Petition, with a motion pursuant to Puc 203.08
23 for protective order and confidential treatment
24 of certain confidential commercial information

1 and work product contained in that study.

2 I want to make sure I will have the
3 DOE's position on it, if you have anything to
4 share?

5 MS. AMIDON: Regarding the Petition?

6 CMSR. CHATTOPADHYAY: Regarding the
7 confidential treatment, you know, motion?

8 MS. AMIDON: We have no objection to
9 that. Thank you.

10 CMSR. CHATTOPADHYAY: Thank you. So,
11 we will issue an order on that motion in the very
12 near future, okay? I will have to meet with the
13 Commissioners, the other Commissioners.

14 The procedural schedule was approved on
15 February 13th, 2023, and modified on February
16 16th, to reschedule today's -- to basically have
17 the prehearing conference today.

18 Do the parties anticipate any further
19 changes to the approved schedule?

20 MS. BROWN: None from the Company.

21 MS. AMIDON: No, we do not. As you
22 probably know, from looking at the schedule,
23 we're well on our way to developing a settlement
24 agreement at this point. But I'll go into that

1 in more detail later. Because, if you look at
2 the procedural schedule, that final filing in the
3 docket is April 27th.

4 CMSR. CHATTOPADHYAY: Yes. Noted.

5 Are there any other preliminary matters
6 to be addressed at this time?

7 *[Atty. Brown and Atty. Amidon both*
8 *indicating in the negative.]*

9 CMSR. CHATTOPADHYAY: No. Okay.

10 So, let's take preliminary positions of
11 the parties, beginning with Pennichuck Water
12 Works.

13 MS. BROWN: Good morning again. Thank
14 you for the opportunity for this prehearing to
15 represent our position.

16 As the Commissioner's remarks just
17 stated, this proceeding involves approval of a
18 special contract, and the governing statute for
19 that is RSA 378:18. And the test is whether
20 special circumstances exist that warrant a
21 departure from Pennichuck's general schedules,
22 just and consistent with the public interest.
23 And with the filing that was put forth with
24 accompanying schedules, prefiled testimony of

1 Mr. Donald Ware and Mr. Ron Minor, as well as the
2 proposed contract, the Company does maintain that
3 there is sufficient evidence for the Commission
4 to make a finding that special circumstances
5 warrant a departure from the general tariff rate
6 schedules.

7 Having said that, and as you just
8 noted, the Company and Merrimack Village District
9 have participated in discovery already, because
10 of the approved procedural schedule. The parties
11 have conducted three rounds of discovery. And,
12 within that discovery, there were some errors,
13 corrections -- or, clarifications that need to be
14 made to the prefiled testimony, Petition, and
15 proposed contract. So, those will be forthcoming
16 to this Commission likely today. So, I wanted to
17 at least put that on the record.

18 We are cognizant that there is a April
19 27th filing deadline for the settlement
20 agreement, and the parties are actively working
21 toward meeting that, that deadline.

22 This is not the first special contract
23 in the past year that has come before the
24 Commission. And, in some of those past special

1 contract reviews, the Commission has offered two
2 improvements of note. And one of the
3 improvements concerned when the demand charge
4 could be adjusted; the second involved when the
5 volumetric charge could be adjusted.

6 And, as the Commission would know from
7 the record, the proposed contract includes those
8 improvements, so that the demand charge can be
9 allowed to be adjusted when there is a material
10 investment in plant required to serve Merrimack
11 Village District that is necessary to be made to
12 comply with U.S. EPA and New Hampshire Department
13 of Environmental Services' regulations.

14 With respect to the volumetric
15 adjustment, the contract includes expressly that
16 the QCPAC Program, which is the "Qualified
17 Capital Project Adjustment Charge" Program, can
18 also effectuate a change on that volumetric
19 charge.

20 So, we thank the Commission for those
21 improvements. And those have indeed been
22 included in the instant contract.

23 Now, as I alluded to, there are changes
24 that will be coming, likely today, with respect

1 to the Petition, prefiled testimony of Mr. Ware,
2 and the proposed contract. Briefly, those are to
3 correct the dates, as you just mentioned, the
4 "August 30th" date should be "August 31st" date
5 for the stub year. So, that has been corrected
6 in the documents.

7 And, also, a correction regarding the
8 stub year, and whether that qualifies or is
9 included in the usage calculation in Subsection
10 6(b). That correction is that "a stub year will
11 be included", not that "it will not be included."
12 So, although that is a material change, it does
13 represent and it is more consistent with the
14 Parties' understanding, and we apologize for
15 that, any confusion that original error caused,
16 but those changes will be coming today.

17 You will note that there is a provision
18 in the proposed contract concerning "wheeling".
19 And that is, if you -- if the Commission were to
20 recall, in Docket 21-134, which involved the
21 Pennichuck Water Works/Merrimack Village District
22 Emergency Special Contract, we put into the
23 record that there were three subdivisions that
24 Pennichuck purchases water from Merrimack Village

1 District to serve. And these subdivisions are in
2 Bedford. They involve Cabot Preserve, Greenfield
3 Farms, Parker Ridge, but not all three of those
4 were expressly identified in the pleadings. In
5 this docket, we have now made that clarification,
6 so that the Commission is fully aware that the
7 wheeling provision concerns those, not
8 necessarily stranded, but those Pennichuck
9 systems in Bedford for which it normally
10 purchases water from Merrimack Village District
11 to serve.

12 You've already mentioned that there is
13 a pending Motion for Protective Treatment. There
14 being no objection from DOE, I can imagine
15 putting that provision in a settlement agreement,
16 so that the Commission has just one order, where
17 it's dealing with the Motion for Protective
18 Treatment and the Settlement Agreement. But, if
19 the Commission deems it preferable to issue an
20 order separate, I just wanted to set that out
21 there, maybe that we can put it in a settlement
22 agreement, so it will be more efficient having
23 the Commission issue one order than two orders.

24 There is a pending rate case for

1 Pennichuck Water Works right now, that docket is
2 DW 22-032. And I mention that, because we have
3 some settlement filing deadlines. We have a
4 filing deadline of a settlement in that rate case
5 of April 19th. We have the filing of a
6 settlement here, in this docket, on April 27th.
7 And there is no hearing scheduled for this
8 particular docket. However, there is a hearing
9 scheduled on May 17th in the rate case docket.
10 And I mention those because, yes, the Commission
11 is going to look at the requested approvals in
12 this particular docket. However, there is that
13 companion rate case docket that, if there are any
14 questions at the hearing, the Commission can ask
15 any questions.

16 We think that, in total, issuing an
17 order for a potential June 1st start date is
18 doable, because there is ample review time, given
19 that the settlements for both of those dockets
20 and the hearing are going to be before the
21 Commission well before a June 1st -- or, well
22 before, you know, at least two weeks before the
23 June 1st start date. And the June 1st is
24 requested, because, if Merrimack Village District

1 needs water over the summer, they will have it.

2 And I just want to clarify that the
3 contract years start September 1 and end
4 August 31st, each contract year. The initial
5 term is three years, and then there's an
6 automatic renewal of one-year terms, and there
7 are three of those. So, in total, it could be a
8 six-year special contract. But the stub year is
9 intended to address, should Merrimack Village
10 District need water over the summer, that the
11 rate will be available to it.

12 So, in closing, the Company and
13 Merrimack Village District are here to answer any
14 questions the Commission has.

15 CMSR. CHATTOPADHYAY: Thank you.
16 Before I go to DOE, I just wanted to make sure to
17 convey that, you know, the Motion on the
18 Confidential Treatment, we will decide. But,
19 until that happens, we will treat it as the
20 information is confidential. So, just to make
21 sure that that's understood.

22 So, let's go to DOE.

23 MS. AMIDON: Thank you. I have
24 allergies, so please forgive me. I sound a

1 little croaky today.

2 The Staff, as you probably know, has
3 conducted the discovery on this matter already.
4 We agree, in the first instance, we agree that
5 special conditions exist to warrant a special
6 contract. And, based on that conclusion, we have
7 gone through with the discovery.

8 And, in the course of that discovery,
9 as Attorney Brown mentioned, which copies of the
10 testimony, contract, and Petition were revised.
11 We received a redline version of this in
12 discovery that was submitted to us on March 30th.
13 As Attorney Brown noted, there are additional
14 changes she needs to make to those documents.
15 But we have requested, and she has agreed, to
16 file those with the Commission, so that you will
17 be dealing with the correct documents, and we
18 don't have to go through that recitation in the
19 Settlement Agreement about how those documents
20 were altered.

21 Having said that, we are prepared to
22 work on the Settlement Agreement with the
23 Company. And we had preliminary discussions
24 about the timing of receiving the draft this

1 morning, and expect to be able to make the April
2 27th deadline.

3 If you have any questions, please let
4 me know. But we are well on our way to
5 concluding the work that needs to be done on this
6 particular docket.

7 Thank you.

8 CMSR. CHATTOPADHYAY: Thank you. So,
9 let's go to the Commissioner questions here.

10 I think one of them was about what you
11 just talked about, which is that, you know, it
12 sprung up because I heard what Attorney Brown
13 mentioned. So, clearly, you are all working on
14 it.

15 And, so, one of the questions that I
16 had was, will anything, with the changes, you
17 know, with the prehearing conference being today,
18 does the settlement date of April 27th still
19 work? Clearly, it does. So, I'm not going to go
20 there.

21 I have just maybe two or three
22 questions.

23 So, you know, clearly, and you can
24 correct me if my understanding is wrong, but the

1 cost of service study was done in DW 19-084,
2 right? And that study is now maybe at least
3 three years old.

4 And, so, one question that I have is,
5 does PWW have any concerns that the rates and
6 charges established pursuant to that cost of
7 service study will be outdated by the time the
8 new contract with MVD will take effect on
9 September 1st this year?

10 And, also, before you respond, also
11 opine on not only that, but also what might be
12 the situation end of six years of the contract
13 term?

14 So, go ahead.

15 MR. WARE: So, Commissioner, two
16 things.

17 There was a separate cost of service
18 study done for this particular special contract.
19 So, the cost of service study you referred to in
20 DW 19-084 was to divide the costs amongst our
21 various customer classes, Private Fire, Public/
22 Municipal Fire, the General Metered customers.
23 And then, part of that was the inclusion of any
24 special contract customers that were there at

1 that time. But -- and that was based on the test
2 year 2018 operating expenses.

3 The results of that was the fact that
4 the Municipal Fire was being undercharged at the
5 time. And laid out in the final order in DW
6 19-084 was a slow transition of bringing
7 Municipal Fire rates up at a rate of three
8 percent a year, and then reducing General Metered
9 volumetric and meter rates by, you know, just a
10 little over half a percent a year.

11 And it was agreed that we would go
12 through a six-year period to transition, and then
13 in part of the next PWW rate filing, you know,
14 and not the next, the one we're in right now,
15 22-032, but the one that would happen with a 2024
16 test year, to be filed in '25, would be a full
17 cost of service study.

18 In the interim, the cost of service
19 studies that has been -- that were performed,
20 again, are specific to each unique wholesale
21 customer, and they are built upon the rates that
22 were approved in DW 19-084. So, they reflect
23 that cost of service study. They also are
24 adjusted, because the rates to the volumetric and

1 the meter charges are adjusted every year as a
2 result of that. So, these special contracts,
3 there's an adjustment there.

4 So, I believe that, you know, that we
5 perform these cost of service studies with the
6 most recent and current information, and in
7 accordance with the agreement between DOE, that
8 were approved by the Commissioners. And that,
9 again, this will all be wrapped together,
10 relative to a whole new cost of service study
11 associated with a 2024 test year.

12 CMSR. CHATTOPADHYAY: So, with respect
13 to the special contract, if I understood you, you
14 did some additional study?

15 MR. WARE: Yes.

16 CMSR. CHATTOPADHYAY: But you still
17 relied on the base study, which is the one that
18 came from 19-084.

19 And, so, really, what I'm trying to
20 understand is, as you keep going every year, will
21 you be tracking the information to allow you to
22 infer things appropriately, or the way this is
23 structured, you know, basically, at least for a
24 while, you will be using, and I'm hesitant to use

1 the word, you know, "stale", but sort of
2 information that is not current?

3 MR. WARE: Right.

4 CMSR. CHATTOPADHYAY: And, so, just
5 give me a sense of that.

6 MR. WARE: So, again, to address that,
7 these unique cost of service studies are specific
8 to the cost to the particular wholesale customer.
9 They get built on the plant and equipment, one
10 side of the equation, and the operating expenses
11 the other. Those are what they are.

12 The cost of service study broadly done
13 in 19-084 divides those costs amongst customer
14 classes. So, that happened back here, in DW
15 19-084. The unique cost of service study isn't
16 looking at how costs are divided between General
17 Metered and, you know, Municipal Fire, Private
18 Fire. It's looking at what share of the expenses
19 that exist, and the plant and property equipment
20 that exist, that that unique wholesale customer
21 is going to utilize.

22 And, so, they're really two -- you
23 know, that special contract is -- cost of service
24 study is not built upon the cost of service study

1 done in 19-084.

2 CMSR. CHATTOPADHYAY: Thank you for
3 explanation. I think I get it. So, it's -- I'm
4 just going to make sure that I understood it, and
5 you can respond.

6 So, basically, the unique realities of
7 the special, you know, customers, that is being
8 addressed. And, yes, the cost of service study
9 that was done previously, which was more about
10 cost allocation, as far as the SC, the special,
11 you know, customer contract are concerned, those
12 costs are sort of being determined independently,
13 and you're making sure they're being recovered
14 appropriately. That's what you're saying?

15 MR. WARE: That is correct.

16 CMSR. CHATTOPADHYAY: Okay. So, one
17 question I have, just out of curiosity, what is
18 the status of the contamination issue with MVD's
19 wells right now?

20 MR. GOODHUE: Do you want MVD to
21 respond?

22 CMSR. CHATTOPADHYAY: Yes. I mean,
23 they can certainly --

24 MS. BROWN: Yes. Merrimack Village

1 District is able to respond to that. Thank you.

2 MR. MINER: So, we just had our last
3 treatment plant on line, put on line the 20th of
4 March, thank you, want to get the month right.
5 So, all of our treatment plants are
6 operational [?]. We're still waiting for one
7 well to come on line, which should be within the
8 next two weeks or so. It's going to be treated
9 by that last plant that came on line.

10 CMSR. CHATTOPADHYAY: Okay. Thank you.
11 Again, give me a summary on, and, again, this is
12 just for my understanding, and I know you are
13 going to be filing something new, you know,
14 supplemental, all of that. But, very briefly,
15 tell me what are the key drivers for the proposed
16 new contract terms?

17 MS. BROWN: I'm just going to find
18 them. They are listed either in the Petition or
19 the testimony.

20 *[Short pause.]*

21 MS. BROWN: Okay. All right. Donald
22 Ware is going to help me here.

23 MR. WARE: So, relative to the key
24 drivers, Commissioner, you're looking at the

1 various demands that the Merrimack Village
2 District is going to place upon the PWW system.
3 So, the way the cost of service studies are done
4 for a wholesale contract, there are four
5 different capacity numbers that are looked at.
6 There is the guaranteed minimum purchase amount,
7 which is viewed over a period of a year. And, in
8 this case, the Merrimack Village District is
9 guaranteeing that they will purchase at least
10 250,000 gallons per day of water over the course
11 of a contract year. If they do not purchase that
12 amount of water, they still pay for that amount
13 of water.

14 Secondarily, they are reserving, so to
15 speak, the ability of Pennichuck's water
16 treatment plant to produce a half a million
17 gallons a day under all conditions, other than a
18 true emergency. So that, you know, they don't
19 call up and say or they go to start their pumping
20 station, and we say "Sorry, we don't have enough
21 water for you today. We're, you know, busy
22 keeping the lawns in Nashua green."

23 Thirdly, they're limiting their peak
24 hour demand -- or, their peak day demand to half

1 a million gallons a day.

2 And, lastly, their peak hour demand
3 flow rate is also half a million gallons a day.
4 So, they're a very nice customer that, normally,
5 if you look at a typical customer pattern,
6 there's times that, you know, they're using a
7 little water, and then, you know, later in the
8 day a lot of water, and there's a lot of cycling
9 back and forth. But, because they have storage
10 and their own supply, you know, they're looking
11 to put a steady drawl on our system that at any
12 hour in any day is not going to exceed half a
13 million gallons a day, which is roughly 347
14 gallons per minute. They're going to limit their
15 maximum day to half a million gallons a day. And
16 then, again, they're going to guarantee the
17 purchase of a quarter of a million gallons a day
18 over a period of 365 days a year.

19 Those are the drivers and the metrics
20 used to shape their share of both our fixed and
21 variable costs.

22 CMSR. CHATTOPADHYAY: Thank you.

23 Is there anything else that we need to
24 cover?

1 MS. AMIDON: Not for the Department.

2 Thank you.

3 CMSR. CHATTOPADHYAY: Thank you.

4 MS. BROWN: Nothing from the Company.

5 CMSR. CHATTOPADHYAY: Okay. So, thank
6 you, everyone. We are adjourned.

7 ***(Whereupon the prehearing conference***
8 ***was adjourned at 9:34 a.m.)***

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