

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

Pennichuck Water Works, Inc.

Docket No. DW 24-071

Petition for Approval of Special Contract with Tyngsborough Water District

**SETTLEMENT AGREEMENT**

November 5, 2024

## **SETTLEMENT AGREEMENT**

### **1. BACKGROUND**

1.1 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 to 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 (TWD), Merrimack Village District, Pennichuck East Utility, Inc., and the Town of Milford.

1.2 TWD is a Massachusetts water district in the Town of Tyngsborough, Massachusetts. The TWD owns and maintains a portion of the water system serving the Pheasant Lane Mall (Mall) in Nashua. The Mall was built with retail and food establishments located on either side of the New Hampshire-Massachusetts boundary. PWW provides water service to New Hampshire customers at the Mall. PWW also sells water to TWD through an interconnection point located in TWD's Booster Station located in Nashua adjacent to the Mall. PWW meters the water usage through a meter that it owns but that is located within TWD's Booster Station.

### **2. EXISTING CONTRACT VERSES PROPOSED CONTRACT**

2.1 The Commission approved a first special contract (First Contract) between PWW and TWD in 2015. See, *Pennichuck Water Works, Inc.*, Docket No. DW 15-133, Order *Nisi* No. 25,800 (dated July 28, 2015). That First Contract was attached to the pre-filed testimony of Donald L. Ware as Attachment DLW-3 in this proceeding. The First Contract enabled TWD to purchase water at wholesale rates from PWW for a term of three years, with two 3-year auto

renewal terms (Renewal Term). It was slated to terminate in July 2024 but was extended per Commission Order No. 27,024 (June 24, 2024).

2.2 A comparison of the existing terms and the revised proposed terms (Second Contract) as part of this settlement are as follows:

	<b>First Contract</b>	<b>Proposed Second Contract</b>
<b>Base Annual Fixed Fee/Demand Charge</b>	\$0	\$13,766.08 monthly (or 165,193 per annum)
<b>Volumetric Rate (as of 9/30/24)</b>	\$2.5002/CCF	\$1.0546/CCF
<b>Minimum Purchase</b>	250,000 GPD	325,000 GPD per year
<b>Annual Ave Daily/Max Daily</b>	250,000/450000 GPD	325,000/525,000 GPD
<b>Peak Hour</b>	576,000 GPD	575,000 GPD
<b>Monthly Fixed Meter Charge for 6" meter</b>	\$38.75 per month	\$86.57 per month
<b>Guaranteed Annual Payment</b>	\$305,469 based on guaranteed daily usage of 250,000 GPD	\$333,481 <sup>1</sup> based on guaranteed daily usage of 325,000 GPD <sup>2</sup>
<b>Term</b>	3 years with (2) three-year auto renewals	5-year Initial Term with (2) five-year auto renewals

<sup>1</sup> The Guaranteed Annual Volumetric fee of 158,590 CCF x \$1.0546/CCF = \$167,249 plus Base fee of \$165,193 plus Annualized Monthly Meter fee (\$86.57/month x 12 months) of \$1,039 for a total guaranteed Annual Payment of \$333,481.

<sup>2</sup> Within each five-year term, a Contract Year runs from September 1 through August 31st of the following year. In light of the extension of the first special contract, the first Contract Year will include the period of time prior to the start of the usual Contract Year and thus will run from January 28, 2025 to August 31, 2026 instead of September 1 through August 31st. This only applies to the first Contract Year. The guaranteed minimum yearly usage of 325,000 GPD/158,590 CCF is calculated on a Contract Year basis. Please note that measurement units (GPD, CCF, and GPM) vary because certain units of measurements are needed for the cost of service model and flow data for actual peak hour is measured in gallons per minute (GPM).

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

(a) TWD can purchase water from another supplier, the City of Lowell, Massachusetts. Without the special contract pricing, TWD would likely purchase some or all of its water from the City of Lowell resulting in PWW losing about \$228,000 in contribution towards PWW's fixed costs and overhead that it would not otherwise receive.

(b) TWD has its own storage which means TWD's usage does not cause a high peaking factor. TWD does not need to receive water to meet its instantaneous demands because it can draw on its storage, if need be.

(c) TWD will be PWW's fourth largest user at a guaranteed purchased water amount of 325,000 gallons per day (or a minimum of 118,625,000 gallons per year) after the Town of Hudson, Anheuser-Busch, and Pennichuck East Utility.

### **3. PROCEDURAL HISTORY**

3.1 On May 6, 2024, PWW filed its petition for approval of the Second Contract with TWD. 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), motion for protective order and confidential treatment, and a proposed Second Contract signed by the TWD Commissioners. The proposed Second Contract would be for an initial five-year term (Initial Term), followed by two five-year automatic renewal terms. Although the first Contract Year in the Initial Term would otherwise run September 1 to August 31, PWW and TWD will add the approximately seven months (January 28, 2025 through August 31, 2025) to the initial Contract Year to allow TWD to meet its guaranteed annual usage and to simplify calculation of the first Contract Year's minimum purchase.

3.2 On May 7, 2024, the Commission issued an acknowledgement letter.

3.3 On May 15, 2024, the N.H. Department of Energy (DOE) filed a notice of appearance.

3.4 On June 4, 2024, the Commission issued an order noticing commencement of this adjudicative proceeding and noticed a prehearing to be held on August 6, 2024.

3.5 On June 5, 2024, PWW filed an assented to motion to extend the First Contract pending the Commission's review of the Second Contract.

3.6 On June 5, 2024, PWW filed an affidavit of its posting on its website of the Commission's notice of the adjudicative proceeding.

3.7 On June 19, 2024, PWW filed a proposed procedural schedule.

3.8 On June 20, 2024, the Commission issued an order approving the proposed procedural schedule.

3.9 On June 24, 2024, by Order No. 27,024, the Commission approved a six month extension of the First Contract.

3.10 On July 23, 2024, the DOE filed a notice of its initial position.

3.11 On August 6, 2024, the Commission held a prehearing conference and issued an order following the prehearing.

3.12 On August 21, 2024, PWW filed a joint request to amend the approved procedural schedule.

3.13 On August 22, 2024, the Commission granted the request to amend the procedural schedule.

3.14 On October 7, 2024, the Commission's stenographer filed a transcript of the prehearing conference held on August 6, 2024.

3.15 On October 17, 2024, PWW filed a supplemental petition updating terms of the proposed Second Contract.

#### **4. LEGAL AUTHORITY**

4.1 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.

4.2 The Commission has approved prior deviations from PWW’s general tariff for wholesale purchases of water: Town of Hudson (Docket No. 22-029, Order *Nisi* No. 26,756, January 6, 2023); Anheuser-Busch, LLC, (Docket No. DW 21-115, Order *Nisi* No. 26,647, July 1, 2022); Tyngsborough Water District (Docket No. DW 15-133, Order *Nisi* No. 25,800 (dated July 28, 2015); Merrimack Village District (Docket No. DW 22-085, Order *Nisi* No. 26,848, June 14, 2023); Pennichuck East Utility, Inc. (Docket No. DW 22-040, Order *Nisi* No. 26,782, March 9, 2023); and the Town of Milford (Docket No. DW 22-070, Order *Nisi* No. 26,763, January 20, 2023).

4.3 Based on the statutory authorities, traditional ratemaking policy, and past Commission orders approving wholesale water supply contracts with PWW, PWW and the DOE believe the Commission has adequate authority to approve the proposed Second Contract between PWW and TWD.

## 5. TERMS OF THIS SETTLEMENT AGREEMENT

5.1 The DOE does not take exception to PWW and TWD's proposed Second Contract. The revised Second Contract is included with this Agreement as Attachment A and is the same version as was filed with PWW's Supplemental Petition<sup>3</sup> on October 17, 2024.

5.2 In summary, the terms are:

5.2.1 The parties propose a January 28, 2025 effective date to coincide with the termination of the extended First Contract, effective January 28, 2025. The Initial Period is for five years followed by two automatically renewing five-year terms. Notice of termination must be given at least six months prior to the date on which the Initial Term or any Renewal Term expires. Delivery is to the point of interconnection between TWD's water system and PWW's water system in the TWD booster station located in Nashua, adjacent to the Pheasant Lane Mall. The meter will be owned by PWW and PWW will have access to the meter. Meter accuracy tests, when performed, will be done by an independent third party. PWW will bill monthly.

5.2.2 The Maximum Daily Demand is limited to not more than 0.575 million gallons per day at the booster station interconnection point. The Maximum Peak Rate Demand is limited to 400 gallons per minute, however, firefighting draws are excepted from this limit. TWD will pay for the actual cost to install two Cellular Meter Interface Units to allow PWW to track usage down to fifteen-minute increments. TWD will pay for

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<sup>3</sup> For completeness, Attachment A contains a track change version to denote the revisions since it was initially filed, as well as a clean signed copy.

regulatory costs of obtaining approval of the special contract as well as for the cost of service study used to determine the cost-based rates for the Second Contract.

5.2.3 TWD will pay an annual demand charge of \$165,193 in monthly installments of \$13,766.08. TWD will pay a volumetric charge of \$1.0546 per 100 cubic feet. This volumetric charge will change at the same percentage and at the same time as any future change in the volumetric rate for PWW's General Metered customers in PWW's core system. TWD will guarantee a minimum yearly usage of 325,000 gallons per day (or 158,590 100 cubic feet) per each Contract Year (September 1 through August 31). That results in a guaranteed annual payment of \$334,420. For purposes of calculating the first Contract Year, the time period from January 28, 2025 through August 31, 2025 will be added to the first Contract Year. The contract includes a credit feature whereby the minimum guaranteed usage is tracked monthly. The difference between the billed minimum monthly usage and TWD's actual consumption will be carried as a credit to TWD in the following month's bill. The credit will reduce the subsequent month's billable consumption should TWD's actual consumption during the subsequent month exceed its minimum monthly usage. TWD will carry any credits from month-to-month until the end of each Contract Year. If, at the end of a Contract Year, TWD has a consumption credit, that credit will be reset to zero as of the start of the next Contract Year. TWD will pay a fixed meter charge each month of \$86.57.

5.2.4 All other aspects of PWW's tariff that are not superseded by the Second Contract will continue to apply to TWD.



5.3 PWW and DOE agree that the proposed Second 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 Second Contract.

5.4 PWW and DOE agree that Attachment A supersedes the prior version of the proposed Second Contract filed with the Commission on May 6, 2024. The changes in Attachment A, as compared to the May 6<sup>th</sup> version were reflected in the track-change version filed with the Commission on October 17, 2024. Those changes were the result of discovery and data responses provided by PWW to DOE's data requests. Relevant discovery is attached hereto as Attachment B so as to complete the Commission's evidentiary record in this proceeding.

5.5 PWW agrees to file within thirty (30) days from the Commission's order approving the Second Contract a version of the Second Contract that complies with N.H. Admin. R. Puc 1606.04's format requirements.

5.6 PWW and DOE request the Commission approve the proposed Second Contract for an effective date of January 28, 2025 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 and DOE agree to the disposition of this docket by settlement agreement. Because RSA 378:18 does not require a hearing, PWW and DOE recommend that the Commission approve the

proposed second Contract without a hearing as the Commission has done in the past. See paragraph 4.2 above for a list of past PWW special contracts approved by order without a hearing.

5.7 PWW and DOE further contend that there is sufficient support in the record, which includes this Agreement and attachments, PWW's statement of special circumstances, the testimony and supplemental testimony of Donald L. Ware, the revised cost of service study documenting the cost basis of the rate such that the Commission can find that special circumstances exist warranting departure from the general schedules to be just and consistent with the public interest.

5.8 PWW and DOE agree that the proposed Second Contract is necessary to provide reasonably priced water service to TWD, that the Second Contract covers PWW's costs to provide wholesale water to TWD, and that the Second Contract does not shift costs to ratepayers or effect PWW's current tariff rates.

## **6. CONDITIONS**

6.1 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.

6.2 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.

6.3 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,

*Marcia A. Brown*  
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Marcia A. Brown

Date: November 5, 2024

**New Hampshire Department of Energy**  
By its attorney,

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/s/ Matthew Young  
Matthew Young

Date: November 5, 2024