

DW 02-157

**PENNICHUCK WATER WORKS
SPECIAL CONTRACT WITH THE TOWN OF MILFORD**

Order Approving Special Contract

O R D E R N O. 24,122

February 6, 2003

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A., by Sarah B. Knowlton, Esq. for Pennichuck Water Works, Inc.; Mr. William Ruoff for the Town of Milford; and Marcia A. B. Thunberg, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On August 21, 2002, Pennichuck Water Works, Inc. (Pennichuck or the Petitioner) petitioned the New Hampshire Public Utilities Commission (Commission) for approval of a renewed special contract with the Town of Milford (Milford) for the wholesale supply of water. An Order of Notice was issued on October 8, 2002, setting a prehearing conference and technical session for November 12, 2002. Pennichuck filed an affidavit stating that the Order of Notice had been published in area newspapers on October 15 and 16, 2002. The prehearing conference and technical session were held on November 12, 2002.

II. POSITIONS OF THE PARTIES

a. Pennichuck Water Works, Inc.

Pennichuck requested Commission approval of the new contract with Milford, representing that the new terms are more favorable to Milford than the terms of the older, existing contract.

b. Town of Milford

Milford agreed that the terms were more favorable under the new contract as compared to the old contract urged prompt Commission approval.

c. Staff

Staff filed a letter in support of the contract on November 13, 2002. Staff also provided the Commission with background information and its analysis of the contract in a memo dated January 29, 2003.

III. CONTRACT TERMS

The original contract between Pennichuck and the Town of Milford was approved by the Commission in Pennichuck Water Works, 73 NH PUC 88 (1988). The contract enabled Milford to purchase water at wholesale rates from Pennichuck Water Works for a term of 15 years and contract is set to expire in March 2003. The contract was prompted by the New Hampshire Department of Environmental Services' requirement that Milford have a safe and reliable backup source of

supply for its system which depended, at that time, upon a single well.

Under the new contract, entered into on March 21, 2002, Pennichuck would supply Milford with wholesale water for twenty years. The contract also allows Milford to extend the contract twice in 10-year increments. The new contract provides Milford with a supply of up to 2 million gallons of water per day (1,389 gallons-per-minute) from the Pennichuck system for a minimum fixed cost of \$81,000 per year, payable in equal monthly installments. Milford also will pay a volumetric charge of \$.97 per 100 cubic feet for actual water purchased. The yearly fee of \$81,000 was based on the net book value of the fixed assets allocable to Milford, factoring in depreciation, tax-effected return, property taxes, and estimated maintenance expenses. The volumetric charge was taken from the low end of a range provided by AUS Consultants' cost of service analysis. This analysis was filed as Exhibit B to the special contract.

By way of comparison, under the old contract, Milford paid a \$102,000 minimum annual payment. In testimony attached to the Petition for Approval, witness Stephen J. Densberger illustrated the difference between the contract terms. In 2001, under the old contract terms, the Town of Milford consumed 78,737 ccf of water for

a total charge of \$167,228. Under the terms of the new contract, Milford would have paid \$157,375 for the same 78,737 ccf. (Petition at 8, lines 14-18).

In supplemental information submitted to the Commission on January 10, 2003, Pennichuck explained that the difference results from the fact that the original contract had a higher minimum charge (\$102,000) but allowed for a 50% credit against volumetric charges up to the amount of the minimum charge. The new contract has a lower minimum charge (\$81,000) and a higher volumetric rate at \$.97 per hundred cubic feet (contrasted with 50% of the tariff rate as specified in the original contract). No major shifts in revenue are anticipated with the renewed contract, but due to the higher volumetric rate, even with the decrease in the annual minimum charge, total charges will be slightly higher than under the 1987 contract as Milford's consumption increases.

The contract also requires Pennichuck to conduct a cost of service study if Milford increases regular daily usage over 450,000 gallons per day.

In the event Pennichuck's ability to supply Milford with water is impaired, Milford will receive a pro rata credit for any decrease in supply on a per diem basis against the minimum fixed amount for that period.

The contract also allows Pennichuck to negotiate a "wheeling" arrangement if it supplies water to customers outside of Milford, using Milford's distribution system. Under this regional interconnection provision, Pennichuck would use Milford's water mains provided the use does not diminish water supply, pressure, or quality to Milford. The negotiated fee will be based on Milford's cost-of-service.

Finally, the contract contains a successor clause which states that any sale of all or parts of Pennichuck Water Works will not compromise, diminish, or alter the contract.

IV. COMMISSION ANALYSIS

Under 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." The Commission may deviate from this general rule and approve special contracts for services by a public utility "if special circumstances exist which render such departure from the general schedules just and consistent with the public interest. . . ." RSA 378:18.

After reviewing the terms of the renewed Agreement between Pennichuck and the Town of Milford, the testimony and supporting

documents filed by the Company and Staff, as well as the positions of the parties stated at the prehearing conference, we find special circumstances exist for approving the sale of wholesale water to the Town of Milford.

Since we first approved the contract between Pennichuck Water Works and the Town of Milford by Commission Order No. 19,027, dated March 7, 1988, Pennichuck has acquired two water systems in the Town of Amherst: Southern New Hampshire Water Company's former Bon Terrain system and the Amherst Village District's system. Prior to this renewed contract, concern existed that should the Town of Milford fail to renew the contract after fifteen years, Pennichuck's investment in the line to Milford could become "stranded." That is no longer the case. These systems are now physically interconnected with the rest of the Company's system, and all of the Amherst customers are now Pennichuck customers.

Revenues from the contract will benefit Pennichuck's core customers as well. With the exception of 1998, annual water use by Milford since the original contract took effect has increased from 14,705 to 80,648 hundred cubic feet. Although the annual minimum charge has decreased, the higher consumption pattern should result in greater revenues from the new contract at continued increases in these consumption levels.

As for the Town of Milford, the terms are sound and more favorable under this contract as compared to the old, existing contract. The more favorable terms are in the best interests of the Town of Milford. The rates proposed will furnish sufficient revenue to cover Pennichuck's cost of service, and will continue to be a reliable back up supply for Milford's gravel pack well used as its primary source of supply.

Lastly, we find that the regional cooperation embodied in this contract is in keeping with the legislature's recent focus on regional cooperation among water systems in 2000 N.H. Laws Ch. 64 and 2002 N.H. Laws Ch. 141:7.

We conclude that the two-part test of RSA 378:18 is satisfied and that special circumstances exist which justify a departure from Pennichuck's schedules of general application and find that the departure is just and consistent with the public good.

We note the petition for approval requests the Commission approve the Agreement but does not request a specific effective date. The Agreement specifies the effective date as April 1, 2002. At the prehearing conference, both Pennichuck Water Works and the Town of Milford requested approval to enable the contract to go into effect immediately. Pennichuck and Milford did not request

retroactive approval of the terms of this Agreement back to April 1, 2002. Accordingly, we will approve the Agreement prospectively.

Based upon the foregoing, it is hereby

ORDERED, that the special contract between Pennichuck Water Works, Inc. and the Town of Milford as detailed above is **APPROVED**, effective as of the date of this order.

By order of the Public Utilities Commission of New Hampshire this sixth day of February, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary