

**STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION**

**Docket No. DW 22-\_\_\_\_\_**

**PENNICHUCK WATER WORKS, INC.**

**PETITION FOR APPROVAL OF AMENDMENTS TO SPECIAL CONTRACT  
WITH PENNICHUCK EAST UTILITY, INC.**

The Pennichuck Water Works, Inc. (PWW) requests Commission approval, pursuant to RSA 378:18, to deviate from its general tariff and amend, retroactively, the wholesale water supply contract entered into between PWW and Pennichuck East Utility, Inc. (PEU) previously approved by the Commission in Docket No. DW 17-071 in Order No. 26,049. In support of this request, PWW states as follows:

**Parties**

1. 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 towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Plaistow, and Salem, New Hampshire as well as in Tyngsboro, 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, and the Town of Milford.

2. PEU is a regulated public utility first formed in 1998 as a result of the Town of Hudson's acquisition, pursuant to RSA Chapter 38, of the Hudson portion of the Consumers

New Hampshire Water Company's (Consumers) franchise.<sup>1</sup> PEU now provides water service to approximately 8,251 customers over a diverse geographic region within in New Hampshire, that includes the towns of Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare, and Windham.

### **Current Contract**

3. The Commission approved a wholesale water supply agreement (Current Contract) between PWW and PEU in Order No. 26,049, dated August 23, 2017, in Docket DW 17-071. That Current Contract has an initial term of twenty years and allows for two five-year automatic renewals. Because PWW's supply of water to PEU under that Current Contract was predicated on completion of a water main underneath the Merrimack River to interconnect PWW and PEU, in Order No. 26,049, the Commission approved the effective date as follows: "the twenty-year term of the contract should not start until the interconnection is completed, the meter installed, and all other contract terms have been complied with by PWW and PEU." That completion date was October 10, 2018, therefore, at a minimum, the Current Contract will otherwise not terminate until October 9, 2038.

### **Significant Change in Events**

4. The circumstances justifying the departure from PWW's filed tariff are described in Mr. Ware's testimony and in the statement of special circumstances signed by PWW. In addition, circumstances justify amending the PWW-PEU Current Contract. In summary, the circumstances are that the Town of Hudson has suddenly found itself without sufficient water to

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<sup>1</sup> See *Consumers New Hampshire Water Company*, Docket No. DE 96-227, 82 NH PUC 814, Order No. 22,792 (November 21, 1997). See also, *Consumers New Hampshire Water Company*, Docket No. DE 96-227, Order No. 22,880 (March 23, 1998). Generally, PEU took Consumers' non-Hudson service territory.

serve its customers, as a direct result of the NHDES requesting Hudson to shut down its Dame and Ducharme wells due to contamination in excess of current allowable levels and standards, by Perflouroctanoic Acid (PFOA). For Hudson, this resulted in PWW and Hudson needing to revise their special contract to allow for increased flows from PWW to Hudson. Additionally, because PEU obtained supply from Hudson for a portion of its overall needs in the town of Litchfield, PEU must now also rely on PWW to provide more water supply than what the original special contract envisioned. Like with Hudson, PEU's increased volume of water taken changes PWW's ongoing cost to provide the ongoing, necessary and needed water supply to PEU in that community, and as it serves customers on the eastern side of the Merrimack river. This cost change for the water supplied by PWW to PEU in this existing special contract is also affected by other large users changing how much supply they will be taking on an ongoing basis going forward. For these reasons, PWW and PEU seek to amend their special contract to have the rates more closely align with new and existing forward looking cost of production to PEU.

### **Proposed Amendment**

5. As seen in the track-change version of the amendment (Amendment) (Attachment DLW-2 to Mr. Donald L. Ware's pre-filed direct testimony), the revisions to the Current Contract are as follows:

- A. PEU will guarantee a minimum annual purchase 195,187 hundred cubic feet (CCF) (Average daily flow of 0.40 MGD over a period of one year).
- B. PWW will maintain its facilities to deliver a peak daily flow of 0.65 MGD and a maximum hourly flow rate of 0.90 MGD to PEU.
- C. PEU will pay a monthly bill, in arrears, consisting of three parts: a monthly meter charge of \$78.33, a monthly fixed charge of \$15,197.07 instead of \$10,101.00 (the COSS

Annual Fixed Charge divided by 12 months), and a monthly Volumetric Charge of \$0.8240 per CCF instead of \$1.2635. PEU will pay monthly volumetric charges based on actual volumetric usage for the month.

D. At the end of each calendar year, PEU's actual volumetric usage for the year will be compared to PEU's guaranteed annual minimum usage of 195,187 CCF. In the event PEU has not used the guaranteed minimum annual usage of 195,187 CCF, the difference between the PEU minimum guaranteed annual usage of 195,187 CCF and the actual annual amount of usage by PEU will be billed to PEU at the volumetric rate in effect between PWW and PEU at the end of that calendar year.

The remaining terms of the Current Contract, including the length of the Current Contract, would remain in full force and effect.

#### **Legal Authority for Approval of Proposed Amendment**

6. 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 378:1, PWW's tariff, terms and conditions of service, and rate schedules are on file with the Commission and set forth the rates and terms of service.

7. Pursuant to RSA 378:18, 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.

8. Pursuant to RSA 365:28, the Commission may alter, amend, suspend, annul, set aside, or otherwise modify any order. A hearing shall not be required if no hearing is required by law and one was not held. In Docket No. DW 17-071, the Commission did not hold a hearing. See also *Public Service Company of New Hampshire*, Docket No. DR 98-139, Order No. 23,139 (February 8, 1999) citing *Re Town of Derry*, Docket No. DR 90-123, Order No. 20,365 (January 7, 1992) (wherein the Commission recognized that it retains jurisdiction over all contracts filed with it for its approval under the so-called Mobile-Sierra doctrine)<sup>2</sup>.

9. In support of the request to approve the proposed Amendment, and as required by Puc 1606 and Puc 203.06, PWW has attached to this petition the pre-filed direct testimony of Mr. Donald L. Ware, and referenced attachments. The attachments include Attachment DLW-1 (Cost of Service model in Excel and PDF), Attachment DLW-2 (proposed Amendment), Attachment DLW-3 (Current Contract); and Attachment DLW-4 (Statement of Special Circumstances as required by Puc 1606.02(b)).

10. PWW avers the circumstances justify the proposed Amendment to the Current Contract. As explained in Mr. Ware's testimony, the cost to provide the water supply to PEU has changed due to the increased volumes PEU now takes, as well as the other factors delineated earlier in this document, as it applies to levels of water needed by all special contracts. It costs PWW less to produce the water supply to PEU when measured over the gallonage taken. PWW and PEU believe it is just and reasonable as well as in the public interest for the Commission to deviate from PWW's general tariff and modify the 2017 Current Contract by the Amendment to better reflect the cost of providing that water supply.

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<sup>2</sup> "The Mobile-Sierra doctrine provides that a contractually based tariff which has been filed by the contracting parties, and approved by the regulatory agency after a finding of reasonableness, may be set aside by the regulatory agency if it later finds that the rate is contrary to the public interest." See *Unites States Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Power Co.*, 350 U.S. 348 (1956).

### **Rule Waiver Request for Retroactive Effective Date**

11. Pursuant to N.H. Admin. R. Puc 1606.02(a)(1), utilities are required to file proposed special contracts “at least 30 days before its proposed effective date.” Under Puc 201.05(a), the Commission shall waive a rule if the Commission finds that the waiver serves the public interest and that the waiver will not disrupt the orderly and efficient resolution of matters before the Commission. As explained in the testimony of Mr. Donald Ware, PEU’s usage increased as of July 1, 2021, thereby changing the cost allocation and resulting costs of PWW to produce the water for PEU. As further explained in Mr. Ware’s testimony, if PEU were to continue to pay the rates under the Current Contract, PEU would be paying PWW at rates higher than the cost to PWW to provide that water to PEU. Mr. Ware stated in his testimony that the difference between the Current Contract and Amendment rates billed between July 1, 2021 to October 31, 2022, for example, would be approximately \$51,000.

12. Because the circumstances under which PEU began taking service changed as of July 1, 2021, PWW and PEU believe it is more just and reasonable for the Amendment to be made effective as of July 1, 2021, and that the rates be applied retroactively to more fully represent the cost to provide that water. PWW believes the waiver of Puc 1606.02 would not disrupt the orderly and efficient resolution of this matter.

WHEREFORE, PWW respectfully requests the Commission:

A. Approve the proposed amendment to the current special contract between PWW and PEU;

B. Grant the waiver of Puc 1606.02 and allow retroactive application of the amendment’s rates; and

B. Grant such other and further relief as may be just and reasonable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorney,

Date: June 29, 2022

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Certificate of Service

I hereby certify that a copy of the foregoing petition and supporting materials have been emailed this day to the Department of Energy and the Office of the Consumer Advocate.

*Marcia A. Brown*  
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