

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 21-134

PENNICHUCK WATER WORKS, INC.

Petition for Approval of Emergency Temporary Water Rate

**COMMENCEMENT OF ADJUDICATIVE PROCEEDING
AND NOTICE OF EXPEDITED HEARING**

On October 22, 2021, Pennichuck Water Works, Inc. (PWW) filed a petition requesting the approval of a temporary emergency water rate. In support of its petition, PWW filed the direct testimony of Donald L. Ware, PWW's chief operating officer, and related attachments, as well as a proposed tariff. The petition and subsequent 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 <https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-134.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

PWW is a regulated water utility owned by Pennichuck Corporation, which, in turn, is owned by the City of Nashua. PWW has customers in Nashua and other New Hampshire municipalities, including Amherst, Bedford, and Merrimack. Merrimack Village District (MVD) also provides water service to the Town of Merrimack using its own water service infrastructure, which presently includes six wells. MVD's service area covers more than 87 percent of the Town of Merrimack, and it manages over 7,500 service connections.

According to Mr. Ware's testimony, PWW has approximately 376 customers in Bedford who obtain their water exclusively from MVD and about 75 customers in Amherst who obtain a supplemental water supply from MVD. He added that MVD has an existing direct interconnection with PWW in Amherst, through which PWW has

previously supplied water to MVD to supplement its overall capacity needs. PWW explained that it and MVD are members of the New Hampshire Public Works Mutual Aid Group.

PWW stated that, on September 23, 2021, the New Hampshire Department of Environmental Services (NHDES) issued MVD a notice of violation, because the water from four of MVD's wells exceeded New Hampshire's standard for per- and polyfluoroalkyl substances (PFAS). PWW noted that, although two of MVD's wells have a PFAS treatment system, the remaining four wells do not. It stated that MVD subsequently contacted PWW for emergency potable water under the mutual aid framework, and, on October 20, 2021, MVD shut off its non-compliant wells and started to obtain water from PWW.

PWW maintained that an emergency exists, because MVD presently does not have enough water complying with state PFAS standards to meet its customers' basic needs and presently cannot continue its water supply to PWW's customers in Bedford and Amherst. As PWW currently does not have a rate applicable to this situation, MVD has been paying PWW's retail rate for the water it has obtained from PWW since October 20. At the retail rate, MVD only has enough money in its budget to obtain water from PWW until approximately November 18, 2021.

In its petition, PWW asserted that it has sufficient capacity to provide MVD with up to one million gallons of water, which complies with state PFAS standards, per day, which it can do through the existing interconnection with MVD. It requested authorization from the Commission to charge MVD a temporary emergency rate, retroactive to October 20, 2021, until MVD can install PFAS treatment systems in its non-compliant wells (the emergency period). Mr. Ware testified that MVD's original plans to have these treatment systems installed in two of its wells by the end of July

2021 were delayed, in part, as a result of supply chain issues created by the COVID-19 pandemic. He submitted that treatment systems for two of MVD's wells is expected to be installed no later than the end of March 2022, with treatment systems to be installed in the remaining two wells sometime during the summer of 2022.

PWW proposed charging MVD an initial rate of \$0.67 per one hundred cubic feet (CCF) of water based on the variable cost of producing potable water in 2020, the most recent year for which PWW has a full year's worth of data. PWW calculated this rate by dividing its total estimated costs for electricity, chemicals, and consumed carbon capacity by the total gallons produced and delivered to PWW's distribution system for consumption. When the emergency period expires, PWW proposed determining an "actual rate" based on the actual costs incurred to produce the CCFs consumed by MVD during the emergency period. Finally, PWW proposed reconciling the difference between the initial rate and actual rate by either billing or refunding the net amount to ensure that PWW ratepayers do not subsidize, or profit from, the sale of water to MVD during the emergency period.

PWW stated that MVD joined its request that the Commission issue an order before November 18, 2021¹ approving the proposed emergency rate of \$0.67 per CCF. The New Hampshire Department of Environmental Services (NHDES) filed a letter in support of PWW's petition on October 29, 2021.

II. ISSUES PRESENTED

The filing presents the following issues: whether RSA 378:9 applies in this instance; whether the Commission should authorize the requested temporary water rate, if at all, as an emergency rate pursuant to RSA 378:9 or pursuant to a special

¹ Mr. Ware testified that an order from the Commission authorizing the proposed emergency rate is required on or before November 19, 2021. Direct Testimony of Donald L. Ware (October 21, 2021) at Bates 26.

contract under RSA 378:18; if RSA 378:9 is found to apply, issues related to RSA 378:9 and whether an emergency exists within the meaning of the statute, such that an immediate and substantial disaster threatens unless prompt relief is given; if RSA 378:18 is found to apply, whether a special contract under the terms proposed as emergency rates is in the public interest; and whether an end date to any potential emergency rates or a special contract term should be established. Accordingly, an adjudicative proceeding will be convened to address these issues.

PWW is directed to file a draft bulk water purchase agreement between it and MVD expressing the terms of the proposed emergency rates as a special contract, as well as copies of records showing its affiliation with, obligations to, and rights to benefit from the New Hampshire Public Works Mutual Aid Group by November 5, 2021. In addition, PWW is requested to be prepared to address its water supply capacity beyond March of 2022, and whether summer or drought conditions would affect its ability to continue to provide water to MVD while providing safe and reliable service to its own customers.

The Commission will be conducting any hearings scheduled in this matter in person. Parties may, however, file a written request for the Commission to also use video conferencing to conduct the proceedings. Parties should support the request with reasoning as to why the hearing should use video conferencing, such as a health condition, or to reduce the cost of witness travel. Any party requesting a hybrid hearing format to accommodate those who will be participating remotely should file a written request with the Commission's Clerk's Office by November 3, 2021. If the Commission determines that a hybrid approach will be used, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a

web-enabled platform, and a remote hearing link will be posted on the Commission's website.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA chapter 541-A, RSA 378:9, RSA 378:18, and the Commission's procedural rules; and it is

FURTHER ORDERED, that the Commission will hold an expedited hearing in this matter at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on November 8, 2021, at 9:00 a.m.; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is,

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to PWW and any other parties on the service list, on or before November 5, 2021. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before November 8, 2021; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

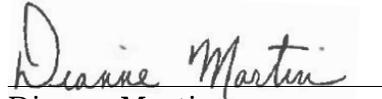
FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, PWW shall notify all entities and individuals desiring to be heard at this hearing by publishing a copy of this order of notice on its website no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before November 2, 2021. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that due to the nature of the relief sought and the expedited hearing track, PWW is directed to provide additional notice to the public by posting a link to this order on PWW's social media platforms no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before November 2, 2021; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.

So ordered, this twenty-ninth day of October, 2021.

A handwritten signature in cursive script that reads "Dianne Martin". The signature is written in black ink on a white background.

Dianne Martin
Presiding Officer
Chairwoman

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket# : 21-134

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