

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

Pennichuck Water Works, Inc.

Docket No. DW 21-115

Petition for Approval of Special Contract with Anheuser-Busch, LLC

**SETTLEMENT AGREEMENT**

June 14, 2022

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**A. BACKGROUND**

Pennichuck Water Works, Inc. (PWW) is a New Hampshire corporation and regulated water utility that provides service to approximately 29,000 customers in a number of municipalities in southern New Hampshire including the City of Nashua, and the Towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Newton, Plaistow, and Salem. PWW is owned by Pennichuck Corporation, a private corporation, which in turn is wholly owned by the City of Nashua. Although Pennichuck Corporation is wholly owned by a municipality, PWW is still a private corporation and regulated public utility within the definition of RSA 362:2 and 4.

Anheuser-Busch, LLC (AB) is a foreign limited liability company that, through its subsidiary Anheuser-Busch Commercial Strategy, LLC, owns and operates a brewery on the Daniel Webster Highway in the Town of Merrimack. AB takes service from PWW through two 6-inch water meters. AB differs from PWW's General Metered customers in that AB has previously compensated PWW for the installation of a 24-inch water main running from PWW's water treatment plant in the City of Nashua northerly along the Daniel Webster Highway to a

point opposite the westerly boundary line of AB's premises in Merrimack. AB has also compensated PWW for a water service connection of 20-inch size running from the 24-inch pipeline to and through the westerly property line of AB to a meter vault, as well as metering and associated equipment, all for the purpose of enabling PWW to supply water to AB. AB also has a storage tank on site with approximately two days of production storage.

**B. PROCEDURAL HISTORY**

On June 4, 2021, PWW filed a petition for approval of a ten-year special contract between itself and AB for effect July 1, 2021. The ten-year contract would be the fifth special contract (Fifth Contract) between PWW and AB. The initially filed version included a Base Monthly Fixed Fee of \$30,435.13 and a Monthly Volumetric Charge of \$1.2710 per 100 cubic feet. These rates compare to the 2011 special contract Base Monthly Fixed Fee of \$30,952.54 and Monthly Volumetric Charge of \$0.9568 per 100 cubic feet.

PWW requested a temporary extension of the existing fourth special contract pending the Commission's investigation of the Fifth Contract. PWW also requested approval to reconcile the rates between the fourth and Fifth Contract so as to apply the rates of the Fifth Contract back to July 1, 2021. The petition was supported by the testimony of Donald L. Ware (attached hereto as Attachment A), a cost of service study, and statement of special circumstances.

In his pre-filed testimony, Mr. Ware, among other things, described how the cost of service study apportioned costs to AB and was used to develop the rates contained in the Fifth Contract. Mr. Ware stated that PWW had made numerous investments in plant since the last contract. These investments include the following projects:

(1) The construction of the Merrimack River Deep Intake, completed in December 2019 at a cost of \$6,693,729;

(2) The addition of a third raw water pump in the Merrimack River Raw Water pump station, along with station improvements and rebuilds of the two original raw water pumps, at a cost of \$485,114; and

(3) The replacement of the carbon media in the six filters in the Nashua Water Treatment plant at a cost of \$1,485,993.

Mr. Ware also described the effective date of July 1, 2021 for the Fifth Contract and how PWW would calculate a reconciliation of the difference between the fourth special contract rates charged from July 1, 2021 to Commission approval and the Fifth Contract rates that would have otherwise been in effect July 1, 2021.

On June 4, 2021, the Commission acknowledged PWW's filing of the petition and assigned Docket No. DW 21-115 to this proceeding.

On July 7, 2021, the Commission issued Order No. 26,496 in the current docket and in the 2011 proceeding concerning approval of the fourth special contract, Docket No. DW 11-018. The Commission approved, effective July 23, 2021, the temporary extension of the fourth special contract. The Commission ordered PWW to post the order on PWW's web site. The Commission also afforded interested parties an opportunity to respond to the order and request a hearing.

On July 8, 2021, PWW filed an affidavit of posting of the order to its web site.

On July 9, 2021, the New Hampshire Department of Energy (DOE) filed a notice of appearance.

On October 18, 2021, PWW notified the Commission that circumstances had changed among its large water users and that an updated cost of service study would be conducted and that PWW would soon file the study and updated testimony.

On October 20, 2021, the DOE filed a notice of appearance changing its counsel for this proceeding to Suzanne Amidon.

On November 10, 2021, PWW filed supplemental testimony of Mr. Ware (attached hereto as Attachment B) as well as the updated cost of service study. The study reflected the change in use of PWW's other large water users and contained updated rates to be charged in the fifth special contract. The Base Monthly Fixed Fee was now \$28,283.61 and a Monthly Volumetric Charge was now \$0.9690 per 100 cubic feet.

On December 28, 2021, PWW filed an assented-to motion to again extend the fourth special contract pending Commission review of the contract.

On February 24, 2022, PWW filed a supplemental petition for approval of the Fifth Contract and its updated rates. In support of the supplemental petition, PWW filed additional testimony of Mr. Ware (attached hereto as Attachment C), a revised cost of service study, special contract, and statement of special circumstances (statement attached hereto as Attachment D). In summary, the cost of service revised the Base Monthly Fixed Fee to \$28,351.90 and the Monthly Volumetric Charge to \$0.9743. As stated above, these rates compare to the 2011 special contract Base Monthly Fixed Fee of \$30,952.54 and Monthly Volumetric Charge of \$0.9568 per 100 cubic feet.

On March 11, 2022, PWW filed an assented-to motion to approve a procedural schedule. On March 16, 2022, PWW filed a request to modify the original requested procedural schedule.

On March 16, 2022, the Commission issued a procedural order and approved a procedural schedule for the proceeding that included two rounds of discovery and a technical session.

On March 30, 2022, by Order No. 26,599, the Commission approved an additional extension of the fourth special contract, effective April 29, 2022, "until a Commission

determination is made on the proposed Fifth Contract in this proceeding.” In its order, the Commission again required PWW to post the order to PWW’s web site. The Commission also afforded interested parties an opportunity to respond to the order and request a hearing.

On April 6, 2022, PWW filed an affidavit that it posted the Commission’s order on PWW’s web site, as required by the order.

**C. TERMS OF THIS SETTLEMENT AGREEMENT**

1. The DOE does not take exception to PWW and AB’s special contract, as amended and has no suggested changes to the contract. In taking no exception, the DOE notes that the proposed Fifth Contract has no effect on other ratepayers, PWW’s reconciliation between the fourth and Fifth Contract for the term July 1, 2021 to the date of Commission approval of the Fifth Contract will be audited and any over or under collection will be either recovered from or refunded to AB.

2. PWW and the DOE recommend the Commission approve the Fifth Contract, attached hereto, as Attachment E. Attachment E supersedes all prior versions of the proposed Fifth Contract filed with the Commission. The changes in Attachment E, as compared to the prior versions of the Fifth Contract, are the result of discovery. Relevant portions of that discovery are attached hereto as Attachment F. In particular, the changes resulting from the discovery are that the Base Monthly Fixed Fee is now \$29,718.47 and the Monthly Volumetric Charge is now \$1.1244. These updated rates are the product of the updated cost of service study attached hereto as Attachment G. This Attachment G cost of service study supersedes all prior versions filed with the Commission.

3. PWW agrees to file a fully signed version of the Attachment E Fifth Contract within thirty (30) days from the Commission’s order approving the Fifth Contract.

4. A summary of the other terms of the Fifth Contract are as follows. The terms are nearly identical to the fourth special contract and include:

(a) PWW will maintain facilities capable of delivering water to AB continuously at the rate of up to 1.90 million gallons per day peak hour, 1.20 million gallons per day maximum day and up to 0.9 million gallons per day of annual plant capacity usage, at a pressure under normal operating conditions of approximately 70 psi at the meter installed on AB's premises. In no instance, and under no conditions, shall the quantity of water taken under the Fifth Contract during any 24-hour period exceed 1.2 million gallons, nor shall the quantity of such water taken under the Fifth Contract during any one-hour period, multiplied by 24, exceed 1.9 million gallons. The Minimum Daily Usage shall be 72,100 cubic feet and will remain unchanged during the term of the Fifth Contract. The Minimum Annual Usage shall be calculated by multiplying the Minimum Daily Usage of 72,100 cubic feet by the number of days within the Annual Period. The number of days in the year will be 365 and in leap years, 366. For the purposes of the Fifth Contract, the first Annual Period shall consist of the first twelve (12) monthly billing periods immediately following the effective date. Each subsequent Annual Period shall consist of the subsequent twelve (12) monthly billing periods.

(b) The contract is for a 10-year term with an effective date of July 1, 2021 and will not extend beyond June 30, 2031. During the Term of the Fifth Contract, AB has the ongoing right, for any reason or for no reason, to terminate the Fifth Contract, provided that it gives PWW at least twenty-four (24) months advance notice.

(c) PWW will invoice AB monthly, in arrears. The invoice will contain three main charges: a Monthly Meter Charge, a Base Monthly Fixed Fee, and a Monthly Volumetric Charge. In addition to the AB monthly bill, PWW will bill AB on an annual basis an Annual Volume

Shortfall charge, if applicable. This shortfall charge is not to be confused with the reconciliation proposed between the fourth special contract and the Fifth Contract.

5. PWW and the DOE agree that, within thirty (30) days of Commission approval of the Fifth Contract, PWW shall file for the Commission and DOE's review its reconciliation of the difference between the rates of the temporarily extended fourth special contract charged to AB and the Fifth Contract for the billing period July 1, 2021 to the effective date of the Commission's order approving the special contract. Because PWW bills AB monthly, PWW will calculate this reconciliation using the bills issued to date. PWW and the DOE agree that PWW shall not charge or refund AB the difference between the fourth special contract and the Fifth Contract until such charge or refund is approved by the Commission.

6. PWW and the DOE request the Commission approve the Fifth special contract and reconciliation without a hearing. The Commission has issued two orders extending the fourth special contract while it reviews the Fifth special contract. Both orders have been posted on PWW's and the Commission's websites. Interested parties have been afforded an opportunity to become involved with the proceeding. The DOE has filed its notice of appearance, however, neither the Office of the Consumer Advocate nor any other interested party has filed to participate in this proceeding. 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. Therefore, because RSA 378:18 does not require a hearing, and where PWW and the DOE are the sole parties to this proceeding and in agreement on this matter, the parties recommend that the Commission approve the signed special contract without a hearing. See, *Pennichuck Water Works, Inc.*, Order No. 26,597 (March 25, 2022) (Commission approved special contract without additional hearing). PWW and the DOE further contend that there is ample support in the record, which includes this settlement agreement and attachments, to find that special circumstances exist that warrant departure from the general schedules just and consistent with the public interest. PWW and the DOE agree that the Fifth special contract is necessary to provide appropriately priced water service to AB under the terms of the special contract, and that the contract does not shift costs to ratepayers or effect PWW’s tariff.

#### **D. CONDITIONS**

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 in their entirety, without change or condition, any party hereto, at its sole option exercised within 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.

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.

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, PWW and the DOE have caused this agreement to be duly signed by their respective fully authorized representatives.

**Pennichuck Water Works, Inc.**

Date: June 14, 2022

*Marcia A. Brown*

By its Attorney, Marcia A. Brown

**N.H. Department of Energy**

Dated: June 14, 2022

*/s/ Suzanne G. Amidon*

By its Attorney, Suzanne G. Amidon