

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**Docket DW 21-\_\_\_\_\_**

**Pennichuck Water Works, Inc.**

**Petition for Approval of Emergency Temporary Water Rate**

Pennichuck Water Works, Inc. (PWW or Company) hereby petitions the Commission for approval, pursuant to RSA 378:9, of an emergency temporary rate for water supplied to Merrimack Village District (MVD). In support of this request, PWW states as follows:

**Parties**

1. 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.
2. MVD is a village district established and is regulated in accordance with the provisions of RSA 38 and 52. MVD manages over 7,500 service connections that include residential, municipal, commercial and industrial properties. MVD's service area covers more than 87% of the Town of Merrimack. MVD owns, services, and maintains approximately 930,800 feet (or roughly 176 miles) of water mains, 930 fire hydrants, six wells (Wells 2, 3, 4, 5, 7, and 8, three water storage tanks, an Iron & Manganese treatment plant, three booster stations and a Per- and Polyfluoroalkyl Substances (PFAS) Treatment Plant.

### **Legal Authorities**

3. Pursuant to RSA 378:9, “[w]henver the commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto.” In emergency situations, pursuant to N.H. Code Admin. R. Puc 1601.01(e), the filing requirements of Chapter Puc 1600 do not apply. Furthermore, PWW only seeks approval for a rate specific to the facts and circumstances of a MVD, therefore, PWW is not seeking a general rate increase which would trigger a lengthy investigation under RSA 378:5 and 6. PWW avers that RSA 378:18 pertaining to special contracts is also not relevant. Special contracts under RSA 378:18 are customarily for known, large quantities of water supply taken by the customer over a specific period of years. As described below and in the attached pre-filed direct testimony and attachment of Mr. Donald L. Ware, an emergency has arisen and MVD needs an emergency source of water on a temporary basis at a rate that is just and reasonable and in the public interest.

### **NH Public Works Mutual Aid Group**

4. The N.H. Homeland Security and Emergency Management has in place, an Emergency Support Function 3 (ESF-3) for Public Works & Engineering. The purpose of the ESF-3 is:

“to utilize resources (i.e., human, technical, equipment, facility, materials, supplies) of member agencies to provide technical expertise; evaluation; engineering services; contracting for emergency repair of dams, drinking water and wastewater treatment facilities; potable water; emergency power; public real estate; and debris management to assist the State in meeting its goals related to lifesaving and life-sustaining actions, damage mitigation, and recovery activities before, during, and after an emergency/disaster event” (emphasis added). ESF-3 at 3. <https://www.nh.gov/safety/divisions/hsem/documents/ESF03.pdf>

The Commission is a Support Agency to this ESF-3. Part of the Commission's support is to:

“[p]rovide a liaison for the NH public and private electric, natural gas, water, sewage, and communications industry and coordinating groups for utility restoration support.” ESF-3 at 11.

Within the mutual aid arena, PWW and MVD are members of the NH Public Works Mutual Aid Group. This group was created to support members in times of emergencies. The Mutual Aid Program for Public Works was the first state-wide program in the U.S. created to specifically address mutual aid among public works departments. Source: <https://t2.unh.edu/ma>

### **The Emergency**

5. Under the framework of mutual aid, MVD has contacted PWW for emergency potable water. The emergency need arose because, on September 23, 2021, MVD received a Notice of Violation (NOV) from the NH Department of Environmental Services (NHDES). The NOV was due to MVD's well water exceeding the State's PFAS standard. One type of PFAS, called PFOA, now has a Maximum Contaminant Level (MCL) of 12 ng/L<sup>1</sup>. MVD exceeded that standard at Wells 2 (13 ng/L), 3 (20 ng/L), 7 & 8 (together, 25 ng/L). Two wells (Wells 4 & 5) have treatment for PFAS and the finished water quality from these wells is fully compliant with the State's PFAS standards. The remaining active wells do not yet have PFAS treatment. MVD has active construction underway to add PFAS treatment to Wells 7 & 8, however, those treatment facilities are not expected to be online until March 2022.<sup>2</sup> Construction experienced significant setbacks due to significant delays in obtaining necessary parts due to supply chain interruptions. This is more fully described in Mr. Ware's testimony. Additionally, one treatment vessel was damaged in transport. But for these delays, MVD would be meeting the PFAS

<sup>1</sup> Nanogram per liter (ng/L) is equal to 1 part per trillion (ppt).

<sup>2</sup> For completeness, MVD expects treatment for its last two wells (Wells 2 and 9) to be online in early fall of 2022. Well 9 is a new well which will replace Well 3.

standards, however, as a result of these construction delays, MVD now does not currently have enough compliant potable water to meet its customers' basic needs.<sup>3</sup>

6. As the Commission may be aware, PWW purchases water from MVD for two of its community water systems: the Greenfield Farms/Cabot Preserve/Parker Ridge water system in Bedford and the Souhegan Woods community water system in Amherst. The Greenfield Farms water system serves 383 residential customers. The Souhegan Woods water system serves 76 residential customers. Therefore, MVD's inability to provide PFAS-compliant water affects customers in these water systems and presents an emergency situation for PWW as well. For the time period that MVD is unable to provide PFAS-compliant water, PWW will be taking two courses of action for these systems. First, it has immediately ceased taking supply from MVD for its Souhegan Woods water system and will instead rely on its existing groundwater wells for sources of supply. Those wells are capable of meeting this water system's base non seasonal water demands. The Greenfield Farms/Cabot Preserve/Parker Ridge water system has no other source of water than MVD. PWW's provision of compliant, emergency water to MVD for delivery to these systems addresses that emergency in the near term.

#### **Terms of Service and Rate**

7. PWW is able to provide MVD with up to 1.0 MGD (million gallons per day) through an existing interconnection point. Therefore, no new physical interconnection needs to be constructed and no additional franchise expansion needs to be approved. The remainder of the applicable terms and conditions of PWW's tariff would apply.

<sup>3</sup> MVD cannot meet its' base winter demand of about 1.6 to 1.7 MGD with its treated wells, Wells 4 and 5. Wells 4 and 5 can produce about 0.60 MGD on a year-round basis. Production from Wells 7 and 8, which are expected to be online in March 2022, can provide about 1.15 MGD and thereby meet MVD's expected non-summer demand.

8. PWW has determined a proposed rate to charge MVD under this emergency by taking the total cost of electricity, chemicals, and consumed carbon capacity and dividing it by the total gallons of raw water delivered to the Company's water treatment plant, treated at the water treatment plant, and then delivered into PWW's distribution system for consumption. The rate, based on 2020 costs with projected increases in power and chemical costs, is \$0.67 per 100 hundred cubic feet (CCF) (Initial Rate). Because 2022 chemical and power costs are not yet known and the amount of chemicals uses for treatment vary year to year based on raw water quality, the actual cost of water cannot not be known or calculated until the exact amounts PWW used during the emergency period are known definitively. In light of the likely changes to costs, PWW proposes to determine a final rate (Actual Rate) for the time period MVD takes emergency temporary service by taking the total variable expenses incurred during that time frame (power, chemicals and carbon) and dividing that total by the millions of gallons produced during that time frame, in order to determine the actual incurred variable cost of producing water during the emergency rate period. PWW proposes that the net between the Initial Rate and Actual Rate be billed (if the Initial Rate was less than the Actual Rate) or will be refunded (if the Initial Rate was higher than the Actual Rate) to Merrimack Village District. This reconciliation provision will ensure that PWW's rate payers do not subsidize or profit from the sale of water to MVD during this mutual aid emergency response.

9. PWW does not believe that any of its current retail rates are otherwise applicable to this emergency. MVD owns its own infrastructure and this is a temporary emergency situation. In contrast, PWW's retail rates are predicated upon the customer remaining an ongoing customer of the Company, purchasing water along with all of the other customers, with a water rate that is designed not only for variable cost of production, but also the long-term carrying costs of

supplying water, inclusive of capital costs. Here, MVD will temporarily take water from PWW and then transport the water within its own system and for as long as the emergency exists. As soon as MVD's treatment is online, the emergency is expected to be over. Furthermore, this emergency provision of water is to deliver "health based" water in compliance with the State PFAS standards to both MVD and PWW's customers. Lastly, if MVD were to pay retail rates it would be a windfall to PWW at the expense of an emergency. This would be contrary to the spirit of the Mutual Aid Group. If the retail rate was charged for a period of around 5 months, it would cost MVD about \$808,160. In comparison, at the variable cost of production, estimated to be about \$0.67 per CCF, the cost of water over a 5-month period would be about \$134,360.

10. Time is of the essence with respect to costs. MVD commenced taking water from PWW on October 20, 2021 when it shut off its non-compliant wells and began taking water from PWW. Because PWW does not yet have a rate to accommodate this unique emergency situation, MVD is paying PWW's retail rate. MVD has sufficient funds to pay the retail rate pending the Commission's approval but only until about November 18, 2021. At about that time, MVD will deplete its funds. Therefore, PWW and MVD request the Commission issue an order prior to November 18<sup>th</sup> that approves the emergency rate of \$0.67 per CCF. This rate is reflected in the tariff, Original Page 45A, being filed contemporaneously with this petition.<sup>4</sup> Additionally, PWW requests that this emergency rate be allowed to apply retroactive to October 20, 2021, the date MVD first started taking water under this emergency.

<sup>4</sup> The effective date of the tariff is shown as November 20, 2021, in compliance with RSA 378:3. If, however, the Commission approves this petition, PWW will file a compliance tariff reflecting an effective date of October 20, 2021.

11. Both the MVD and the NHDES support PWW providing emergency, temporary water to MVD. Because of the urgency of filing this petition, PWW will be filing the MVD and NHDES letters of support as soon as it receives them.

WHEREFORE, PWW respectfully requests that the Commission:

- A. Find, pursuant to RSA 378:9, that an emergency exists that warrants a temporary rate;
- B. Authorize, no later than November 18, 2021, PWW to charge the above-described emergency rate retroactively to October 20, 2021, the date MVD first took service under this emergency;
- C. Approve the emergency rate for effect until November 1, 2022 or the date on which all of MVD's wells have PFAS treatment installed and operational, whichever is earlier; and
- D. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorney,

NH BROWN LAW, PLLC

Date: October 21, 2021

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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 Office of the Consumer Advocate.

Marcia A Brown  
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