

November 1, 2021

Dianne Martin, Chairwoman
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

RE: Docket DW 21-134 Pennichuck Water Works, Inc.
Petition for Emergency Temporary Rate for Merrimack
Village District

Dear Chairwoman Martin:

This office serves as general counsel to the Merrimack Village District (“MVD”), the primary water supplier for the Merrimack community, as well as a supplier to Pennichuck Water Works (“PWW”). I submit this letter on behalf of MVD in support of PWW request for an emergency temporary rate for water purchase. MVD began taking service from PWW on October 20, 2021. Prior to taking service, MVD and PWW discussed the proposed rate and reconciliation mechanism (but see footnote ¹ below) that is now before the Commission for approval.

The following circumstances and facts support PWW’s request:

1. 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, three water storage tanks, an Iron & Manganese treatment plant, three booster stations and a PFAS Treatment Plant. MVD has an existing interconnection with PWW on Route 101A in Amherst. MVD also operates 6 groundwater wells - #2, 3, 4, 5, 7 & 8. In 2020, the State Legislature adopted Maximum Contaminant Levels (“MCLs”) for PFAS. One type of PFAS, called PFOA, now has an MCL of 12 ng/L. *Before treatment*, the raw water at all MVD wells contains levels of PFOA above the 12 ng/L MCL. Wells #4 and #5 have an operating PFOA treatment system which has been in service since October 2020, and reduces PFOA levels to below the MCL. MVD began working, even before the MCLs were adopted, to implement treatments systems for all of its operating wells. PFOA treatment for Wells #7 and #8 was scheduled to go online in September/October 2021. The treatment system for Wells #2 and #3 is scheduled for the summer/fall of 2022. With Wells #7 and #8 treatment systems on-line,

¹ Only MVD’s Superintendent, Water Quality and Testing Administrator, and undersigned counsel, have discussed reconciliation with PWW; due to public meeting (RSA 91-A) constraints, the MVD Board of Commissioners, which is the governing body of MVD, has not had an opportunity to discuss reconciliation – this will be brought to the Commissioners at their next meeting on November 15, 2021.

together with treated water from Wells #4 and #5, it was anticipated that MVD would have enough water for its customers, including PWW's consecutive water systems, through the winter months when demand is lower. This might require, at certain times, shutting down Wells #2 and #3 whenever they exceeded the PFOA MCL.

2. The treatment system for Wells #7 and #8 requires 2 large, specialized tanks/vessels. These were ordered and were to be shipped from Iowa. Tank #2 made its way to MVD as scheduled and without issue in May 2021. Tank #1, however, has been delayed until October/November 2021 as a result of the vessel hitting a bridge en route to MVD, resulting in the carrier truck returning the vessel to Iowa to undergo repairs. As a direct result of this unforeseen circumstance, MVD's plan to provide MCL-complaint water from Wells 7 & 8 has been unavoidably waylaid. The Wells #7 and #8 treatment system is now not expected to go on-line until the Spring 2022.
3. Compounding these exigent and unforeseen circumstances, MVD received a "Notice of PFAS Maximum Contaminant Level Exceedance" from NH Department of Environmental Service ("DES") in September 2021 for PFOA MCL exceedances at Wells 2 (13 ng/L), #3 (20 ng/L), #7 & #8 (together, 25 ng/L). This notice is required to be sent to all MVD customers and to those PWW customers whose water comes from MVD. Without the treatment system at Wells #7 and #8 up and running as planned, MVD has no way to supply water below the PFOA MCL on its own.
4. As a result of all of the above, PWW approached MVD and the two entities have been working together on a plan for PWW to provide necessary water, around 1 MGD (may be more or less), which, together with MVD treated Wells #4 and #5, provides a temporary solution for MVD (until the Wells #7 and #8 treatment system is on-line), and thus PWW, to provide MCL-compliant water to customers.
5. MVD supports this request contingent on receiving the proposed emergency rate of \$0.67/100 cf to use at their discretion. While this proposal is viable technically, MVD has limited access to funds in order to pay PWW's retail rate of \$4.03 per CFF for five plus months. Because MVD owns its own infrastructure, a wholesale rate would be more appropriate than paying PWW's retail rate, which includes costs associated with PWW's PFOA treatment plant and infrastructure that is not used to supply MVD. The anticipated amount of water MVD would purchase from PWW over the winter is approximately 1 MGD, which is 1,337 CCF and at the \$4.03 retail rate, that is \$5,388 per day or approximately \$161,600 per month (based upon a 30-day month). This would amount to approximately \$970,000 through April 30, 2022 in additional cost to MVD. At the \$4.03 retail rate, MVD currently only has access to funds which would cover only approximately 1.5 months of water. At the reduced emergency rate proposed of \$0.67 per CFF, MVD has funds to cover approximately 5 – 5.5 months.
 - a. MVD can only expend funds that the voters have authorized **RSA 32:8 Limitation on Expenditures**. – No board of selectmen, school board, village district commissioners or any other officer, employee, or agency of the municipality acting as such shall pay or agree to pay any money, or incur any liability involving

the expenditure of any money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11.

- b. MVD has \$100,000 in a Reserve Fund that is accessible
- c. MVD has \$20,000 in a Contingency Fund that is accessible
- d. MVD has \$20,000 in a budget line item for “Water Purchase”, which has already been exceeded in the current fiscal year. While MVD can move funds within its budget to the “Water Purchase” line item it needs to be able to backfill that amount because the Budget was created carefully and money can't generally permanently be pulled from a line item, it would leave that line item underfunded or unfunded. **RSA 32:10 Transfer of Appropriations.** – I. If changes arise during the year following the annual meeting that make it necessary to expend more than the amount appropriated for a specific purpose, the governing body may transfer to that appropriation an *unexpended balance remaining in some other appropriation*, provided, however, that: (a) The total amount spent shall not exceed the total amount appropriated at the town or district meeting.
- e. MVD does not have direct access to surplus/unassigned fund balance; the voter's must approve use of surplus at an annual or special meeting for a specific expenditure. DRA Technical Assistance for Towns, Village Districts, School Districts, Budget Committees ("Per RSA 32:10, I (a), 'The total amount spent shall not exceed the total amount appropriated at the town or district meeting.'") For this reason, a special contract under RSA 378:18 is impractical because MVD needs water now and cannot wait until March when voters approve the next budget. Further, the MVD cannot, pursuant to RSA chapter 32, enter into this type of a contract requiring an expenditure which would bind MVD for longer than a year (multi-year contract) without having the contract first put to voters. Again, MVD cannot wait that long.
 - i. While it is legally possible to go to Superior Court and petition for a Special Town Meeting, there are special considerations and limitations on MVD's ability to obtain authority to hold a special meeting, as follows:
 - 1. The money to be raised by a Special Town Meeting has to come from somewhere, in this case it would come from surplus/unassigned fund balance. But taking the money from surplus would likely reduce the DRA-recommended level of surplus, and would indirectly result in having to raise money through an increase in rates to the customers. This is not equitable to the customers – who are not responsible for PFAS contamination and are already having to pay increased rates to account for MVD's implementation of PFAS treatment. (MVD has recently sued three polluters allegedly responsible for contamination of MVD's drinking water to recoup MVD's costs – which will be on-going many years into the future.)
 - 2. There is no guarantee that the Superior Court will approve a Special Town Meeting, because there are elements that must first be met. In consideration of all of these obstacles, it is far superior that the Commission approve PWW's proposed tariff and PWW's petition

requesting that the rate be allowed to be retroactive when the estimated and actual rates are reconciled.

For these reasons, MVD respectfully requests the Commission approve PWV's petition for an emergency temporary rate for MVD. The rate would greatly help MVD meet its goal of providing MCL-compliant water to its customers.

Sincerely,

/s/ Keriann Roman
Keriann Roman