

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

Pennichuck Water Works, Inc.

Docket No. DW 21-134

Petition for Approval of Emergency Temporary Water Rate  
and  
Special Contract with Merrimack Village District

**SETTLEMENT AGREEMENT**

March 3, 2022

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**A. BACKGROUND AND PROCEDURAL HISTORY**

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.

Merrimack Village District (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.

On October 21, 2021, pursuant to RSA 378:1 and 3, PWW filed Original Page 45A for emergency temporary water service. This tariff was set for effect thirty days after filing, on November 20, 2021. Contemporaneously with its tariff filing, pursuant to RSA 378:9, PWW also filed a petition for approval of emergency temporary water rates to make the rate retroactive back to October 20, 2021 which was the date MVD first took service.

On October 25, 2021, the Commission acknowledged PWW's filing of the petition and assigned Docket No. DW 21-134 to this matter. On October 27, 2021, the N.H. Department of Energy (Department) filed an appearance, and the N.H. Department of Environmental Services filed a letter supporting the provision of water to MVD under emergency rates.

On October 29, 2021, pursuant to its authority under RSA 378:9, RSA 378:18, and RSA 541-A:31, I and III, the Commission commenced an adjudicative proceeding and noticed a hearing for November 8, 2021.

On November 1, 2021, PWW filed proof of its posting of the hearing notice on its web site and requested remote participation at the November 8<sup>th</sup> hearing.

On November 2, 2021, the Commission issued a procedural order approving remote participation at the November 8<sup>th</sup> hearing.

On November 2, 2021, MVD filed a letter of support.

On November 5, 2021, pursuant to the Commission's order commencing the adjudicative proceeding and directing PWW to file a draft special contract, PWW and MVD filed a proposed special contract to govern service taken as of October 20, 2021.

On November 8, 2021, the Commission held a duly noticed hearing on PWW's petition and draft special contract.

On November 12, 2021, PWW and MVD filed a fully signed copy of the special contract. Later, on November 12, 2021, by way of Order No. 26,552, the Commission approved PWW's emergency rate tariff for six months, November 20, 2021 - May 19, 2022, pending the investigation of PWW and MVD's special contract.

On November 17, 2021, PWW filed a supplemental petition expressly requesting Commission approval of the PWW-MVD special contract.

On December 8, 2021, the Department filed a motion for approval of a procedural schedule to govern discovery and a technical session. The Commission approved the motion on December 21, 2021.

## **B. TERMS OF THIS SETTLEMENT AGREEMENT**

1. The Department does not take exception to PWW and MVD's special contract filed on November 12, 2021 and has no suggested changes to the contract. In taking no exception, the Department notes that the proposed special contract has no effect on other ratepayers, PWW's actual costs of providing the service will be audited and recovered from MVD, and its duration is limited to the term of the emergency faced by MVD.

2. PWW, MVD, and the Department recommend the Commission approve the special contract, reattached hereto as Attachment A.

3. Rates under the special contract are the "actual variable cost to produce the water" and will be subject to reconciliation at the conclusion of the emergency:

The total cost of electricity, chemicals, and consumed carbon capacity divided by the total gallons of raw water delivered to PWW'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 projected to 2022 by incorporating

known or expected increases in carbon, power and chemical costs, is \$0.67 per 100 hundred cubic feet (Initial Rate). After the termination of the emergency, a final rate (Actual Rate) will be determined for the time period MVD took 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. The net between the Initial Rate and Actual Rate will then 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 MVD.

PWW, MVD, and the Department agree that no later than thirty (30) days after the termination of the emergency PWW will submit a reconciliation of the Initial Rate and Actual Rate for review and audit by the Commission and Department prior to billing or crediting the difference to MVD. In addition, and also no later than thirty (30) days after the termination of the emergency, PWW will submit to the Commission for audit a reconciliation between the retail rate MVD paid from October 20, 2021 through November 19, 2021, prior to the emergency Initial Rate (\$0.67 per 100 cubic feet) that went into effect on November 20, 2021.

4. Upon approval of the special contract by this Commission, PWW will cancel, within fifteen (15) days from Commission approval, its Original Page 45A pursuant to the format prescribed in Puc 1603.06(i).

5. PWW, MVD, and the Department request the Commission approve the special contract without a hearing. Since the Commission noticed this proceeding under RSA 541-A:31, III, interested parties have been afforded an opportunity to intervene and present evidence. That included the hearing held on November 8<sup>th</sup>. 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, similar to RSA 378:3 which allows rate changes to go into effect, without a hearing, upon thirty-days’ notice. These rate statutes differ from the legislature’s clear expression in RSA 374:26 where hearings on franchise requests are required when all parties are not in agreement. Therefore, in light of RSA 378:18 not requiring a hearing and where PWW, MVD, and the Department, being the sole parties to this proceeding, are all in agreement, the parties believe that the Commission can approve the signed special contract without an additional hearing.

6. In the event the Commission wishes to hold a hearing, and to aid the Commission in scheduling a hearing when all parties can attend, the parties are available for the following dates: March 30, 2022; March 31, 2022; and April 1, 2022.

### **C. 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.

This agreement may be executed in counterparts.

IN WITNESS WHEREOF, PW, MVD, and the Department have caused this agreement to be duly signed by their respective fully authorized representatives.

**Pennichuck Water Works, Inc.**

Date: March 3, 2022

  
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By its Attorney, Marcia A. Brown

**Merrimack Village District**

Dated: March 3, 2022

  
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By Ronald Miner, Jr. Superintendent

**N.H. Department of Energy**

Dated: March 3, 2022

  
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By its Attorney, Suzanne G. Amidon