

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 22-032**

**PENNICHUCK WATER WORKS, INC.**

**Request for Change in Rates**

**Order *Nisi* Approving Recovery of Rate Case Expenses and Granting Motion for Confidential Treatment**

**ORDER NO. 26,904**

**November 20, 2023**

In this order, the Commission authorizes, on a *nisi* basis, Pennichuck Water Works, Inc. (PWW) to recover rate case expenses in the amount of \$36,656.34 through a monthly surcharge of 10 cents per customer over a 12-month period.

PWW's petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-032.html>.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On June 27, 2022, PWW petitioned the Commission for authority to implement new permanent rates for water services. On May 31, 2023, PWW, the Office of Consumer Advocate (OCA), and Staff of the Department of Energy (DOE) filed a settlement on permanent rates (Settlement). The Commission approved the Settlement by Order No. 26,862 (July 27, 2023). The Settlement included a provision allowing PWW to recover its rate case expenses by filing a request pursuant to Puc 1905.02 within thirty days of the final order approving the permanent rate. See Hearing Exhibit 4 at 14.

On August 28, 2023, PWW filed its request to seek recovery of \$37,496.34 in rate case expenses via a 12-month customer surcharge of 10 cents per customer per month. PWW also filed a motion for confidential treatment and protective order. On September 28, 2023, PWW, after engaging in a technical session with the DOE, filed a revised request to seek recovery of rate case expenses. The revision included removal of \$840 in legal expenses deemed unrelated to the rate case proceeding. The subsequent request was reduced to \$36,656.34 with no impact on the monthly surcharge amount to its customers.

The August 28, 2023 motion for confidential treatment renews a May 10, 2023 request for confidential treatment and a protective order concerning information provided in data responses and submitted as Hearing exhibits 2 and 5 during the May 31, 2023 hearing. Furthermore, the motion makes an additional request for confidential treatment and a protective order concerning information gathered during the discovery process of the rate case expenses.

On October 23, 2023, the DOE filed a report and technical statement regarding its review of PWW's rate case expenses. The DOE recommended the Commission approve PWW's request for recovery of the amended rate case expenses. *See* DOE October 23, 2023, Technical Statement of Jayson Laflamme.

## **II. COMMISSION ANALYSIS**

### **Rate Case Expenses**

The Commission treats prudently incurred rate case expenses as a legitimate cost of service appropriate for recovery through rates, consistent with N.H. Code Admin. Rules Puc Chapter 1900. Puc 1904.02 sets forth the criteria for determining allowed rate case expenses, including that such expenses are consistent with the Chapter 1900 requirements, the costs are actual, known, and measurable expenses

associated with a full rate case proceeding, and that recovery of the expenses is just, reasonable, and in the public interest, pursuant to the standards of RSA 378:7. See, e.g., *Hampstead Area Water Company, Inc.*, Order No. 26,185 (Oct. 30, 2018), at 4.

The rate case expenses in this matter were anticipated in the 2023 proposed settlement of permanent rates. The Commission held a duly noticed hearing on the Settlement Agreement, and resultant proposed rates, on May 31, 2023. Section 4.7 of the Settlement Agreement is entitled Rate Case Expense Surcharge. See Hearing Exhibit 4 at 14.

The Commission has reviewed the amended request for rate case expenses, the Company's responses to data requests from the DOE, as well as the technical statement provided by the DOE. The Commission finds that PWW has adequately supported, and supplemented where required, its request with expense documentation and thorough responses to inquiries by the DOE. Accordingly, the Commission finds PWW's amended request to recover its rate case expenses in the amount of \$36,656.34, which, when divided by the customer base of 29,124, yields a surcharge of 10 cents per month, is just and reasonable pursuant to RSA 378:7.

#### **Motion for Confidential Treatment**

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that

it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(IV) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." *Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case PWW seeks protection for compensation and payroll information contained in hearing exhibits. Additionally, as part of their rate expenses, documents containing legal expense information and work product are being sought to be

protected. PWW argues that disclosure of the information contained in the legal billing would put PWW's attorneys at a competitive disadvantage by divulging the rates they charged for work.

Concerning the original motion filed in May 2023 but not yet ruled on, the Commission finds that this motion is comparable to the one previously granted in October 2022. Order No. 26,711 (October 24, 2022) granted PWW's motion to protect compensation and payroll information and the "live" model of PWW's cost of service study. In granting this motion, the Commission noted that it routinely issues protective orders concerning employee compensation. Further, the commission noted that PWW has a privacy interest in protecting the details of its payroll and the compensation of its employees and the proprietary software of its consultants. When balanced against the public's interest in disclosure in this case, the balance favors protecting this information from disclosure. The Commission once again grants PWW's request to protect this information.

RSA 91-A:5, XII specifically exempt records protected under the attorney-client privilege or the attorney work product doctrine. PWW's legal billing it seeks to remain confidential includes information that is protected under the attorney-client privilege. Because this document is exempt from disclosure, an analysis under RSA 91-A:5, IV is unnecessary. It is found that the legal bills include attorney client work product and are therefore exempt.

Accordingly, pursuant to Puc 203.08(a), we grant PWW's motions for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

**Based upon the foregoing, it is hereby**

**ORDERED NISI**, that subject to the effective date below, Pennichuck Water Works, Inc. is authorized to recover \$36,656.34 in rate case expenses over a 12-month period through a monthly surcharge of 10 cents per customer; and it is

**FURTHER ORDERED** that Pennichuck Water Works, Inc. shall post a copy of this order on the Company's website within two business days of the date of this order (November 22, 2023), with an affidavit of publication to be filed with this office on or before November 29, 2023; and it is

**FURTHER ORDERED**, that Pennichuck Water Works, Inc.'s motion for confidential treatment is **GRANTED**; and it is

**FURTHER ORDERED**, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than November 30, 2023 for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than December 7, 2023; and it is

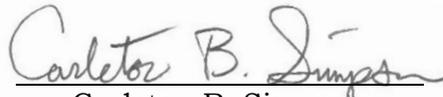
**FURTHER ORDERED**, that this order shall be effective December 20, 2023, unless the Pennichuck Water Works, Inc. fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

**FURTHER ORDERED**, that the Pennichuck Water Works, Inc. shall file a compliance tariff with the Commission on or before January 2, 2024, in accordance with New Hampshire Code of Administrative Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 2023.



Pradip K. Chattopadhyay  
Commissioner



Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 22-032

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