

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 19-084

PENNICHUCK WATER WORKS, INC.

Request for Change in Rates

**Order Authorizing Temporary Rate Recoupment, Recovery of Rate Case Expenses, and
Granting Motion for Confidential Treatment**

ORDER NO. 26,469

April 8, 2021

This order authorizes Pennichuck Water Works to recoup the difference between its temporary and permanent rates and to recover its rate case expenses. This order also approves Pennichuck Water Works' motion for confidential treatment of its attorneys' and consultant billing rates, and certain billing account numbers.

I. PROCEDURAL HISTORY

On June 30, 2020, the Commission approved temporary rates for Pennichuck Water Works, Inc. (PWW or the Company). *Pennichuck Water Works, Inc.*, Order No. 26,373 (June 30, 2020) (setting temporary rates at then current rates). The temporary rates applied to all customer classes, on a service rendered basis, effective April 14, 2020. *Id.* at 7, 9.

On November 24, 2020, the Commission approved a final revenue requirement of \$35,819,773, resulting in a net revenue increase of \$2,501,648, or 7.90 percent. *Pennichuck Water Works, Inc.*, Order No. 26,425 at 1, 5. The Commission directed PWW to file documentation of the difference between temporary rates which went into effect on April 14, 2020, and permanent rates as determined, and to file a proposed surcharge for recovering the difference from its customers. *Id.* at 5. The Commission also directed the Company to file its final rate case expense request. *Id.*

On January 20, 2021, PWW filed its proposed recoupment charges, along with supporting documentation. PWW also submitted a request for recovery of its rate case expenses, along with a motion for confidential treatment of certain billing and account information. Commission Staff (Staff) filed its recommendation on February 26, 2021.

PWW's initial filings and any subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-084.html>.

II. POSITIONS

A. PWW

PWW proposed a total net revenue recoupment of \$1,592,837.86. That represented the incremental difference between temporary and permanent rates, for service rendered from April 14, 2020, through November 23, 2020, inclusive. The Company requested to recover that revenue over an eighteen-month period through various surcharges based on customer class and customer usage during the recoupment period. PWW indicated that recoupment charges would vary by usage, but, according to the accompanying proposed tariffs, on average a general metered residential customer would be assessed \$1.95 per month for 18 months.

PWW also initially requested recovery of rate case expenses totaling \$178,490.10 over a 12-month period. The Company proposed to recover that amount by collecting \$0.51 per month for 12 months from each of its customers. During the course of discovery, PWW amended its request for rate case expense recovery to \$172,066.71 due to clerical errors revealed in the legal invoices.

Along with its rate case expense recovery request, the Company submitted a Motion for Protective Order and Confidential Treatment of Hourly Billing Rate Data and Vendor Account Information (Motion). PWW's request for confidential treatment pertained to the hourly rates

PWW paid to its outside legal counsel for services performed during the course of the rate proceeding. The Company also requested extension of that protection to cover the hourly rate of its cost of service consultant. PWW, furthermore, requested that its FedEx-issued account number also remain confidential.

PWW argued that disclosure of its attorneys' and consultant's hourly rates would cause competitive harm to those vendors. The Company further stated that disclosure of that information could have a detrimental effect on the Company's competitive bidding efforts in the future with respect to outside legal and consultant services. The Company argued that the public's interest in this information is diminished because the total amount paid by PWW for legal and consultant services is disclosed.

The Company also stated that its FedEx account number should remain confidential because it prevents "theft of services by an unauthorized user's use of [PWW's] the account number." Motion at 4.

B. Staff

Staff recommended that the Commission approve PWW's proposed net revenue recoupment of \$1,592,837.86. Staff stated that the approval of recovery of the difference between temporary and permanent rates would be consistent with the Commission's ratemaking authority and the just and reasonable rates set by Order No. 26,425. Staff, therefore, recommended that the Commission find PWW's request just and reasonable pursuant to RSA 378:7.

Staff recommended that the Commission approve a total of \$172,058.76 in rate case expenses for PWW¹. Staff recommended that the expenses be recovered over a twelve-month

¹ Staff proposed a \$7.95 reduction from the Company's revised request of \$172,066.71. That reduction pertained to a "cost of money fee" included in one of the legal invoices.

period via a monthly surcharge of \$0.50 per customer, commencing immediately upon approval. Staff recommended that the Commission find this surcharge to be just and reasonable pursuant to RSA 378:7.

Staff supported PWW's motion for confidential treatment. Staff agreed with the Company that disclosure of the hourly billing information for professional services could have a detrimental effect on PWW and, ultimately, its customers. Staff further stated that the Commission has granted confidential treatment of similar information in the past. Staff also agreed that the FedEx account information should remain confidential, as it would protect the Company from unauthorized charges. Staff, finally, stated that it was not aware of any public interest in the disclosure of the professional service hourly rate or FedEx account information.

C. PWW Reply

According to the Staff Recommendation, PWW concurred with Staff's recommendations.

D. OCA

According to the Staff Recommendation, the OCA concurred with Staff's recommendations.

E. City of Nashua

According to the Staff Recommendation, the City of Nashua did not take a position.

III. COMMISSION ANALYSIS

A. Temporary-Permanent Rate Recoupment

RSA 378:29 requires the Commission to allow utilities to amortize and recover the difference between temporary and permanent rates over the effective period of the temporary rates if, upon the final disposition of the rate proceeding, the rates ultimately approved exceed the earlier-imposed temporary rates. Here, the temporary rates were lower than the rates that the

Commission ultimately approved. The difference created a revenue shortfall that the Company is entitled to recoup from its customers.

The net revenue shortfall has been calculated by PWW to be \$1,592,837.86, including adjustments in the customer's favor, and confirmed by Staff. We therefore approve recovery of the proposed revenue differential through 18 monthly surcharges for all of PWW's customers.

B. Rate Case Expense Recovery

RSA 365:8, I(j) and PART Puc 1900 permit recovery of certain rate case expenses that are just and reasonable and in the public interest. Approved rate case expenses are recovered through the imposition of a surcharge to rates. Puc 1908.01. Consistent with the statute and administrative rules, we have reviewed PWW's rate case expenses as well as Staff's recommendation, and we find the rate case expenses for PWW of \$172,058.76 to be just and reasonable and in the public interest. We approve the Company's recovery of this amount over a 12-month period through a monthly customer surcharge of \$0.50.

C. Motion for Confidential Treatment

PWW sought confidential treatment of attorney and consultant hourly billing information, and its FedEx account information pursuant to Puc 203.08. The Company argued that the hourly billing rates and account information fall within RSA 91-A:5, IV, which exempts from public disclosure records pertaining to confidential, commercial, or financial information. According to PWW, disclosure of that information would cause competitive harm to its vendors and could have a detrimental effect on the Company's competitive bidding efforts in the future. PWW also argued that the Company may be susceptible to theft if the FedEx account information were disclosed.

The Commission applies a three-step balancing test to determine whether documents should be protected from disclosure as "confidential, commercial, or financial information"

under RSA 91-A:5, IV. *Pennichuck Water Works, Inc.*, Order No. 26,442 at 9 (December 29, 2020) (citing Northern Utilities, Inc., Order No. 25,700 at 6 (August 1, 2014) and *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)). Applying that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* at 13. Finally, the Commission must balance “those competing interests and decide whether disclosure is appropriate.” *Id.* (citing Lambert, 157 N.H. at 383).

We find that PWW has established a significant privacy interest in maintaining the confidentiality of the records and information at issue. We first note that the Commission has previously held hourly billing rate information exempt from disclosure. *Pennichuck East Utility, Inc.*, Order No 26,222 at 5 (February 26, 2019). Disclosure of billing rates for professional services could result in a competitive disadvantage for PWW’s attorneys and consultants. That could prove detrimental to the Company and its customers. We find disclosure to the public of FedEx account information, could lead to unauthorized account charges which would also be detrimental to the Company and its customers. On the other hand, we find the public’s interest in disclosure of this information is minimal.

On balance, the Company’s interest in maintaining the confidentiality of the information at issue is significant, and outweighs the minimal interest the public may have in its disclosure. We therefore grant the motion for protective order and confidential treatment.

Consistent with past practice, 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 Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant. *See* Puc 203.08(k).

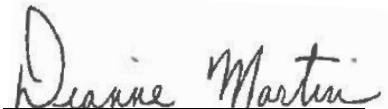
Based upon the foregoing, it is hereby

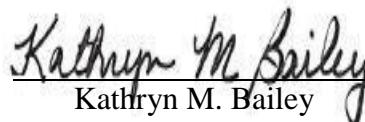
ORDERED, that Pennichuck Water Works, Inc. is authorized to recover \$1,592,837.86 from its customers over an 18-month period through a monthly customer surcharge based on individual usage, representing the difference between revenues billed by Pennichuck Water Works between April 14, 2020, the effective date of temporary rates approved in Order No. 26,373, and the permanent rates approved in Order No. 26,425; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. is authorized to recover \$172,058.76 in rate case expenses, through a surcharge in the amount of \$0.50 per customer per month for 12 months; and it is

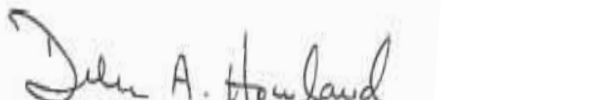
FURTHER ORDERED, that Pennichuck Water Works, Inc.'s motion for confidential treatment is GRANTED.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 2021.


Dianne Martin
Chairwoman


Kathryn M. Bailey
Commissioner

Attested by:


Debra A. Howland
Executive Director

Service List - Docket Related

Docket# : 19-084

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