

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 21-134**

**PENNICHUCK WATER WORKS, INC.**

**Request for Emergency Temporary Rates for Merrimack Village District**

**Order Approving Special Contract**

**O R D E R N O. 26,597**

**March 25, 2022**

In this order, the Commission approves a special contract between Pennichuck Water Works, Inc. (PWW) and the Merrimack Village District (MVD). The special contract provides for sale of emergency bulk water supplies at the variable cost of water from PWW to MVD from October 1, 2021, until December 31, 2022. This special contract helps facilitate the provision of emergency mutual assistance from PWW to MVD necessitated by per- and polyfluoroalkyl (PFAS) contaminants in several MVD water supply wells while MVD installs new water treatment facilities.

**I. PROCEDURAL HISTORY AND BACKGROUND**

On October 21, 2021, PWW filed an emergency tariff sheet for a single customer, MVD, proposing tariff language allowing bulk water would be sold to MVD at the actual variable cost of production (to be billed at an estimated initial rate of \$0.67 per 100 cubic feet), for effect November 20, 2021.

On October 22, 2021, PWW filed a petition requesting the approval of a temporary emergency water rate which would enable it to provide bulk water supply to MVD while MVD's water supply systems are brought into compliance with water quality regulations for (PFAS) contaminants. In support of its petition, PWW filed the direct testimony of Donald Ware, PWW's chief operating officer, and related attachments, as well as a proposed tariff.

PWW is a regulated water utility owned by Pennichuck Corporation, which, in turn, is owned by the City of Nashua. PWW has customers in Nashua and other New Hampshire municipalities, including Amherst, Bedford, and Merrimack. The town of Merrimack is also served by MVD using its own water service infrastructure, which presently includes six wells. MVD's service area covers more than 87 percent of the Town of Merrimack, and it manages over 7,500 service connections. PWW has approximately 376 customers in Bedford who obtain their water exclusively from MVD and about 75 customers in Amherst who obtain a supplemental water supply from MVD.

On October 27, the Department of Environmental Services (NHDES) filed a letter in support of PWW's petition, stating that "NHDES has determined the approach to providing safe drinking water to MVD described in the petition is the most appropriate action to address the contamination in the drinking water until MVD completes the construction filtration systems..."

On October 29, 2021, the Commission issued a Notice of Adjudicative Proceeding, scheduling an expedited hearing in this matter on November 8, 2021. Among other things, the Commission's notice required PWW to file a draft bulk water purchase agreement between it and MVD, expressing the terms of the proposed emergency rates as a special contract.

On November 1, 2021, MVD filed a letter in support of PWW's petition.

On November 8, 2021, the Commission held a duly noticed expedited hearing. The Commission heard from PWW witnesses Larry Goodhue and Donald Ware, and MVD witnesses Ronald Miner Jr., Jill Lavoie, and Michelle Houlton. At the conclusion of the hearing, PWW and the New Hampshire Department of Energy (Energy) took the position that the Commission should authorize the proposed tariff language to take

effect as proposed on November 20, 2021, for a term of six months, and that PWW and MVD would pursue a special contract for the purchase of water supply on the same terms as the proposed tariff, covering the period of time from October 20, 2021, to at least November 1, 2022.

On November 5, 2021, and as revised on November 12, 2021, PWW filed an executed special contract between PWW and MVD representing similar terms to the originally filed tariff, permitting PWW to provide MVD up to one million gallons of water per day at the actual variable cost of production (to be billed at an estimated initial rate of \$0.67 per 100 cubic feet) between October 20, 2021 and December 31, 2022. In filing the executed special contract, PWW noted that “PWW and MVD, as well as the Department of Energy indicated support for allowing the tariff to go into effect pending the review and approval of the special contract. To that end, PWW will file a supplemental petition to reflect these changing requests.”

On November 12, 2021, the Commission issued Order No. 26,552, authorizing the temporary tariff provision requested by PWW, for effect on November 20, 2021, and for a period of time not to exceed six months.

On November 17, 2021, PWW filed a supplemental petition for approval of the special contract. The supplemental petition requested the Commission approve the special contract as filed on November 12, 2021, arguing that the same conditions and circumstances underlining its original petition present cause to find that special circumstances exist under RSA 378:18, and that approval of the special contract would be just and consistent with the public interest.

On December 8, 2021, Energy filed a motion seeking approval of a procedural schedule to allow Energy the opportunity to review the special contract. The proposed

procedural schedule included opportunities for discovery and a technical session. The Commission approved Energy's proposed procedural schedule on December 21, 2021.

On March 3, 2022, PWW filed a settlement agreement entered into by PWW, MVD, and Energy (Settling Parties). The Settling Parties recommend the Commission approve the special contract as filed on November 12, 2021. The Settling Parties further agreed that 30 days after the termination of MVD's water emergency that PWW will submit a reconciliation of the initial rate and actual variable rate for review and audit by the Commission and Energy prior to billing or crediting any difference to MVD, as well as a reconciliation between the retail rate MVD paid from October 20, 2021 through November 19, 2021, prior to the emergency initial rate. PWW also agreed to cancel the emergency tariff within 15 days of a Commission order approving the special contract.

PWW's tariff, petitions, and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-134.html>.

## **II. COMMISSION ANALYSIS**

Unless precluded by law, disposition may be made of any contested case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a). Pursuant to N.H. Admin. R., Puc 203.20(b), the Commission shall approve the disposition of any contested case by stipulation if it determines that the result is just and reasonable and serves the public interest. The Commission encourages parties to settle disagreements through negotiation and compromise because it is an opportunity for creative problem solving, allows parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Hampstead Area Water*

*Company, Inc.*, Order No. 26,131 at 3 (May 3, 2018). Nonetheless, the Commission cannot approve a settlement, even when all parties agree, without independently determining that the result comports with applicable standards. *Id.*

RSA 378:14 requires public utilities to only charge customers rates identified in the utility's tariff. The Commission may, however, approve special contracts for services by a public utility, "if special circumstances exist which render such departure from the general schedules just and consistent with the public interest." RSA 378:18.

As the Commission concluded in Order No. 26,552 (November 12, 2021) it is uncontested that that:

- 1) PWW and MVD are members of a mutual aid entity; 2) PWW and MVD's water supply systems contain pre-existing interconnections, including a gate capable of transporting bulk water supplies from PWW to MVD, and distribution infrastructure where MVD provides water supply for subsets of PWW's customer base; 3) a majority of MVD's water supply sources are contaminated with PFAS contaminants, a situation that is unlikely to change until treatment systems can be installed over the course of the next year; 4) MVD would be unable to purchase bulk water supplies from PWW at retail rates due to budgetary constraints; 5) PWW has the capacity to supply MVD with up to one million gallons of water per day for the foreseeable future, including under adverse conditions such as drought; 6) PWW and MVD are in agreement on terms for PWW to supply MVD with bulk water at the variable cost of production while MVD remedies its supply contamination issue; and 7) NHDES states that the action proposed is the most appropriate way to address the contamination in MVD's drinking water.

Order No. 26,552 at 3–4 (November 12, 2021).

Based on these conclusions, which we agree with and incorporate in this order, we find that there is ample support in the record to find that special circumstances exist. Furthermore, we agree that the terms of the special contract, namely the provision of bulk water at its actual variable cost to produce, are just and consistent

with the public interest. As such, we find that the settlement agreement reached between the Settling Parties is just and reasonable and serves the public interest.

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

**ORDERED**, that the settlement agreement filed in this matter on March 3, 2022, and the underlying special contract as filed on November 12, 2021, are

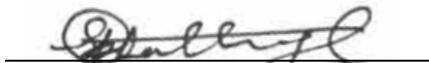
**APPROVED**; and it is

**FURTHER ORDERED**, that Pennichuck Water Works, Inc. shall make all filings in this docket as proposed by the settlement agreement, including:

- 1) Filing a reconciliation of the initial rate and actual rate within 30 days of the termination of Merrimack Village District's water emergency;
- 2) Filing a reconciliation of the retail rate Merrimack Village District paid from October 20, 2021, through November 19, 2021, within 30 days of the termination of Merrimack Village District's water emergency; and
- 3) Filing a cancellation of Tariff Original Page 45A within fifteen days of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 2022.

  
Daniel C. Goldner  
Chairman

  
Pradip K. Chattopadhyay  
Commissioner

  
Carleton B. Simpson  
Commissioner

## Service List - Docket Related

Docket# : 21-134

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