

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 24-071**

**PENNICHUCK WATER WORKS, INC.**

**Petition for Approval of Special Contract with Tyngsborough Water District**

**Order *Nisi* Approving Special Contract and Granting Motion for  
Confidential Treatment**

**ORDER NO. 27,082**

**December 2, 2024**

In this Order *Nisi*, the Commission approves a second special contract reached between Pennichuck Water Works, Inc. (PWW) and the Tyngsborough (Massachusetts) Water District (TWD). We find that special circumstances exist which render a departure from PWW's general rate schedules just and consistent with the public interest. The Commission also grants PWW's motion for confidential treatment.

PWW's initial petition requesting approval of a second special contract with TWD was filed in this proceeding on May 6, 2024. The initial petition and all subsequent filings in this docket, including the Settlement and Second Contract approved herein, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at [www.puc.nh.gov/Regulatory/Docketbk/2024/24-071.html](http://www.puc.nh.gov/Regulatory/Docketbk/2024/24-071.html).

**I. BACKGROUND AND PROCEDURAL HISTORY**

On May 06, 2024, Pennichuck Water Works, Inc. (PWW or the Company) filed a Petition for Approval of a Special Contract with Tyngsborough Water District (TWD). On June 24, 2024, the Commission issued Order No. 27,024 approving a temporary

extension of its first special contract with TWD, approved on July 28, 2015, in Docket DW 15-133.

PWW is a subsidiary of Pennichuck Corporation, which is wholly owned by the City of Nashua. PWW provides retail water service in the City of Nashua and in the Towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Plaistow, Newmarket, and Salem, New Hampshire as well as in Tyngsboro, Massachusetts. See Petition at ¶ 1. TWD is a Massachusetts water district which owns and maintains a portion of the water system serving the Pheasant Lane Mall (Mall) in Nashua. See Id at ¶2. PWW sells water to TWD through an interconnection point located in TWD's Booster Station located in Nashua adjacent to the Mall. See Id.

The Commission approved a first special contract between PWW and TWD in July 2015. See Docket No. DW 15-133, Order *Nisi* No. 25,800 (dated July 28, 2015). On May 6, 2024, PWW filed for approval of a second special contract with TWD that, if approved, will fully recover the costs of serving TWD.

On May 15, 2024, the New Hampshire Department of Energy (DOE) filed an appearance. No other parties filed for intervention. Thereafter, the parties engaged in discovery and held a technical session. On October 17, 2024, PWW filed an amended petition which corrected the volumetric charge and the base annual fixed fee/demand charge. See Revised Petition at ¶4. On November 5, 2024, the parties filed a Settlement Agreement accepting the second special contract.

## **II. SETTLEMENT**

The following chart, included in the Settlement, lays out the proposed changes

to the existing contract between PWW and TWD, as adjusted by the Settlement:

	<b>First Contract</b>	<b>Proposed Second Contract</b>
<b>Base Annual Fixed Fee/Demand Charge</b>	\$0	\$13,766.08 monthly (or \$165,193 per annum)
<b>Volumetric Rate (as of 9/30/24)</b>	\$2.5002/CCF	\$1.0546/CCF
<b>Minimum Purchase</b>	250,000 GPD	325,000 GPD per year
<b>Annual Ave Daily/Max Daily</b>	250,000/450,000 GPD	325,000/525,000 GPD
<b>Peak Hours</b>	576,000 GPD	575,000 GPD
<b>Monthly Fixed Meter Charge for 6" meter</b>	\$38.75 per month	\$86.57 per month
<b>Guaranteed Annual Payment</b>	\$305,469 based on guaranteed daily usage of 250,000 GPD	\$333,481 <sup>1</sup> based on guaranteed daily usage of 325,000 GPD <sup>2</sup>
<b>Term</b>	3 years with (2) three-year auto renewals	5-year Initial Term with (2) five-year auto renewals

See Settlement at 3.

Per the terms of the Settlement filed on November 5, 2024, PWW and DOE jointly recommend approval of the amended second contract between PWW and TWD. The Settlement and recommendation for approval were based, in part, on an updated cost of service study (COSS), which PWW filed on May 6, 2024, supported by testimony of the Company's Chief Operating Officer Donald L. Ware.

Pursuant to the Settlement, PWW will deliver to the point of interconnection between TWD's water system and PWW's water system in the TWD booster station located in Nashua, adjacent to the Pheasant Lane Mall. See Settlement at ¶5.2.1.

<sup>1</sup> The Guaranteed Annual Volumetric fee of 158,590 CCF x \$1.0546/CCF = \$167,249 plus Base fee of \$165,193 plus Annualized Monthly Meter fee (\$86.57/month x 12 months) of \$1,039 for a total guaranteed Annual Payment of \$333,481.

<sup>2</sup> Within each five-year term, a Contract Year runs from September 1 through August 31st of the following year. Considering the extension of the first special contract, the first Contract Year will include the period of time prior to the start of the usual Contract Year and thus will run from January 28, 2025 to August 31, 2026 instead of September 1 through August 31st. This only applies to the first Contract Year. The guaranteed minimum yearly usage of 325,000 GPD/158,590 CCF is calculated on a Contract Year basis. Please note that measurement units (GPD, CCF, and GPM) vary because certain units of measurements are needed for the cost-of-service model and flow data for actual peak hour is measured in gallons per minute (GPM).

The terms of the special contract are:

1. A rate of \$1.0546 per hundred cubic feet (CCF);
2. A minimum daily purchase of 325,000 gallons of water;
3. A base annual fixed fee/demand charge of \$165,193 per annum or \$13,766.08 monthly;
4. A fixed monthly charge for a 6-inch meter of \$86.57; and
5. A limit to TWD's peak day demand and peak hourly demand of 575,000 gallons and 400 gallons per minute, respectively.

See Settlement at ¶5.2.2-5.23. PWW asserts that approving the special contract will allow PWW to retain TWD as a customer when they have other water supply options available which would result in a revenue loss of about \$228,000.

The DOE noted in the Settlement that the second special contract would have no effect on other ratepayers. The second special contract has a 5-year term, with (2) five-year auto renewals. The parties have requested an effective date of January 28, 2025.

### **III. MOTION FOR CONFIDENTIAL TREATMENT**

In its motion, PWW requests confidential treatment of the live workbook contained in the cost-of-service study (COSS) conducted by Raftelis Financial Consultants. Raftelis considers the live formulas contained in the working model of its study to be proprietary and confidential, its work product, and a trade secret. Raftelis has a privacy interest in its proprietary software. Raftelis does not publicly disclose its software and asserts that disclosure of the live formulas would put it at a competitive disadvantage because it would give competitors the opportunity to use the methodologies and processes developed by Raftelis for their own financial gain.

PWW states that disclosure of the proprietary software could make it harder for rate-regulated utilities to obtain such studies. For these reasons, PWW asserts that Raftelis' commercial and financial interests with respect to this information significantly outweighs the public's interest in disclosure of Raftelis' software. See Motion for Protective Order at ¶3.

#### **IV. COMMISSION ANALYSIS**

##### **A. Special Contract**

Pursuant to RSA 378:14, no public utility "shall charge or receive a greater or different compensation for any service rendered to any person, firm or corporation than the compensation fixed for such service by the schedules on file with the commission and in effect at the time such service is rendered." The Commission may deviate from this general rule and 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." See RSA 378:18.

Based on our review of the special contract and the Settlement Agreement, we find that service to TWD constitutes a special circumstance because of its high level of consumption and the low level of cost associated with providing that service. Importantly, the special contract pricing is based on a recently completed cost of service study, the result of which was that the sales to TWD will generate a net contribution to PWW's fixed costs.

It should also be noted that the second special contract is similar to PWW's wholesale contracts with the Town of Hudson, the Town of Milford, and the Merrimack Village District. In all four cases each Town has other sources of supply than PWW. See Testimony of Donald Ware at 10. In all four cases there is a Base Annual Fixed Fee as well as a Monthly Fixed Meter Charge that is substantially

greater than the PWW's tariffed monthly meter charge. *See Id.* All four contracts set limits on the maximum amount of usage on a daily and peak hour basis. This can only be accomplished because all four of these communities have their own storage water facilities. *See Id.*

We recognize PWW's need for stability in usage and revenues and conclude that the provisions of the special contract regarding minimum payment obligations and maximum water use address those needs. Accordingly, we find that special circumstances exist which justify departure from PWW's schedules of general application. We further find that the terms and conditions of this contract with TWD are just and reasonable, and consistent with the public good in accordance with RSA 378:18.

**B. Motion for Protective Order and Confidential Treatment of Proprietary Information**

In its motion for a protective order, PWW requested protective treatment of the live formulae included in the COSS prepared by Raftelis as confidential, commercial, or financial information protected under RSA 91-A:5, IV. PWW asserted that Raftelis considers the live formulae to be proprietary and confidential, its work product, and a trade secret. Accordingly, PWW argued, Raftelis has a privacy interest in its proprietary software and would be subject to a competitive disadvantage upon public disclosure, as competitors could use the methodologies and processes developed by Raftelis for their own financial gain.

The Commission has routinely protected as confidential similar proprietary business models and software formulae provided in support of utility rate filings in the past. *See, e.g., Abenaki Water Company*, Order No. 25,840 (November 13, 2015); *Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 26,376 (June 30, 2020); *Pennichuck Water Works, Inc.*, Order No. 26,711 (October 4, 2022);

and *Pennichuck Water Works, Inc.*, Order No. 26,726 (November 18, 2022). Here, we find that the identified information constitutes confidential and sensitive commercial or financial information under RSA 91-A:5, IV, and that PWW has a privacy interest in protecting the proprietary software of its consultant. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by the privacy interests of PWW and its consultant in information that, if disclosed, could pose legitimate financial harm or privacy risk to PWW, including the retention of experts in aid of future regulatory rate filings.

Accordingly, pursuant to Puc 203.08(a), we grant PWW's motion 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, the new special contract between PWW and TWD, as presented and supported by the Settlement filed on November 5, 2024, is hereby **APPROVED** for effect on January 28, 2025, as set forth herein above; and it is

**FURTHER ORDERED**, that PWW shall file within thirty (30) days a version of the Second Contract that complies with N.H. Admin R. Puc 1607.04<sup>3</sup>; and it is

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<sup>3</sup> The Settlement cited N.H. Admin R. Puc 1606.04 as the rule that articulates the format of special contracts. Puc 1600 was readopted with amendment on July 24, 2024. See DRM 24-036. The provisions for special contracts are now located in Puc 1607 and not Puc 1606.

**FURTHER ORDERED**, that the Petitioner's May 6, 2024 Motion for Protective Order and Confidential Treatment is **GRANTED**; and it is

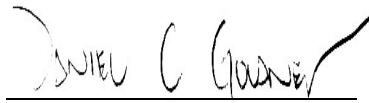
**FURTHER ORDERED**, that PWW shall post a copy of this order on the Company's website within two business days of the date of this order with an affidavit of publication to be filed with this office on or before December 9, 2024; and it is

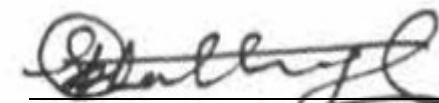
**FURTHER ORDERED**, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than December 16, 2024, for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than December 23, 2024; and it is

**FURTHER ORDERED**, that this order shall be effective January 2, 2025, unless PWW fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this second day of December, 2024.

  
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Daniel C. Goldner  
Chairman

  
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Pradip K. Chattopadhyay  
Commissioner



# Service List - Docket Related

Docket#: 24-071

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