

JOHN C. RANSMEIER  
DOM S. D'AMBRUOSO  
LAWRENCE S. SMITH  
STEVEN E. HENGEN\*  
GARRY R. LANE\*\*  
JEFFREY J. ZELLERS\*  
TIMOTHY E. BRITAIN  
CHARLES P. BAUER  
THOMAS N. MASLAND  
R. MATTHEW CAIRNS  
LISA L. BIKLEN  
JOHN T. ALEXANDER  
PAUL H. MACDONALD\*\*\*  
STEPHEN A. DUGGAN\*  
TINA L. ANNIS  
MARIE M. MCPARTLIN  
LISA M. LEE  
JARED J. NYLUND

**RANSMEIER & SPELLMAN**  
PROFESSIONAL CORPORATION

ONE CAPITOL STREET  
P.O. BOX 600  
CONCORD, NEW HAMPSHIRE 03302-0600

TELEPHONE (603) 228-0477  
FAX (603) 224-2780  
WEBSITE WWW.RANSPELL.COM

JOSEPH S. RANSMEIER  
OF COUNSEL

LAWRENCE E. SPELLMAN  
1924-2001

\*ALSO ADMITTED  
IN MASSACHUSETTS

\*\*ALSO ADMITTED  
IN MAINE AND  
CONNECTICUT

\*\*\*ALSO ADMITTED  
IN VERMONT

January 11, 2006

**Hand Delivered**

Ms. Debra A. Howland  
Executive Director & Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Re: DW 04-048, City of Nashua

Dear Ms. Howland:

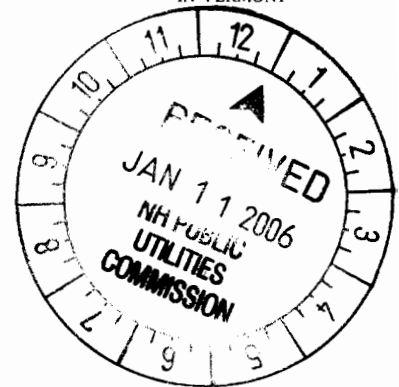
On behalf of Anheuser-Busch, Incorporated, an intervenor in the above-captioned proceeding, enclosed please find an original and eight copies of the testimony of Dennis Nesbitt, as well as a computer disk in word format containing his testimony and its two attachments.

The recently revised global email group has been served this day electronically.

Very truly yours,



Dom S. D'Ambruoso  
Email: [dom@ranspell.com](mailto:dom@ranspell.com)



DSD/ntk/331585

Enclosure

cc: Service List

TESTIMONY OF DENNIS A. NESBITT  
ON BEHALF OF ANHEUSER-BUSCH, INCORPORATED

**Q. Please state your name, the name of your employer, and your business address.**

A. My name is Dennis A. Nesbitt. I am employed by Anheuser-Busch, Inc. ("A-B") as the plant manager of A-B's brewery at 221 Daniel Webster Highway, Merrimack, New Hampshire.

**Q. Please state your educational background and your work experience.**

A. I received my formal education at University of Cincinnati, obtaining a bachelor's degree in industrial management. I have 29 years experience with Anheuser-Busch, gained at five different Anheuser-Busch brewery locations.

**Q. What are your duties as plant manager of the Merrimack brewery?**

A. I have general supervision of all packaging, shipping, human resource and business operations at the brewery.

**Q. Describe A-B's Merrimack facility.**

A. A-B employs approximately 450 people at the Merrimack brewery. A-B is the principal customer on the Pennichuck Water Works ("PWW") system, and accounts for approximately 15 percent of the system's average daily volume of water sales.

**Q. What is A-B's arrangement for water service with PWW?**

A. Since 1970, PWW has supplied A-B with water pursuant to special contracts. The current contract, designated the "Third Special Contract" (*Attachment A*), is

a 10-year contract approved by the Commission on March 4, 2005 (Order No. 24,441, Docket DW 04-228) and effective on July 1, 2005 (*Attachment B*).

**Q. What is the purpose of your testimony?**

A. A-B uses the water it purchases from PWW to produce its beer. It is therefore crucial to A-B to have high-quality water at long-term rates that are stable and reasonable, and to maintain good working relations with its supplier. Water is an essential ingredient in A-B's product and cleaning processes. A reliable supply of high-quality water is a fundamental factor in the brewing process and in A-B's decisions regarding utilization of its breweries.

**Q. Have the special contracts with PWW met A-B's needs?**

A. Yes. The special contracts have permitted A-B to make long-term decisions for its Merrimack facility by providing stable, cost-based rates for water. In addition, PWW has been responsive in addressing operational issues that arise from time to time. A-B believes that the special contracts have also benefited PWW by assuring a reliable, high volume of sales with minimal operational complications and costs, and have helped keep rates lower for PWW's other customers.

**Q. What rate does A-B pay for water?**

A. A-B pays a cost-based rate approved by the Commission in 2005 in accordance with PWW's 2001 Cost of Service Study. In approving the "Third Special Contract," the Commission found that "service to AB constitutes a special circumstance because of its high level of consumption and the low level of cost associated with providing that service. [...] [W]e find special circumstances exist which justify departure from PWW's schedules of general application. We further

find that the departure described in the terms and conditions of the Third Contract with AB are just and reasonable, and consistent with the public good in accordance with RSA 378:18." Order No. 24,441, March 4, 2005, Docket DW 04-228.

**Q. What concerns does A-B have about municipalization of PWW's system?**

A. As I stated, A-B's primary need is for a stable, long-term, cost-based rate. The "Third Special Contract" meets that need. A-B would be pleased to continue to receive what has been reliable service from PWW under that contract. However, A-B has no reason to doubt that the City of Nashua could also provide satisfactory water service. If municipalization is to go forward, A-B asks the Commission to condition its final approval order on the City's assumption and continuation of the "Third Special Contract." Alternatively, A-B asks the Commission to condition its final approval order on implementation of such other, similar agreement as A-B and the City may enter into before the final order is issued.

**SPECIAL CONTRACT**  
**CONTRACT NO. NHPUC [REDACTED]**  
**PENNICHUCK WATER WORKS, INC.**  
**WITH**  
**ANHEUSER-BUSCH, INC.**

Date of Execution:

October 5<sup>th</sup>, 2004

Effective Date:

July 1, 2005 (Subject to NHPUC Approval)

Date of Termination:

Ten Years After Effective Date Unless  
Terminated Sooner Pursuant to Terms Herein

**STATEMENT OF THE SPECIAL CIRCUMSTANCES  
RENDERING DEPARTURE FROM GENERAL SCHEDULES  
JUST AND CONSISTENT WITH THE PUBLIC INTEREST**

1. The service to be rendered under this Third Contract consists of the furnishing of water service to Anheuser-Busch Incorporated, located at 221 Daniel Webster Highway, Merrimack, New Hampshire at a price consistent with Pennichuck's 2001 Cost of Service Study, which confirmed that the cost to provide such service is significantly below the costs that would be recovered based on the otherwise applicable rate under Pennichuck's tariff.
2. Consistent with prior special contracts in effect between Anheuser-Busch and Pennichuck, this Third Contract has been designed to meet the specific needs of Anheuser-Busch while at the same time providing benefits for Pennichuck and its customers. The parties agree that water supply is a vital element of Anheuser-Busch's business, and that Anheuser-Busch has relied on this Third Contract in making long-term decisions concerning its acquisition of water and concerning its operations in Merrimack as a whole. This Third Contract reduces the risk of Pennichuck's losing the Anheuser-Busch water take, which currently is approximately 14.8% of Pennichuck's average daily volume. Retention of this customer in turn will help hold down rates for Pennichuck's other customers.
3. Because of the high proportion of Pennichuck's total revenues that are accounted for by Anheuser-Busch, Pennichuck requires protection from sudden reductions in Anheuser-Busch's usage. The Minimum Payment Obligation and Early Termination provisions of the Third Contract provide this necessary protection.

THIRD CONTRACT FOR WATER SERVICE BETWEEN  
ANHEUSER-BUSCH, INCORPORATED  
AND  
PENNICHUCK WATER WORKS, INC.

Agreement made as of this 5<sup>th</sup> day of October, 2004 by and between Anheuser-Busch Incorporated, a Missouri corporation having a place of business in Merrimack, New Hampshire and a mailing address of 221 Daniel Webster Highway, P. O. Box 610, Merrimack, New Hampshire 03054-0610 (hereinafter referred to as "AB") and Pennichuck Water Works, Inc., a New Hampshire corporation with its principal place of business at 25 Manchester Street, Merrimack, New Hampshire 03054 (hereinafter referred to as "PWW").

WHEREAS, PWW is engaged in business as a public utility in the City of Nashua and in a limited area in the Town of Merrimack, among other places, in gathering and distributing water to the public;

WHEREAS, AB owns and operates a brewery in the Town of Merrimack on the Daniel Webster Highway at a point about 2.4 miles north of the boundary line between the Town of Merrimack and the City of Nashua ("AB's Premises") to which PWW has supplied water since 1970 pursuant to a Contract for Water Service between AB and PWW dated March 3, 1969 (the "Contract"), and another contract between AB and PWW dated July 1, 1995 (the "Second Contract");

WHEREAS, pursuant to the Contract, AB compensated PWW for the installation of (i) a 24-inch water main running from its water treatment plant in the City of Nashua northerly along the Daniel Webster Highway to a point opposite the westerly boundary line of AB's Premises in Merrimack, New Hampshire, (ii) a water service connection of 20-inch size running from said 24-inch pipeline to and through the westerly property line of AB to a meter vault, and (iii) metering and associated equipment, all for the purpose of enabling PWW to supply water to AB; and

WHEREAS, the Second Contract by its terms expires on June 30, 2005; and

WHEREAS, AB desires that PWW continue to provide water service to AB's Premises and PWW desires to continue to provide such service upon the terms and conditions set forth in this Third Contract.

NOW, THEREFORE, AB and PWW for and in consideration of the mutual covenants and agreements hereinafter set forth do hereby agree as follows:

1. Firm Supply of Water Minimum Pressure. PWW agrees during the term of this Third Contract to maintain facilities capable of delivering water continuously at the rate of 2.0 million gallons per day. PWW agrees to provide a continuous, regular and uninterrupted supply of water, subject to interruptions by reasons of acts of God, accident, strike, legal process, State

or Federal law, regulation, order or directive or other causes beyond its control. PWW agrees to maintain a water pressure under normal operating conditions of approximately 70 psig at its meter installation on AB's Premises, but it is understood that sudden increases in consumption either by AB or others, equipment failures, or other causes beyond the reasonable control of PWW may temporarily result in pressures of less than 70 psig. PWW shall not be liable for damages to AB by reason of inadequate pressure or volume or failure to provide water for any cause whatever except to the extent such damages to AB occur by reason of inadequate pressure or volume or failure to provide water resulting directly from intentional or grossly negligent conduct of PWW or violations with PWW's knowledge and failure to take reasonable corrective action of any safety-related or health-related statutes or regulations by PWW in providing water service to AB.

2. Term. The term of this Third Contract is ten years commencing on July 1, 2005.

3. Rate. AB shall pay PWW monthly for all water taken by it; such payment to be at the rate of \$0.795 per 100 cubic feet, provided, however, that the rate charged for water taken by AB shall be subject to adjustment from time to time in the same percentage as any future change in the volumetric rates for general metered service, as determined by the New Hampshire Public Utilities Commission ("Commission"), which PWW charges to its core system customers in the City of Nashua and the Town of Merrimack, unless such adjustment is based in part upon the results of any future cost of service allocation study obtained by PWW ("Cost of Service Study") and such Cost of Service Study would require a different percentage increase for water taken by AB. In such event the adjustment of the rate for water taken by AB shall be based on the Cost of Service Study, and if AB and PWW cannot agree upon the amount of such adjustment, either party may apply to the Commission for a determination thereof, which determination shall be conclusive as between the parties hereto. The above rate of \$0.795 per 100 cubic feet as so adjusted shall be called the "AB Rate."

4. Minimum Payment Obligation. In the event that the total price for water actually taken by AB ("Total Annual Charge") during any 12 month period commencing July 1 of any year ("Annual Period") shall be less than the Minimum Annual Charge (as defined below) for such Annual Period, or in the event that AB takes no water during said Annual Period, AB shall within 30 days after receipt from PWW of an invoice therefor pay to PWW the difference between the Total Annual Charge for such Annual Period and the Minimum Annual Charge for such Annual Period, it being the intention of this condition to create a Minimum Annual Charge payable by AB to PWW to protect PWW from a sudden decrease in the demand which AB is currently exerting on the system. In addition, AB shall also pay a standard customer charge per month based on the size of the meter(s) used to serve AB. This standard customer charge shall be as set forth in Schedule G-M of PWW's tariff from time to time (or any successor schedule).

The Minimum Annual Charge for each of the respective Annual Periods during the term of this Third Contract shall be the product of the AB Rate in effect during said Annual Period multiplied by the greater of (i) 90% of the total 100 cubic feet of water actually taken by AB during the prior Annual Period or (ii) the Minimum Volume in 100 cubic feet set forth on Schedule A attached hereto for the respective Annual Period.



5. Early Termination. AB shall have the option to terminate this Third Contract effective as of the fourth June 30 following its giving notice to PWW in the manner provided in Paragraph 16 below and its paying to PWW with respect to each of the three ensuing Annual Periods commencing on July 1 after the notice is given (in lieu of the Minimum Payment Obligation set forth in Paragraph 4 above) the greater of (i) the Total Annual Charge for water taken by it during each such Annual Period, or (ii) the Adjusted Minimum Annual Charge for such Annual Period as defined below. The Adjusted Minimum Annual Charge for each such Annual Period shall be determined as set forth below, as appropriate for the respective Annual Period.

For the Annual Period beginning on the first July 1 following AB's giving of notice

The greater of (i) 90% of the Total Annual Charge for the Annual Period during which notice is given or (ii) the Minimum Annual Charge for the Annual Period during which notice is given ("Base Adjusted Minimum Annual Charge")

For the Annual Period beginning on the second July 1 following AB's giving of notice

66-2/3% of the Base Adjusted Minimum Annual Charge

For the Annual Period beginning on the third July 1 following AB's giving of notice

33-1/3% of the Base Adjusted Minimum Annual Charge

6. Maximum Water Take. Pursuant to Paragraph 1 above, PWW has agreed that during the term of this Third Contract it will maintain facilities capable of delivering water continuously at the rate of 2.0 million gallons per day. In no instance, and under no conditions, shall the quantity of water taken under this Third Contract during any 24-hour period exceed 3.0 million gallons, nor shall the quantity of such water taken under this Third Contract during any one-hour period, multiplied by 24, exceed 4.0 million gallons. Provided, however, that AB shall be entitled to increase its take under this Third Contract above said limits one year after giving notice to PWW of its intention to do so, if PWW, after assessing the capacity of its facilities and its obligations to other customers, agrees to such an increase. In the event that PWW agrees to such an increase, this Third Contract shall be amended to reflect the revised limits, and such amendment shall not require approval of the Commission in order to become effective.

7. Definitions. Where the words "day," "daily," or "24 hours" are used in this Third Contract, they shall refer to the 24-hour period between the daily meter readings.

8. Exceptions for Emergencies. The Maximum Water Take limits in Paragraph 6 above shall not be affected in the event that the amount of water supplied to AB exceeds the daily or hourly limitations established herein for not more than 24 hours in case of fire or main break emergencies, and for not more than five days in the case of other catastrophes requiring an emergency supply of water, provided PWW is promptly notified that any such emergency exists.

9. Indemnification. AB agrees to indemnify, defend and hold PWW harmless from and against any and all claims, injuries, judgments, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, and court costs (including those incurred at the trial and appellate levels) (hereinafter "claims") to the extent such claims arise out of AB's negligence or willful misconduct.

10. Books and Records. During the Term hereof and for a period of at least two years thereafter, PWW shall maintain such books and records (collectively "Records") as are necessary to substantiate that PWW is in compliance with this Third Contract, including that (i) all representations and warranties made by PWW in this Agreement are true and correct in all respects, (ii) all invoices and other charges submitted to AB for payment were valid and proper, and (iii) no payments have been made, directly or indirectly, by or on behalf of PWW to or for the benefit of any AB employee or agent who may reasonably be expected to influence either AB's decision to enter into this Third Contract or the amount to be paid by AB pursuant hereto. (As used herein, "payments" shall include money, property, services, and all other forms of consideration.) All Records that are accounting records shall be maintained in accordance with generally accepted accounting principles consistently applied. AB and its representatives shall have the right at any time during normal business hours, and upon reasonable notice, to examine the Records, make copies and take extracts therefrom and discuss the Records with PWW's officers, employees and independent public accountants as AB deems necessary.

11. Regulatory Approval. PWW agrees, upon execution of this Third Contract, to file the same with the Commission, and to request the required approval. PWW agrees to use all commercially reasonable efforts to secure the regulatory approval of this Third Contract by the Commission. PWW shall not, however, be liable to AB for any damages, direct or indirect, resulting from its failure to obtain said approval. The performance by PWW of its obligations under this Third Contract is subject to the condition that PWW shall obtain from the Commission approval of this Third Contract as required by law.

12. Methods of Treatment of Water. The parties recognize that the existing water treatment facilities and methods of treatment of PWW result in water suitable for use by AB. PWW agrees to give AB at least 60 days written notice of any contemplated change in its treatment of water which would significantly change its chemical composition or otherwise adversely affect to a material extent the suitability of water for use by AB. At the request of AB, the parties will confer with respect to such contemplated change, and subject to its obligations under then-existing applicable law and regulations, PWW will use its best efforts not to institute

a change which would have an adverse effect to a material extent upon the suitability of water for use by AB.

13. Acquisition by Municipality. If any governmental entity or group of governmental entities acquires properties, assets and/or facilities of PWW necessary for PWW to perform its obligations under this Third Contract, PWW's obligations shall terminate and, to the fullest extent permitted by law, shall be assumed by the acquiring governmental entity or entities.

14. Entire Agreement. This instrument constitutes the entire agreement between the parties and is executed by each without reliance upon any representations made by either to the other during the course of the negotiations with respect thereto; provided, however, that the parties understand and agree that, except to the extent it is inconsistent with this Third Contract, the terms of PWW's tariff on file with the Commission shall govern the parties' relationship.

15. Successors and Assigns. Insofar as may be legally possible, each party covenants and agrees that the benefits and burdens of this Third Contract shall be binding upon the successors and assigns of each including any successor in title to all or substantially all of the properties of each.

16. Notices. Except as otherwise provided herein, all notices hereunder shall be in writing and shall be deemed to have been duly given for all purposes (i) when delivered in person, or (ii) three days after the date on which deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, or (iii) one day after the same is delivered to an express courier service guaranteeing overnight delivery, or (iv) when sent by telecopy transmission if receipt is confirmed and a copy is sent by regular first class mail, postage prepaid, in each case directed to the party to receive the same (which, in the case of PWW, is the President and in the case of AB is the Plant Manager) at its address stated above or at such other address as may be substituted by notice given as herein provided.

17. Amendment. This Third Contract may be amended only by written agreement by and between AB and PWW and, if required by applicable law or regulation, only if approved by the Commission. If AB desires to extend the term of this Third Contract, it shall give notice thereof to PWW not later than January 1, 2015, but not sooner than January 1, 2014. If PWW is willing to consider such an extension, the parties shall then discuss the terms and conditions thereof and if agreement is reached with respect to such terms and conditions, such agreement shall be evidenced in writing which, if required by applicable law or regulation, shall be submitted to the Commission for its approval.

18. Applicable Law. The parties agree that this Third Contract shall be governed by the laws of the State of New Hampshire.

19. Headings. The headings in each section of this Agreement are for convenience of reference only, and do not form a part hereof and in no way modify or shall be used to interpret or construe the meaning of this Third Contract.

IN WITNESS WHEREOF the parties have caused their corporate names to be subscribed by a duly authorized officer.

PENNICHUCK WATER WORKS, INC.

By: Stephen J. Densberger  
Name: Stephen J. Densberger  
Title: Exec. Vice Pres, duly authorized

ANHEUSER-BUSCH, INCORPORATED

By: Douglas Mittleman  
Name: Douglas Mittleman  
Title: VP Brewing operations, duly authorized  
by technology

Legal approval  
- GAH

11-15-04

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## PENNICHUCK WATER WORKS, INC.

## SPECIAL CONTRACT WITH ANHEUSER BUSCH, INC.

	<u>2003</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
AVERAGE DAILY VOLUME (mgd)	1,955	90%	80%	70%	60%	50%	50%	50%	40%	40%	40%
MINIMUM VOLUME as % of 2004 volume:											
MGD	1,955	1,760	1,564	1,369	1,173	0,978	0,978	0,978	0,782	0,782	0,782
100 cu. ft.	2,614	2,352	2,091	1,830	1,568	1,307	1,307	1,307	1,045	1,045	1,045
CURRENT AB VOLUMETRIC RATE											
per million gallons	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83	\$1,062.83
per 100 cu. ft.	\$0.795	\$0.795	\$0.795	\$0.795	\$0.795	\$0.795	\$0.795	\$0.795	\$0.795	\$0.795	\$0.795
MINIMUM PROJECTED ANNUAL REVENUE based on minimum volume and current AB volumetric rate	\$758,412	\$682,571	\$606,730	\$530,888	\$455,047	\$379,206	\$379,206	\$379,206	\$303,365	\$303,365	\$303,365

Note: The AB volumetric rate is subject to change pursuant to subsequent rate adjustments approved by NHPUC

**DW 04-228**

**PENNICHUCK WATER WORKS, INC.**

**Petition for Special Contract for Service to Anheuser-Busch, Inc.**

**Order *Nisi* Approving Third Special Contract**

**ORDER NO. 24,441**

**March 4, 2005**

**I. BACKGROUND**

On December 8, 2005, Pennichuck Water Works, Inc. (PWW), a public utility providing water service in communities in southern New Hampshire, petitioned the New Hampshire Public Utilities Commission (Commission) for authority, pursuant to RSA 378:18, to provide service to Anheuser-Busch, Incorporated (AB), pursuant to the terms of a proposed Special Contract entered into by PWW and AB, dated October 5, 2004. AB owns and operates a brewery in the town of Merrimack and currently receives service under the terms of a special contract approved by the Commission in Order No. 21,681 (June 6, 1995) in Docket No. DR 95-046 (Second Contract). The Second Contract superseded a prior special contract between PWW and AB that was approved by Commission Order No. 9,685 (April 25, 1969) (First Contract). The Second Contract expires June 30, 2005.

In this Petition, PWW seeks approval of a proposed third special contract (Third Contract) to replace the Second Contract. The Petition was accompanied by a copy of the executed Third Contract as well as a Statement of Special Circumstances in accordance with N. H. Code of Admin. Rules, Puc 1606.03(b).

Puc 1606.05(c) (2) requires submission of a title page that identifies the serial number of any special contract being superseded by the special contract. The Second Contract

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between PWW and AB did not bear a serial number, and thus PWW could not reference that number in its title page. PWW filed a motion for a waiver from the requirements of N. H. Puc Code of Admin. Rules Puc 1606.5 (a) and (c) (1) and (2).

In support of the Petition, PWW submitted prefiled testimony of Stephen J. Densberger, Executive Vice President of PWW. Mr. Densberger identified the terms and conditions of the proposed Third Contract as well as the particular circumstances that render a departure from PWW's general schedules just and consistent with the public interest, pursuant to RSA 378:18. PWW stated that its 2001 Cost of Service study demonstrated that the cost to serve AB is significantly below the costs that would result from application of general metered rates under PWW's tariff. This cost difference constituted a special circumstance supporting charging AB for service pursuant to a special contract.

On March 2, 2005, the Commission Staff (Staff) filed a letter recommending approval of the Third Contract. Staff attached to its letter a copy of PWW's responses to Staff's data requests received on January 31, 2005. Staff indicated that for many years PWW has been supplying water service to AB under terms of special water supply contracts at a rate other than that specified in PWW's tariff. This lower rate was established after a Cost of Service study was performed which identified the amount of annual revenue needed to satisfy costs allocated to AB. This revenue was recovered through a rate equal to a certain percentage, approximately one half, of PWW's lowest declining block rate. In a subsequent rate proceeding, PWW established a single block rate and AB's contract rate continues to be a percentage of PWW's single block metered rate. The most recent PWW Cost of Service study on file with the Commission, dated July, 2001, indicates that AB should be responsible for 4.8% of the total annual revenues of PWW. That translates to \$0.79 per 100 cubic feet. AB's rate is subject to adjustment in rate

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cases in the same percentage as any change in the volumetric rate for general metered service applied to PWW's core. For instance, whatever percentage rate increase is applied to the general metered service rate as a result of PWW's current rate case, Docket No. DW 04-056, would also be applied to AB's consumption rate.

According to PWW and Staff, during calendar year 2003, AB used 710 million gallons of water or 1.95 million gallons per day. AB is PWW's largest customer and this amount is over six times the amount of water taken by PWW's next largest customer. Under the Third Contract, PWW would maintain facilities capable of continuously delivering 2.0 million gallons per day, and up to 3.0 million gallons per day provided AB gives one year's notice of its intention to increase consumption as provided in Section 6 of the Third Contract. As with the Second Contract, the term of the Third Contract is ten years.

Similar to the Second Contract, the Third Contract also contains a minimum payment provision whereby AB can reduce its water consumption by 10% per year commencing in 2005, by 50% in the years beginning July 1, 2009-2011, by 60% in years 2012-2014, the last three years of the contract, as set forth in Schedule A of the Third Contract. According to Schedule A, the minimum revenue from AB will range from \$682,571 in year one to as low as \$303,365 in the last three years of the Third Contract. Finally, in order to afford PWW an opportunity to react to a sudden loss in revenue resulting from the loss of AB as a customer, AB will pay 90% of the Base Adjusted Minimum Annual Charge<sup>1</sup> for the annual period beginning on the first of July following AB's notice, two-thirds of the Base Adjusted Minimum Annual Charge for the period beginning on the second July first following AB's notice, and one-third of

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<sup>1</sup> Base Adjusted Minimum Annual Charge is the minimum charge determined by taking into consideration the prior period's obligations and calculating the percent reduction therefrom.



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the Base Adjusted Minimum Annual Charge on the third July first following AB's notice to discontinue taking service.

According to Staff, the proposed Third Contract provides benefits for PWW's customers in the form of additional revenue while satisfying the needs of AB in conducting its operations in the town of Merrimack. AB's water consumption is approximately 14.8% of PWW's average daily demand, and Staff agreed that the special contract would help stabilize overall demand and reduce the need to increase rates to PWW's other customers. Staff identified that the Third Contract provides revenue stability in the event of sudden reductions in usage from AB in the form of Minimum Payment Obligations and Early Termination provisions. Staff further noted that the Third Contract provides contingencies in the event of municipalization of PWW's assets, an issue presently before this Commission in Docket No. DW 04-048. In the event PWW's assets are taken, PWW's obligations under the contract terminate and, to the extent permissible, would be assumed by the relevant governmental entity.

## **II. COMMISSION ANALYSIS**

Under 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. . . ." RSA 378:18. Based on our review of the proposed Third Contract between PWW and AB, Staff's recommendation, and discovery, we find that service to AB constitutes a special circumstance because of its high level of consumption and the low level of cost associated with providing that

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service. PWW serves no other customer(s) with similar usage requirements; in fact, the next highest customer usage is significantly lower than AB. We recognize PWW's need for stability in usage and revenues and believe the provisions of the Third Contract regarding minimum payment obligations and maximum water use address those needs.

We take administrative notice that the City of Nashua has before us, in Docket No. DW 04-048, a petition seeking valuation of PWW's assets relative to the City of Nashua's eminent domain authority under RSA 38. The Third Contract contains language terminating PWW's obligations to AB in the event of a municipal take-over of assets necessary to serve AB and provides, to the extent permissible, for transfer of those obligations to an acquiring governmental entity. We believe such a clause is reasonable and demonstrates that both PWW and AB recognize that although the term of the special contract runs through June 30, 2015, this contract may be impacted by developments in DW 04-048.

For the above reasons, we find special circumstance exist which justify departure from PWW's schedules of general application. We further find that the departure described in the terms and conditions of the Third Contract with AB are just and reasonable, and consistent with the public good in accordance with RSA 378:18.

With respect to PWW's request that this Commission waive application of Puc 1606.05(a) and (c) (1) and (2), we find the solution articulated in Staff's recommendation of assigning a year and sequential number to the contract reasonable. Accordingly, we will grant PWW's waiver request and order PWW's Third Contract be numbered 2005-1 and that the Second Contract be numbered 1995-1. Any other special contracts entered into by PWW shall be numbered by year and sequentially according to this example, regardless of the identity of the other contracting party.

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

**ORDERED *NISI***, that pursuant to RSA 3748:18, Pennichuck Water Works, Inc. Third Contract with Anheuser-Busch, Inc. with an effective date of July 1, 2005 is APPROVED; and it is

**FURTHER ORDERED**, that Pennichuck Water Works, Inc.'s motion to waive the requirements of N. H. Puc Code of Admin. Rules Puc 1606.05 (a) and (c) (1) and (2) is GRANTED; and it is

**FURTHER ORDERED**, that the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than March 14, 2005 and to be documented in an affidavit filed with this office on or before April 4, 2005; and it is

**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than March 21, 2005 for the Commission's consideration; and it is

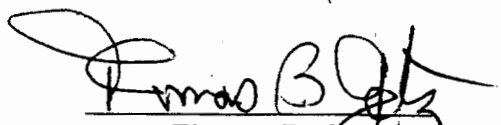
**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than March 28, 2005; and it is

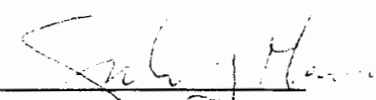
**FURTHER ORDERED**, that this Order *Nisi* shall be effective April 4, 2005, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.


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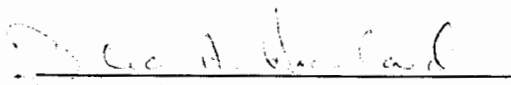
By order of the Public Utilities Commission of New Hampshire this fourth day of  
March, 2005.

  
Thomas B. Getz  
Chairman

  
Graham J. Morrison  
Commissioner

  
Michael D. Harrington  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director & Secretary