

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 08-073

PENNICHUCK WATER WORKS, INC.

Permanent and Temporary Rate Proceeding

Order Approving Temporary Rates

ORDER NO. 24,926

December 30, 2008

APPEARANCES: McLane, Graf, Raulerson & Middleton, P.A. by Sarah B. Knowlton, Esq., for Pennichuck Water Works, Inc.; Upton & Hatfield, P.A. by Justin Richardson, Esq., for City of Nashua; Ransmeier & Spellman by John T. Alexander for Anheuser-Busch; Office of the Consumer Advocate by Rorie Hollenberg, Esq. on behalf of residential ratepayers; and Staff of the Public Utilities Commission by Marcia A. B. Thunberg, Esq.

I. PROCEDURAL HISTORY

On May 22, 2008, Pennichuck Water Works, Inc. (PWW) filed a notice of its intent to file rate schedules. On June 23, 2008, PWW filed revised tariff pages designed to increase its revenues from general metered customers by \$3,193,791, or 14.72%, on an annual basis over its current authorized level of rates. In support of its rate increase, PWW filed schedules, exhibits, and pre-filed testimony of Donald L. Ware, Bonalyn J. Hartley, William D. Patterson, and Harold Walker. PWW also filed a petition for temporary rates.

PWW proposed that its permanent rate increase take effect on a service rendered basis as of August 1, 2008, or the date on which customers are notified, whichever is sooner. PWW also requested two step increases for capital additions placed in service in 2008. The first step increase, based on plant that was used and useful as of May 1, 2008, would generate an additional \$1,095,263 in annual gross operating revenue and would result in a further 5.05%

increase for general metered customers. The second step increase, based on plant that was used and useful as of November 1, 2008, would generate an additional \$1,196,149 in annual gross operating revenues and would constitute a further 5.51% increase for general metered customers.

In addition to its rate requests, PWW filed a motion requesting a waiver of a filing requirement contained in N.H. Code Admin. Rules Puc 1604.03 pertaining to internal financial reports. PWW also requested a waiver of N.H. Code Admin. Rules Puc 1203.03 pertaining to the mailing of individual customer notifications.

On July 16, 2008, Staff responded to PWW's waiver request. Staff concurred with PWW's request to waive the filing of its parent company's internal financial reports and stated that such reports were already on file with the Commission. Staff did not concur with PWW's request to waive the rule pertaining to customer notification and recommended instead that the Commission waive only the 30-day time frame and require PWW to individually notify customers in conjunction with its next billing.

On July 23, 2008, by Order No. 24,876 and pursuant to RSA 378:6, the Commission suspended the proposed revisions to PWW's permanent rate tariffs pending its investigation and decision thereon, scheduled a hearing for August 27, 2008 to address procedural matters regarding the proposed temporary and permanent rate increases, and ordered that PWW publish notice of the hearing.

In a secretarial letter issued on July 30, 2008, the Commission granted PWW's request to waive filing of internal financial reports and partially granted PWW's request to waive the customer notification requirement of N.H. Code Admin. Rules Puc 1203.02(c). The Commission required PWW to notify all customers by mail of the proposed rate changes but it

waived the 30-day time frame to allow PWW the ability to notify customers through its next regular billing.

On July 31, 2008, PWW filed affidavits of publication from the Union Leader and The Telegraph which indicated that the Commission's order of notice was published in the Union Leader on July 26, 2008 and in The Telegraph on July 28, 2008. On August 5, 2008, the OCA filed a letter of participation in this docket and the next day Anheuser-Busch, Inc. filed a petition to intervene. On August 22, 2008, the City of Nashua filed a petition to intervene.

On August 27, 2008, the Commission held a prehearing conference and granted the petitions to intervene. Staff and the parties met in a technical session after the hearing and developed an agreed-upon proposed procedural schedule to govern the remainder of the proceeding. Staff filed the proposed schedule with the Commission and the Commission approved the schedule by way of a secretarial letter dated October 16, 2008.

On September 5, 2008, PWW revised its request for the second step increase and lowered the amount sought to \$823,836 in annual gross operating revenues, which would represent a 3.80% increase over test year revenues. On the same day, PWW also filed a revised petition for a temporary rate increase in the amount of \$2,446,978, or 11.27% over current rates. In support of its request, PWW filed supporting schedules, exhibits, pre-filed testimony, and an addendum to its cost of service study.

Staff and the parties conducted discovery pursuant to the procedural schedule and, on November 10, 2008, Staff and PWW filed a settlement agreement on temporary rates. Staff and PWW presented the agreement at the hearing held on November 12, 2008.

II. POSITIONS OF THE PARTIES AND STAFF

A. City of Nashua

The City of Nashua did not take a position on the settlement agreement.

B. Anheuser-Busch

Anheuser-Busch did not take a position on the settlement agreement.

C. Office of the Consumer Advocate

Although the OCA did not oppose the level of proposed temporary rates, it did object to the use of a revised cost of service study to determine the revenue allocations among customer classes for temporary rate purposes. OCA stated “we take the position that the company's revised cost of service study, while it has been admitted as an exhibit, is not fairly characterized as a book and record, full record, under RSA 378:27. Rather, we see these types of documents that fall under this category as those including the company's annual report and other reports to the Public Utilities Commission as are required by its rules, including those that discuss the capital investments that are made between rate cases.” Hearing Transcript of November 12, 2008 (11/12/08 Tr.) at 58, lines 15-24. OCA argued that even if the Commission were to disagree with its characterization of the revised cost of service study as not qualifying as a book or record, the Commission should not give it any weight. OCA stated the non-signatory parties did not receive it until less than a week before hearing; OCA has not had an opportunity for discovery related to it; and PWW did not make the author of the study available for cross-examination at hearing.

D. Staff

Staff indicated that its position on the temporary rate request of PWW was embodied in the terms of the settlement agreement, summarized below.

E. PWW

PWW indicated that its position on its temporary rate request was embodied in the terms of the settlement agreement, summarized below.

III. SETTLEMENT AGREEMENT**A. REVENUE REQUIREMENT**

Staff and PWW recommend the Commission approve an 11.00% overall increase in PWW revenues, on a temporary basis, to produce a total revenue requirement of \$24,090,406. Exh. 3 at 7. At hearing, PWW testified that based on its 2007 test year, it was earning a rate of return that was 125 basis points below its last authorized rate of 7.89%. 11/12/08 Tr. at 16 lines 14-18. PWW attributes the under earning to the significant capital expenditures it has made over the past couple of years. Id. at lines 20-23. PWW states that its rate of return continues to erode and that as of April 2008, its rate of return was 6.47%. 11/12/08 Tr. at 18 lines 1-4. Staff and PWW state that this revenue requirement recommendation represents a reasonable compromise of all issues relating to establishment of temporary rates for PWW, and results in rates for PWW's customers that are just and reasonable.

B. RATE DESIGN

Staff and PWW agree and recommend the Commission approve, on a temporary basis, a change in rate design such that the increase in fire protection rates should be equally shared between municipal and private fire protection customers. At hearing, PWW testified that its cost of service study determined that private fire protection was not paying its fair share of the cost of service and thus recommended PWW increase the allocation to the private fire protection class. 11/12/08 Tr. at 15 lines 14-17. Staff and PWW recommend that, in order to mitigate the increase for private fire protection, pending a thorough investigation in the permanent rate phase of the

proceeding, the revenue increase for the fire protection classes be shared equally. Staff and PWW attached to the settlement agreement revised schedules from its cost of service consultant which indicated that an 11.00% increase in PWW's revenue requirement and equal sharing of the fire protection classes would result in a 10.79% increase for general metered customers; a 41.56% increase for private fire protection customers; a 6.41% increase for municipal fire customers; a 12.47% increase for the Anheuser-Busch Contract; a 11.71% increase for the Milford Contract Volumetric Charges; and an 8.85% increase for the Hudson Contract Volumetric Charges. Exh. 3 at 8.

C. EFFECTIVE DATE

Staff and PWW recommend the Commission approve temporary rates, effective for service rendered on and after July 28, 2008, the date on which customers were notified of PWW's request for new rates in this proceeding.

IV. COMMISSION ANALYSIS

Pursuant to RSA 378:27, the Commission may approve temporary rates for the duration of the proceeding if, in its opinion, the public interest so requires and the reports of the public utility filed with the Commission indicate it is not earning a reasonable return on its property used and useful in the public service. The standard for approval of temporary rates is less stringent than that for permanent rates. *Appeal of the Office of the Consumer Advocate*, 134 N.H. 651, 660 (1991), citing *New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518 (1949).

We have reviewed the evidence presented regarding temporary rates and we find it reasonable to approve an 11.00% overall increase in PWW's revenue requirement, on a temporary basis. PWW demonstrated that, based on its reports on file with the Commission, it is under-earning and that this under-earning may ultimately disadvantage both PWW and its

ratepayers. PWW and Staff agreed to an increase for temporary rates of 11.00%, a level that is slightly less than one-half of the total increase that PWW seeks for permanent rates. We conclude that such an increase is in the public interest and will yield a reasonable return on PWW's plant for the duration of this proceeding. If the permanent rates finally determined in this proceeding are higher than the temporary rates, this increase now will mitigate potential rate shock to customers in the future and will reduce the significance of any recoupment between temporary rates and permanent rates. If permanent rates are lower than temporary rates, then PWW and its customers are protected because, pursuant to RSA 378:29, the temporary and final revenue requirements and rates will be fully reconcilable upon final disposition of the issues involved in this proceeding. This reconciliation provision protects both PWW and its customers in that PWW will only recover the revenue requirement as finally determined and customers will pay net rates no higher than those authorized.

With respect to PWW and Staff's proposal to change the allocation of PWW's revenue requirement among its customer classes, we understand that the cost of service study submitted with PWW's filing contains a recommendation for a substantial increase in the revenue allocation to the private fire protection class. Exh. 4 at 13. The study found that revenues from private fire protection service were noticeably below their cost of service indication. *Id.* Under PWW's initially proposed temporary rates, it sought to increase private fire protection by 69.72% and municipal fire protection by 1.11%. Exh. 2 at 10. In an effort to mitigate the increase to private fire protection, pending a full review of the study in the permanent rate phase of the proceeding, Staff and PWW allocated one-half of the proposed increase in the private fire protection class to the municipal fire protection customers. 11/12/08 Tr. at 29 lines 17-20. Staff and PWW thus recommend a temporary increase of 41.56% for private fire protection. Staff

testified at hearing that it agreed to this increase as a means of gradually bringing private fire protection customers up to their share of the allocated revenue requirement. 11/12/08 Tr. at 51 lines 19-22. This increase is less than PWW's initial proposal of 69.72%, but it is still consistent with the cost of service study recommendation that PWW increase the allocation of its revenue requirement to private fire protection service.

OCA disagrees with Staff and PWW's use of the revised cost of service study and argued at hearing that PWW's cost of service study should not be given any weight because the parties have not had an opportunity to conduct discovery on the study. On this point, we note the approved procedural schedule for this proceeding afforded parties an opportunity to perform discovery on PWW's filing, including the initial and revised cost of service studies, prior to the hearing on temporary rates. With respect to OCA's argument that the study's author was not made available for cross examination, we note that RSA 378:27 authorizes the Commission to determine temporary rates "without such investigation as might be deemed necessary to a determination of permanent rates." *Appeal of the Office of the Consumer Advocate, supra*. Accordingly, we find it proper to rely on the revised cost of service study for the purpose of setting temporary rates.

We next address the OCA's argument that the revised cost of service study cannot be considered for purposes of allocating PWW's revenue requirement among its customer classes because it is not a report on file with the Commission. RSA 378:27 authorizes the Commission to set reasonable temporary rates "sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service, less accrued depreciation, as shown by the reports of the utility filed with the Commission, unless there appears to be

reasonable grounds for questioning the figures in such reports.” We do not read the reference to reports in RSA 378:27 in the narrow manner urged by the OCA. Rather, we interpret the reference more broadly, to include the cost of service study filed with the Commission in this proceeding, which will be subject to full scrutiny in the consideration of permanent rates. Further we note that with regard to the allocation of revenue for temporary rate purposes “[n]either the method of allocation nor its result needs to be adopted in the final establishment of permanent rates.” *New Eng. Tel. & Tel. Co. v. State, supra*.

We next consider the effective date proposed by Staff and PWW. Staff and PWW request that temporary rates be effective on a service rendered basis as of July 28, 2008, the date on which all customers were notified of the proposed rate increase. We acknowledge that this proposed effective date precedes the date of the temporary rate hearing; however, RSA 378:27 allows the Commission to authorize effective dates as early as the date on which the petition for a permanent rate change is filed. *See Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980). In this case, PWW filed its notice of intent to file rate schedules on May 22, 2008 and published Order No. 24,876 on July 26, 2008 in the Union Leader and on July 28, 2008 in The Telegraph. The publications notified the public of PWW’s rate case filing, proposed tariffs, date of the Commission’s prehearing conference, and of the ability to intervene in this proceeding. In light of this notice, we find that implementing the temporary rate on a service-rendered basis, effective July 28, 2008, is just and reasonable and consistent with our authority.

Having reviewed the record in this proceeding, including the settlement agreement and the supporting testimony presented at the November 12, 2008 hearing, we find the terms of the settlement agreement to be reasonable and for the public good. We find that PWW has demonstrated an earnings deficiency and that it is in the public interest to authorize, on a

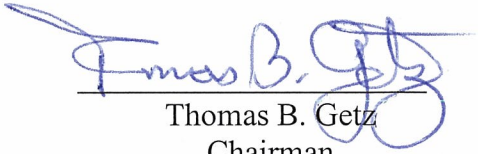
temporary basis, an increase in PWW's revenue requirement sufficient for it to earn a reasonable rate of return during our investigation in this proceeding. We will approve Staff and PWW's proposed overall increase of 11.00% in PWW's revenue requirement. We note that the actual increase among customer classes varies and that some customers will experience higher increases than other customers. We find this allocation of revenues to be a reasonable compromise pending full investigation of the cost of service study, and we note that the reconciliation mechanism found in RSA 378:29 will protect customers in the event we decide that permanent rates should be different or applied in a manner different from that authorized for temporary rates. We find that the terms of the settlement agreement will result in just and reasonable rates for customers and that they represent an appropriate balancing of ratepayer interests and the interests of PWW's investors. Accordingly, we adopt and approve the terms of the settlement agreement.

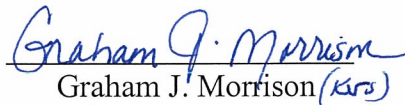
Based upon the foregoing, it is hereby

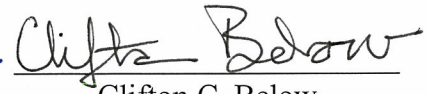
ORDERED, that Pennichuck Water Works, Inc.'s request for an overall temporary rate increase of 11.00% is **GRANTED**, on a service rendered basis effective July 28, 2008, as detailed above; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. shall submit tariff pages in compliance with this order within 15 days of the date of this order.

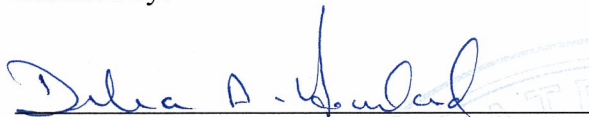
By order of the Public Utilities Commission of New Hampshire this thirtieth day of
December, 2008.

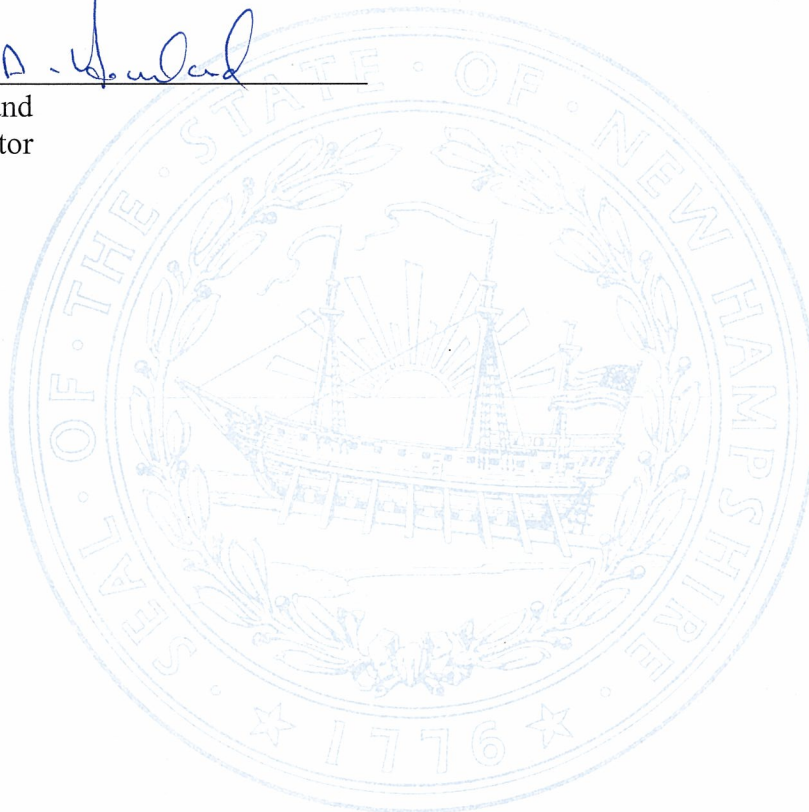

Thomas B. Getz
Chairman


Graham J. Morrison (KRS)
Commissioner


Clifton C. Below
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Attested by:


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12/30/08 Order No. 24,926 issued and forwarded to all parties.
Copies given to PUC Staff.

Docket #: 08-073 Printed: December 30, 2008

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

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