

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

PENNICHUCK WATER WORKS, INC.

DOCKET NO. DW 19-091

**AMENDED REQUEST FOR MEDIATION**

Now comes, the petitioner, Pennichuck Water Works, Inc. (“PWW” or “Company”), and respectfully petitions the N.H. Public Utilities Commission (“Commission”) to mediate or arbitrate a dispute concerning paragraph 7(b) of the wholesale water supply contract (“Special Contract”) between PWW and the Town of Hudson (“Town”). In support of this petition, PWW states as follows:

1. On May 10, 2019, PWW filed a request for a declaratory ruling and request for mediation concerning its wholesale water supply contract with the Town. PWW, the Town, and Staff have since met in a technical session to clarify the scope of this proceeding as well as to develop a proposed procedural schedule to govern this proceeding. This revised request is the result of that technical session. PWW withdraws its request for a declaratory ruling and seeks the Commission to mediate or arbitrate this billing dispute.

2. By way of background, the Commission approved a twenty-year contract for wholesale water supply between the Town and PWW by Order No. 24,611 in Docket No. DW 05-143 (March 31, 2006). The Commission approved the contract pursuant to its authority under RSA 378:18. The Special Contract expressly notes that the Commission may modify certain rates in the future. The relevant provisions is below:

7. (b) Volumetric Charge. In addition to the Demand Charge, the Town shall pay the Company \$1.116 per 100 cubic feet (748) gallons), the Company’s production cost excluding administrative and general cost for all water taken by the Town (the “Volumetric Charge”). The Volumetric Charge shall be adjusted from time-

to-time by the same percentage and effective as of the same dates as any adjustment in the rates paid by residential customers in Nashua pursuant to the Company's tariff on file with the NHPUC. If the Company no longer has a tariff for service to residential customers in Nashua, the parties shall negotiate in good faith to determine an appropriate reference point for adjustment to the Volumetric Charge. See, Attachment A, Special Contract, paragraph 7(b).

3. After the effective date of the Special Contract, PWW had five rate cases, four of which resulted in rate increases which increased PWW's residential and the Town's rates as provided for in Paragraph 7(b). See Docket No. DW 06-073, Order No. 24,751 (May 25, 2007); Docket No. DW 08-073, Order No. 25,006 (August 13, 2009); Docket No. DW 10-091, Order No. 25,230 (June 9, 2011); Docket No. DW 13,130, Order No. 25,693 (July 15, 2014); and Docket No. DW 16-806, Order No. 26,070 (November 7, 2017). These increases were reflected in PWW's tariffs on file with the Commission. The Town paid the increased rates.

4. In its 2016 rate case, PWW requested Commission approval of the Qualified Capital Project Adjustment Charge ("QCPAC") program. On October 25, 2016, the Commission issued Order No. 25,957 notifying the public of its intent to investigate PWW's proposal as well as its rate case. Thereafter, the Commission commenced a year-long proceeding to investigate the QCPAC program and PWW's rate case. The Town of Hudson did not intervene.

5. On November 7, 2017, the Commission approved the QCPAC. Order No. 26,070 (November 7, 2017). The QCPAC charge was made applicable to all of PWW's customers, including PWW's residential customers and the Town of Hudson. The QCPAC rate is part of PWW's volumetric rate. More recently, by way of Order No. 26,183, dated October 29, 2018 in Docket No. DW 18-022, the Commission approved of PWW's QCPAC rate of 1.69%. The Commission approved this rate applicable to all customer, including the Town of Hudson. It

authorized the QCPAC for all bills rendered after May 4, 2018. The Commission noted that the QCPAC would be applied uniformly to all customer classes with the exception that the QCPAC will not be applied against the monthly fixed contract charges associated with Anheuser-Busch, Town of Milford, and Town of Hudson special contracts. *Id.* at 5. PWW denotes the QCPAC charge on its customer bills as “PWQCPAC Recoupment.” The total QCPAC fluctuates each month, based on the volume of water used. PWW charged the Town the QCPAC charge.

6. On December 8, 2017, PWW filed for recovery of its rate case expenses. On February 23, 2018, the Commission’s Staff recommended the Commission approve PWW’s recovery of rate case expenses from all of its customers, including the Town. On March 20, 2018, in Order No. 26,114, the Commission approved PWW’s recovery of its rate case expenses from all of PWW’s customers. PWW charged the Town its share of the rate case expenses.

7. In a certified letter dated December 27, 2018, the Town’s counsel informed PWW of the Town’s dispute and objection to paying the QCPAC and rate case expense surcharge. See, Attachment B. After receiving the certified letter, Donald Ware, PWW’s Chief Operating Officer, spoke with the Town in an attempt to resolve the matter. PWW received a second certified letter, dated February 14, 2019, wherein the Town still objected to paying the charges. See, Attachment C. By letter dated March 11, 2019, PWW responded to the Town with a lengthy explanation of the legal origins of the charges. See, Attachment D. The Town replied by letter dated April 2, 2019 and reiterated its position that the charges do not apply to the Town. See, Attachment E. The parties are at an impasse.

8. The sum of the Town’s objection is that it disputes that it is obligated to pay rate case expenses from PWW’s 2016 general rate case and the QCPAC charge that was approved by the Commission in Order No. 26,183.

9. PWW would like to note that the Town has paid other Commission-approved charges such as the Water Infrastructure and Conservation Adjustment (“WICA”) which is equivalent to the QCPAC. See, 2018 and 2019 Hudson bills, Attachment F and G. PWW wishes to further note that because the Town provides water to PWW’s affiliate, Pennichuck East Utility, Inc. (“PEU”), it has billed PEU for water, based on PWW’s rates. Importantly, the rates include PWW’s QCPAC, to which the Town adds a 20% administrative markup, and bills PEU. PEU then pays the Town. The attached spreadsheets contain true-up data for years 2016/2017, 2017/2018, and 2018/2019 that the Town uses to bill PEU the WICA/QCPAC, plus the 20% administrative markup. See, Attachment H.

10. PWW believes it is obligated, pursuant to the above-referenced orders, to bill its customers, including its wholesale water supply contract customers, for rates approved by the Commission. PWW does not believe it can avoid charging the Town the Commission-approved rates that are reflected in its tariff and applicable to the wholesale water supply contract. Accordingly, PWW will continue to bill and issue overdue notices to the Town. The unpaid charges are now in excess of \$7,576.56. See, Attachment F. It is also important to note that the Town opened its seasonal interconnection with PWW in April. As a result, the Town’s water use has increased, thereby increasing the unpaid amount owed to PWW by approximately \$4,200. Consistent with N.H. Code Admin. R. Puc 1203.11 and page 17 of its tariff, PWW has issued disconnection notices. See, Attachment I.

WHEREFORE, for the foregoing reasons, Pennichuck Water Works, Inc. respectfully requests the Commission:

A. Mediate or arbitrate the above dispute between the parties pursuant to the Commission's authority mediate or investigate under N.H. Code Admin. Rule Puc 204.06, Puc 1203.07, and RSAs 365:5, 365:23, and 365:25; and

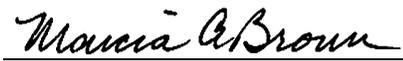
C. Grant such other and further relief as may be necessary.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By Its Attorney

Date: July 29, 2019



Marcia A. Brown, Esq.  
NH Brown Law, P.L.L.C.  
P.O. Box 1623  
Concord, NH 03302-1623  
(603) 219-4911  
mab@nhbrownlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this amended request for mediation or arbitration has been emailed this day to counsel for the Town of Hudson and the Office of the Consumer Advocate.

Dated: July 29, 2019



Marcia A. Brown, Esq.