

**STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION**

**Docket No. DW 22-\_\_\_\_\_**

**PENNICHUCK WATER WORKS, INC.**

**PETITION FOR APPROVAL OF SPECIAL CONTRACT**  
**WITH TOWN OF HUDSON**

The Pennichuck Water Works, Inc. (PWW) requests Commission approval, pursuant to RSA 378:18, to deviate from its general tariff and enter into a new special contract, effective July 1, 2021, with the Town of Hudson (Hudson) for wholesale water supply and to terminate the current contract between the parties. PWW also seeks waiver of N.H. Code Admin R. Puc 1606.02(a)(1). In support of this request, PWW states as follows:

**Parties and Current Contract**

1. PWW is a regulated public utility under RSA 362:2 and RSA 362:4. PWW is authorized by the Commission under RSA 374:22 and 26 to provide water service in the City of Nashua and towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Plaistow, and Salem, New Hampshire as well as in Tyngsboro, Massachusetts at rates filed or approved under RSA Chapter 378. PWW also has, pursuant to RSA 378:18, Commission-approved special contracts with the Town of Hudson, Anheuser-Busch, LLC, Tyngsborough Water District, Pennichuck East Utility, and the Town of Milford.

2. Hudson is a New Hampshire municipal corporation providing water service to its customers. In 2006, under the authority of RSA 378:18, the Commission approved a twenty-year contract for seasonal wholesale water supply between Hudson and PWW to replace a prior contract. See, *Pennichuck Water Works, Inc.*, Order No. 24,611 in Docket No. DW 05-143

(March 31, 2006). The current contract contains an automatic 5-year renewal and a 3-year notice for termination. Section 6 of the current contract allows PWW and Hudson to increase the quantity of water taken and to negotiate a price. Also, although Section 10 of the current contract states termination “shall not be effective until three (3) years from the date” of such termination notice, Section 10 allows for earlier termination “as may be determined by order of the NHPUC”. Because Hudson’s usage has changed substantively since the 2006 contract and Hudson’s usage has gone from seasonal to full-time, Hudson and PWW have negotiated a new contract. The rates for the new contract are the product of a Cost of Service Study funded by the New Hampshire Department of Environmental Services (NHDES) for Hudson. Accordingly, PWW and Hudson are requesting Commission termination of the existing contract and approval of the new, proposed contract under the Commission’s authority cited below.

### **Significant Change in Events**

3. The circumstances justifying the departure from PWW’s filed tariff are described in Mr. Ware’s testimony and in the statement of special circumstances signed by PWW. In summary, the circumstances are that Hudson has suddenly found itself without sufficient water to serve its customers as a result of the NHDES requesting Hudson to shut down its Dame and Ducharme wells due to contamination by Perflouroctanoic Acid (PFOA). This circumstance was not envisioned by PWW and Hudson when the parties developed the current contract for seasonal service. For these reasons, Hudson and PWW request Commission approval of the proposed contract.

## **Proposed Contract**

4. The terms of the new, proposed contract are intended to cover costs PWW will incur to now provide wholesale water supply to Hudson on a full-time basis. The proposed contract is Attachment DLW-2 to the testimony of Donald L. Ware. PWW and Hudson propose a retroactive effective date of July 1, 2021 to June 30, 2023 (Initial Term). The effective date of July 1, 2021 was chosen because on that date, Hudson began taking service on a full-time basis. The proposed contract would automatically extend for three additional terms of two (2) years (Renewal Term) each unless either party gives written notice to the other, at least twelve (12) months prior to the date on which the Initial Term or any Renewal Term expires. The Renewal Terms are intended to give Hudson time to assess and implement a plan for replacing its source of supply. It is unknown at this juncture if a special contract will be needed after the proposed contract and if so, what those terms would look like. In summary the terms of the proposed contract include:

- a. PWW will reserve 1.0 MGD of capacity from its Nashua water treatment plant for Hudson.
- b. Hudson will guarantee a minimum annual purchase 487,968 CCF (Average daily flow of 1.0 MGD over a period of one year).
- c. Hudson will pay a monthly bill, in arrears, consisting of three parts: a monthly meter charge of \$78.33, a monthly fixed charge that consists of the Annual Fixed Charge divided by 12 months, and a monthly Volumetric Charge. Hudson will pay monthly volumetric charges for a minimum of 1,337 CCF per day (based on the number of billing days in the month) or the actual volume of water used, whichever is greater. In the event there is a month where Hudson does not use a minimum of 1,337 CCF

per day, the difference between 1,337 CCF billed per day and the actual amount used by Hudson for that bill will be carried forward into the next month as a credit for Hudson's usage in the following month(s). Hudson can carry any usage credits over month to month but not from one contract period to the next contract period. As stated in the Wholesale Water Supply Contract under "Term" and "Renewal Terms", a contract period, or term, runs over two years, commencing July 1<sup>st</sup> and ending June 30<sup>th</sup> of each two-year term. This results in a guaranteed annual purchase water amount of 487,968 CCF.

**Legal Authority for Early Termination of Current Contract  
and Approval of Proposed Contract**

5. 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." Pursuant to RSA 378:1, PWW's tariff, terms and conditions of service, and rate schedules are on file with the Commission and set forth the rates and terms of service.

6. Pursuant to RSA 378:18, the Commission may deviate from RSA 374:14 and approve special rates for utility service if it finds that "special circumstances exist which render such departure from the general schedules just and consistent with the public interest..." RSA 378:18.

7. In support of the request to approve the proposed special contract, and as required by Puc 1606 and Puc 203.06, PWW has attached to this petition the pre-filed direct testimony of Mr. Donald L. Ware and attachments. The attachments include Attachment DLW-1 (Hudson's Cost of Service model in Excel and PDF), Attachment DLW-2 (Proposed Wholesale Water

Supply Contract), Attachment DLW-3 (Statement of Special Circumstances as required by Puc 1606.02(b)), and Attachment DLW-4 (2006 Special Contract-which is included for historical reference).

8. PWW avers the circumstances justify the early termination of the current contract. As explained in Mr. Ware’s testimony, and as shown in the difference in terms between the current contract (Attachment DLW-4) and the proposed contract (Attachment DLW-2), the cost to provide seasonal water supply is much higher than the cost to provide full-time, or permanent, wholesale water supply. In short, the current contract no longer reflects the reality of costs to serve Hudson under its new full-time take of water service. To illustrate that difference, the Volumetric Charge under the current contract is \$2.5610 per one hundred cubic feet (CCF). Again, this current contract was based on seasonal take of water from PWW. In contrast, the Volumetric Charge under the proposed contract is \$1.0012 per CCF for full-time water supply. There are other charges in the respective contracts, however, the Volumetric Charge reasonably illustrates the cost differential. Because of this cost differential, PWW and Hudson does not believe the current contract, as of the change in circumstances on July 1, 2021, remains “just and consistent with the public interest”. RSA 378:18. See also *Public Service Company of New Hampshire*, Docket No. DR 98-139, Order No. 23,139 (February 8, 1999) citing *Re Town of Derry*, Docket No. DR 90-123, Order No. 20,365 (January 7, 1992) (wherein the Commission recognized that it retains jurisdiction over all contracts filed with it for its approval under the so-called Mobile-Sierra doctrine)<sup>1</sup>. See also, *Public Service Company of New Hampshire*, Docket No. DE 17-177, Order No. 26,083 dated December 11, 2017 (the Commission approved early

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<sup>1</sup> “The Mobile-Sierra doctrine provides that a contractually based tariff which has been filed by the contracting parties, and approved by the regulatory agency after a finding of reasonableness, may be set aside by the regulatory agency if it later finds that the rate is contrary to the public interest.” See *Unites States Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Power Co.*, 350 U.S. 348 (1956).

termination of the special contract). Furthermore, both parties are in agreement on the need to terminate the existing contract unlike in *University of New Hampshire*, Docket No. DW 04-118, Order No. 24,436 (February 25, 2005) where the parties disputed early termination. For these factual and legal reasons, PWW believes early termination of the current special contract between PWW and Hudson is consistent with the public interest. Therefore, PWW requests the Commission approve early termination of the current contract.

### **Rule Waiver Request for Retroactive Effective Date**

9. Pursuant to N.H. Admin. R. Puc 1606.02(a)(1), utilities are required to file proposed special contracts “at least 30 days before its proposed effective date.” Under Puc 201.05(a), the Commission shall waive a rule if the Commission finds that the waiver serves the public interest and that the waiver will not disrupt the orderly and efficient resolution of matters before the Commission. As explained in the testimony of Mr. Donald Ware, PWW and Hudson learned in late June that the NHDES was requiring Hudson to shut off its Dame and Ducharme wells, effective June 29, 2021. As further explained in Mr. Ware’s testimony, if Hudson were to continue to take water supply under the current contract rates, a windfall would result to PWW because the rates were based on the cost to provide seasonal rather than full-time service.

10. Because of this differential and because the circumstances under which Hudson is taking service changed as of July 1, 2021, PWW and Hudson believe if the proposed contract is made effective 30 days or later after the filing of this petition (and not retroactively back to July 1, 2021) that compliance with Puc 1606.02(a)(1) will result in an onerous financial detriment to Hudson of about \$349,000. See Testimony of Mr. Ware at page 16. PWW and Hudson believe the intent of the 30-day rule is to provide the Commission with time to review the proposed contract. PWW and Hudson believe this intent of Puc 1606.02(a)(1) can be satisfied

alternatively by allowing the Commission review time beyond the thirty days and, presuming approval of the contract, allowing the rates to apply retroactively.

11. As Mr. Ware proposed in his testimony at page 16, PWW could then apply a credit to Hudson's bills over a period of twelve months to return to Hudson the difference between the current rate Hudson is paying and the proposed contract rate. PWW believes the Commission has authority pursuant to RSA 378:7 and RSA 378:27 and 29 to provide this requested rate relief. See also *Pennichuck Water Works, Inc.*, Docket No. DW 21-134, Order No. 26,597 (March 25, 2022) (wherein Commission approved a settlement agreement which included a retroactive application of the new rate and a reconciliation mechanism to address any over or under collections.) For these reasons, PWW believes the intent of Puc 1606.02(a)(1) can be met in an alternate way, that waiver of Puc 1606.02(a)(1) and retroactive application of the rates in the proposed contract serve the public interest and will not disrupt the orderly and efficient resolution of this proceeding.

WHEREFORE, PWW respectfully requests the Commission:

- A. Approve termination of the current contract between Pennichuck Water Works, Inc. and Town of Hudson effective July 1, 2021;
- B. Approve the proposed special contract between Pennichuck Water Works, Inc. and Town of Hudson;
- C. Grant a waiver of the Commission's administrative rules as discussed herein; and
- D. Grant such other and further relief as may be just and reasonable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorney,

Date: April 27, 2022

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Certificate of Service

I hereby certify that a copy of the foregoing petition and supporting materials have been emailed this day to the Department of Energy and the Office of the Consumer Advocate.

*Marcia A. Brown*  
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