

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-029

PENNICHUCK WATER WORKS, INC.

Petition for Approval of Special Contract with Town of Hudson

ORDER *NISI* APPROVING SPECIAL CONTRACT

O R D E R N O. 26,756

January 6, 2023

In this order, the Commission approves a new special contract reached between Pennichuck Water Works, Inc. (PWW, or the Company) and the Town of Hudson (Hudson, or the Town) for the wholesale supply of water from PWW to Hudson on a year-round basis.

PWW filed its petition (Petition) in this docket on April 27, 2022. On May 3, 2022, the Town of Hudson filed a letter of support for the Petition. The New Hampshire Department of Energy (DOE) filed an appearance on April 28, 2022. The Office of the Consumer Advocate (OCA) filed a letter of participation on June 6, 2022. No petitions to intervene were filed. A prehearing conference was held on July 6, 2022. On November 14, 2022, PWW filed a settlement agreement (Settlement) reached with Hudson and DOE, and an amended proposed contract to reflect the terms of that Settlement. The signatories to the Settlement agreed that the amended contract supersedes all prior versions of the proposed contract.

All docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2022/22-029.html.

I. PETITION

In its Petition, PWW requested: (1) authorization to terminate its existing special contract with the Town of Hudson (Hudson, or the Town) for seasonal wholesale water supply; and (2) approval of a new special contract, pursuant to RSA 378:18, to supply water on a full-time basis year-round. In support of its Petition, PWW filed the direct testimony of Chief Operating Officer Donald L. Ware, with related attachments, a statement of special circumstances, and a copy of the proposed contract.

Under the existing 20-year contract, PWW provides Hudson with wholesale water supply on a seasonal basis and not to exceed 2 million gallons in a single day. Petition at 1, ¶2; Att. DLW-4 at Bates Page (BP) 3, ¶5(a). That contract was approved in Docket No. DW 05-143 by Order No. 24,611 on March 31, 2006. Petition at 1-2, ¶2. Section 10 of the existing contract requires a three-year notice period prior to termination, “except as may be determined by order of the [Commission]” or upon acquisition of PWW assets and facilities by a municipality. Att. DLW-4 at BP 5, ¶¶10-11. The existing contract also includes an option to negotiate a new price in the event the Town’s usage requirements exceed the specified maximum daily volume of 2 million gallons per day. Att. DLW-4 at BP 4, ¶ 6.

According to the Petition, Hudson was required to shut down two out of three of its source wells on June 29, 2021, due to perfluorooctanoic acid (PFOA) contamination, because the wells were about to exceed the NH Department of Environmental Services (NHDES) PFOA standards. Ware Testimony at 5, lines 12-13 and 17-18. As a result, Hudson required additional water supply on a full-time basis, which it began taking from PWW on June 30, 2021, at the current rates under the existing contract. *Id.* at 15.

Hudson hired a consultant to conduct a Cost of Service Study (COSS) to determine the appropriate rates for the contract, based on Hudson’s changed water

needs. *Id.* at 9, lines 4-6, and 15, lines 15-19. The COSS indicated that, if Hudson purchased a guaranteed minimum of 487,968 ccf (one hundred cubic feet) per year (approximately one million gallons of water per day), PWW could charge Hudson a fixed annual demand charge of \$457,083 and a reduced volumetric charge of \$1.0012 per ccf. *Id.* at 9, lines 7-10. Based on that level of usage, Hudson would become PWW's largest customer. *Id.* at 16, line 16. After the COSS was completed in early November 2021, PWW and Hudson negotiated the terms of a new wholesale water supply contract with rates based on the COSS. *Id.* at BP 13, lines 18-23.

The Petition proposed that the new contract be approved with an effective date of July 1, 2021, the date on which PWW began to provide Hudson with water on a full-time basis, and an end-date of June 30, 2023, for the initial contract term, with three additional terms of two years each, unless written notice is provided at least 12 months prior to expiration of the initial term or any renewal term. Petition at 3, ¶4. Under the new contract, Hudson would guarantee a minimum annual purchase of 487,968 ccf, and PWW would bill Hudson monthly for the following charges:

- a monthly portion of the \$457,083 annual demand charge (*i.e.*, \$38,090.25 per month);
- a meter charge of \$78.33; and
- a volumetric charge of \$1.0012 per ccf.

See Id. at 3, ¶4(b), (c), and at 5, ¶8. In addition, the proposed monthly fixed meter charge and volumetric charge would be subject to any approved Qualified Capital Project Adjustment Charges to ensure that the Town pays its share of expenses associated with the provision of service to Hudson. Ware Testimony at 10, lines 1-7, and 14, lines 3-8 and 21-23. The contract further provides for three two-year renewal terms to provide Hudson time to develop a plan for a new source of water supply. *Id.* at 15, lines 6-8 and 18, lines 13-16.

PWW also requested in its Petition a waiver of rule Puc 1606.02(a)(1), which requires a utility proposing a special contract to file the terms of the contract “at least 30 days before its proposed effective date.” Petition at 6, ¶9. In support of its request, PWW asserted that a rule waiver permitting the contract rates to take effect retroactively would result in a credit to Hudson of approximately \$349,000 from the amount collected during the retroactive period, rather than an onerous “financial detriment” in the same amount, due to the difference between the current and proposed rates. *Id.* at 6-7, ¶¶10-11. Under the new contract, that overcollection will be reconciled back to customer bills over 12 months. *Id.* Finally, PWW requested authorization to terminate the existing contract, effective July 1, 2021, upon approval of the new, proposed contract. Petition at 8.

II. SETTLEMENT AGREEMENT

The Settlement signed by PWW, Hudson, and the DOE, as filed on November 14, 2022, amended a number of terms of the proposed contract filed by PWW with its Petition on April 27, 2022. Under the new, amended contract, PWW agrees to reserve 1.0 million gallons per day of capacity from its Nashua water treatment plant for Hudson, and Hudson agrees to pay a monthly meter charge, a monthly fixed charge, and a monthly volumetric charge. Settlement at 5. The monthly volumetric charges will be based on a minimum of 1,337 ccf per day (based on the number of billing days in the month), or actual volume of water used, whichever is greater. *Id.* In the event Hudson uses less than the minimum volume per day, the difference in billing will be carried forward into the next month as a credit. *Id.* The Town will be allowed to carry any usage credits over month-to-month, but not from one contract period to the next contract period. A contract period – or term – runs two years, commencing July 1 and ending June 30 of each two-year term. *Id.*

The new contract, as amended, will reflect the rates detailed in the updated COSS. Settlement at 6. The volumetric rate will be reduced from \$2.5610 in the 2006 contract to \$1.0093 in the new contract. Id. The annual fixed demand charge will increase from \$32,800 in the 2006 contract to \$457,441 under the new contract. Id. That increase is linked to the increase in Hudson's guaranteed purchase amount triggered by NHDES's requirement for Hudson to obtain a new supply source as of July 1, 2021. Id. Under the new contract, Hudson will be contributing more to PWW's general and administrative costs, thereby lowering G-M customer rates. Id. at 7.

The Settlement cites statements made by Mr. Ware in the course of discovery, in support of a new contract in lieu of tariffed rates, noting that: (a) Hudson has its own water storage and therefore does not require water to meet peak needs; (b) Hudson is contractually obligated to purchase a minimum amount of water from PWW; (c) unlike a general metered customer, Hudson will take water at a fixed rate rather than a variable rate; and (d) if PWW were to create a separate customer class in its general rate schedules for Hudson, it would be a class of one customer. Settlement Agreement at 7, ¶(d); Petition Att. DLW-3 (Statement of Special Circumstances); and Settlement Agreement, Att. B (PWW's response to DOE 2-1).

III. COMMISSION ANALYSIS

Pursuant to RSA 378:18, the Commission may, by order, permit a utility to charge rates that depart from the utility's standard tariff when special circumstances exist "which render such departure from the general schedules just and consistent with the public interest". *See, e.g., Pennichuck Water Works, Inc., Order No. 26,597 (March 25, 2022) (approval of special contract for bulk water supply to remedy supply contamination at variable cost of production with a retroactive application of new rate and reconciliation of rates to address over or under collection).* We find that approval

of the special contract proposed in this proceeding by PWW and Hudson, as amended pursuant to the Settlement, is supported by the record and meets the applicable statutory standards.

The proposed new contract is based on certain changed circumstances, as outlined in PWW's Petition and the Settlement, including Hudson's lack of adequate water supply to serve its customers after NHDES required the Town to shut down two of its three wells due to contamination. Accordingly, the existing contract has been amended to reflect the costs for PWW to provide a substantial increase in wholesale water supply to Hudson on a year-round, full-time basis, rather than on a seasonal basis. The Petition provides a statement of special circumstances supporting approval of the proposed contract, including the fact that Hudson has its own water storage tanks and service infrastructure. See Attachment DLW-3 (Statement of Special Circumstances).

PWW requested a retroactive effective date of July 1, 2021 for the new contract, with a two-year initial term ending on June 30, 2023. As noted in the Petition and the Settlement, an effective date of July 1, 2021, reflects the date Hudson began taking service on a full-time basis as a result of NHDES's directive to shut down two of the Town's three wells. Petition at 2-3, 6; Ware Testimony at 5 lines 12-13; Settlement at 4. Three extensions of two years each were included in the amended contract to provide the Town time to assess and implement a plan for replacing those sources of supply, and for PWW to assess the cost and capacity required to serve the Town on a full-time, year-round basis to avoid "a windfall [that] would result to PWW because the [current] rates were based on the cost to provide seasonal rather than full-time service." See Petition at 6, ¶9; Settlement at 6. As explained in the Petition, it was

“unknown . . . if a special contract will be needed after the proposed contract and if so, what those terms would look like.” Petition at 3, ¶4.

We find the retroactive reduction in PWW’s contract rates for Hudson to be reasonable under the circumstances described in the Petition and clarified in the Settlement signed by PWW, the Town, and the DOE. Although the OCA expressed disapproval of the proposed retroactive date at the prehearing conference held on July 6, 2022 (Tr. at 13-14), no objections to the Settlement or amended contract were filed. We find that the proposed contract, as amended and supported by the Settlement, adequately addresses the supply issues raised in the Petition, and the corresponding cost impacts on the Town, the Company, and affected customers. Accordingly, we find the amended contract to be just and consistent with the public interest, as required by RSA 378:18.

We therefore approve the new contract between PWW and the Town of Hudson for effect from July 1, 2021 until June 30, 2023, with three automatic extensions of two-year terms unless either party provides written notice to the other, at least 12 months in advance of the renewal date, of an intent to decline renewal. In approving this contract, we expect both PWW and the Town of Hudson to seek and consider any further steps that may be warranted to lower costs and to avoid the potential shifting of fixed costs to other PWW customers.

Based upon the foregoing, it is hereby

ORDERED NISI, that, subject to the effective date below, the new special contract between PWW and the Town of Hudson, as presented and supported by the Settlement filed on November 14, 2022, is hereby **APPROVED** for effect on July 1, 2021, as set forth herein above; and it is

FURTHER ORDERED, that a waiver of Puc 1606.02(a)(1) is **GRANTED** for purposes of accepting and implementing the new special contract with an effective date of July 1, 2021; and it is

FURTHER ORDERED, that the request of PWW to terminate its existing special contract with the Town of Hudson, upon implementation of the new contract approved herein, is **GRANTED**; and it is

FURTHER ORDERED, that PWW shall file a fully signed version of the approved new contract within 30 days of this Order *Nisi*; and it is

FURTHER ORDERED, that PWW shall file by March 1, 2023, for review by the Commission and the New Hampshire Department of Energy, its reconciliation of the difference between the rates charged to the Town of Hudson under the current, existing special contract and the new special contract, as approved, for the billing period July 1, 2021, to the effective date of this Order *Nisi*; and it is

FURTHER ORDERED, that DOE is requested to file by April 3, 2023, a recommendation regarding PWW's reconciliation and any over- or under-collection to be recovered from or refunded to Hudson for the term July 1, 2021, to the date of this Order *Nisi*; and it is

FURTHER ORDERED, that PWW 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 January 16, 2023, and to be documented by affidavit filed with the Clerk's Office on or before February 3, 2023; and it is

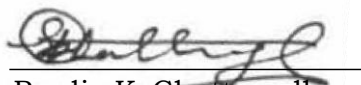
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a

hearing which states the reason and basis for a hearing no later than January 23, 2023, for the Commission's consideration; and it is

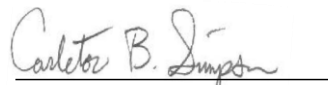
FURTHER ORDERED, that that any party interested in responding to such comments or request for hearing shall do so no later than January 30, 2023; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective on February 6, 2023, 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.

By order of the Public Utilities Commission of New Hampshire this sixth day of January, 2023.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-029

Printed: 1/6/2023

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