

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

Pennichuck Water Works, Inc.

Docket No. DW 22-070

Petition for Approval of Special Contract with Town of Milford

**SETTLEMENT AGREEMENT**

January 4, 2023

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**A. BACKGROUND**

Pennichuck Water Works, Inc. (PWW) is a New Hampshire corporation and regulated water utility that provides service to approximately 29,000 customers in a number of municipalities in southern New Hampshire including the City of Nashua, and the Towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Plaistow, and Salem. PWW is owned by Pennichuck Corporation, a private corporation, which in turn is wholly owned by the City of Nashua. Although Pennichuck Corporation is wholly owned by a municipality, PWW is still a private corporation and regulated public utility within the definition of RSA 362:2 and 4.

The Town of Milford (Milford) is a New Hampshire municipal corporation providing water service to customers within its corporate boundary. Milford has a current interconnection point with PWW's water system through a 6-inch meter.

In 1988, the N.H. Public Utilities Commission (Commission) approved the first special contract between PWW and Milford. See, *Pennichuck Water Works, Inc.*, Docket No. DR 87-

167, Order No. 19,027 (1988). That contract enabled Milford to purchase water at wholesale rates from PWW for a term of 15 years, until March 2003.

In 2003, the Commission approved the currently effective second contract (Current Contract) between PWW and Milford, for a twenty (20) year term, with two 10-year automatic renewals. See, *Pennichuck Water Works, Inc.*, Order No. 24,122 in Docket No. DW 02-157 (February 6, 2003). The last effective date of the Current Contract is February 5, 2023.

**B. PROCEDURAL HISTORY**

On October 21, 2022, PWW filed a petition for approval of a third contract (Proposed Contract) between PWW and Milford, to become effective as of February 6, 2023. PWW supported the petition with the pre-filed testimony of Donald L. Ware, a new Cost of Service Study (COSS), a copy of the Proposed Contract, a Statement of Special Circumstances justifying continued departure from PWW's general tariff schedules, a copy of the Current Contract, and a letter of support from Milford.

The new COSS was conducted to determine the rates needed to cover the change in usage by Milford. PWW requested an effective date of February 6, 2023, so that Milford can seamlessly transition from the Current Contract (which terminates at the end of the day on February 5, 2023) to the Proposed Contract, without interruption, adjustment, or a need for reconciliation.

The table below, which was included in Mr. Ware's testimony, compares the terms between the Current Contract and the Proposed Contract:

	<b>Current Contract</b>	<b>Proposed Contract<sup>1</sup></b>
<b>Base Annual Fixed Fee</b>	\$6,750.00 monthly (or \$81,000 per annum)	\$8,984.42 monthly (or \$107,813 per annum)
<b>Volumetric Rate</b>	\$2.5238/CCF	\$1.6669/CCF
<b>Minimum Purchase</b>	None	120,000 GPD per year
<b>Annual Ave Daily/Max Daily</b>	450,000/2,000,000 GPD	180,000/350,000 GPD
<b>Peak Hour</b>	2,000,000 GPD	900,000 GPD
<b>Monthly Fixed Meter Charge for 4" meter in new booster station</b>		\$66.17 per month
<b>Term</b>	20 years with (2) ten-year auto renewals	5-year Initial Term. (3) five-year auto renewals

PWW stated that since approval of the Current Contract, Milford's circumstances have changed such that Milford no longer needs to reserve 2 million gallons per day (MGD) of supply from PWW. This change in need precipitated Milford's request to renegotiate its contract for renewal with PWW. PWW and Milford's Proposed Contract, as updated through discovery, is included with this Settlement Agreement as Attachment A.

As part of the terms of the Proposed Contract, PWW explained that Milford will be paying the cost to construct a new booster pump station, and would also be paying 100% of the costs for the COSS and legal costs associated with regulatory approval of the Proposed Contract. PWW stated that, rather than pay up-front for the COSS and legal expenses, Milford had requested to

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<sup>1</sup> The initially filed COSS was not the then-current version. The Base Annual Fixed Fee should have been \$107,323 and the Volumetric Rate should have been \$1.5383/CCF. See Settlement Term Section D.2. and footnote 3 below.

incorporate the repayment, plus interest, into the Base Annual Fixed Fee of the Proposed Contract. The cost of the new booster pump station will be borne solely and directly by Milford and is not included in the Base Annual Fixed Fee.

PWW stated that the circumstances justifying the departure from PWW's filed tariff are as follows: (1) Milford owns water storage facilities, which results in Milford's usage being steady, consistent, and without troublesome hourly or daily peaks during seasonal peaking periods; (2) Milford paid for the entire cost of constructing the water main and booster station that currently feeds water from Amherst into Milford, and will be paying for the new booster station and demolition of the old booster station; and (3) Milford owns two large wells with a combined capacity capable of providing 100% of Milford's water supply, therefore PWW's provision of water will serve as a second source of water supply in the event that one of Milford's wells is not operational or the well field becomes contaminated, resulting in the loss of both wells as a source of supply.

PWW stated that retaining Milford as a customer for the next 5 to 20 years, with a base annual fixed fee and a minimum purchase amount, provides PWW and its other customers with two primary essential benefits from this contract: (1) guaranteed fixed monthly contributions towards PWW's water supply facilities' fixed costs; and (2) a contribution to the variable expenses related to PWW's General, Administrative, Water Supply and Distribution costs, which will defray a portion of these costs that would otherwise be borne in full by PWW's other customers.

Lastly, PWW stated that the Proposed Contract is consistent with the public interest because it will continue a legislative policy encouraging regional cooperation among water systems. See 2000 N.H. Laws Ch. 64 and 2002 N.H. Laws Ch. 141:7.

On October 24, 2022, the Commission issued an acknowledgement letter.

On October 26, 2022, the New Hampshire Department of Energy (DOE) filed a notice of appearance.

On November 3, 2022, PWW filed an agreed-to proposed procedural schedule on behalf of itself and the DOE. The proposed procedural schedule included three rounds of discovery as well as a technical/settlement session.

On November 14, 2022, the Commission issued an order commencing an adjudicative proceeding, approving the proposed procedural schedule, and setting a prehearing conference and technical session for December 15, 2022. The Commission also issued hearing guidelines. Further, the Commission ordered that PWW notify the public by publishing the Commission's order on PWW's website within two business days and file an affidavit confirming posting of the order no later than November 22, 2022. The Commission also published its order on its website.

On November 16, 2022, PWW filed an affidavit of timely publication of the Commission's order on PWW's website.

On December 15, 2022, the Commission held the scheduled prehearing conference and took statements from PWW and the DOE. No intervenors requested to participate in the proceeding. A representative from Milford was present and available at the prehearing conference, to answer questions the Commission may have had for the town regarding the Proposed Contract.

### **C. LEGAL AUTHORITY**

Pursuant to RSA 378:14, the general rule is that 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 378:18, however, 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.

The Commission has used the authority of RSA 378:18 broadly to approve just and reasonable rates to meet the unique needs of parties. As noted above, the Commission previously found, in 1988 and, again, in 2003, that special circumstances warranted deviation from the general tariffed rates for PWW’s water supply to Milford.

Cost causation is a traditional ratemaking policy that the Commission frequently reviews when setting rates. *Pennichuck Water Works, Inc.*, Docket No. DR 97-058, Order No. 22,883. This policy is relevant to this proceeding in that in some circumstances, the Commission has approved rate designs that included some cross subsidy among customers when that subsidy is within a “zone of ‘just and reasonable’”. *Id.* Here, however, there is no subsidy. A COSS is a direct assessment of cost causation and the COSS provided in Attachment C assessed PWW’s costs to provide service to Milford. The rates in the Proposed Contract are based directly on that assessment and reflect the updated costs to provide water supply. The application of the COSS to the Proposed Contract ensures that the rates Milford pays keep up with current cost conditions and that no subsidies will result from the PWW-Milford Proposed Contract.

Based on the statutory authorities, traditional ratemaking policy, and past Commission orders, PWW and the DOE believe the Commission has adequate authority to approve the relief requested in this Settlement Agreement.

**D. TERMS OF THIS SETTLEMENT AGREEMENT**

1. The DOE does not take exception to PWW and Milford's Proposed Contract, which is included with this Settlement Agreement as Attachment A. PWW and the DOE agree that the Proposed Contract will have no detrimental effect on PWW's other ratepayers. There will be no recovery from, or refund to, these other ratepayers as a result of the implementation of the Proposed Contract.

2. PWW and the DOE agree that Attachment A supersedes all prior versions of the Proposed Contract filed with the Commission and that the Commission should approve it. The changes shown in Attachment A, as compared to the initially filed version of the Proposed Contract, are the result of discovery and primarily affect the proposed rates, as follows:

	<b>Original COSS</b>	<b>Revised COSS</b>
Base Annual Fixed Fee	\$107,323	\$105,943
Volumetric Rate	\$1.5383 per 100 cubic feet	\$1.6669 per 100 cubic feet

Other typographical errors were also corrected in the Proposed Contract. Relevant data responses provided in discovery are included with this Settlement Agreement as Attachment B.

3. PWW and the DOE agree and recommend that the Commission approve Milford's request to include its COSS, legal, and regulatory approval costs in its payments to PWW over the term of the Proposed Contract, instead of paying those costs separately, with an up-front payment. As noted in response to DOE 3-1 included in Attachment B, PWW explained that Milford requested to pay the COSS, legal, and regulatory approval costs as part of the Proposed Contract. The portion of the Base Annual Fixed Fee associated with the legal costs will be based on 1.1 times the principal and interest associated with this cost based on a term of 20-years and an

interest rate equal to the effective interest rate associated with PWW's bonds sold in April 2022.<sup>2</sup> Because these costs and the cost of the financing are fixed and do not vary with volume, the costs are appropriately recovered through the Base Annual Fixed Fee.

4. PWW and the DOE agree and recommend the Commission approve the terms of the Proposed Contract, which include, among other terms, language in Section 5(a) that the Base Annual Fixed Fee may be adjusted only in the event that a new cost of service allocation study is obtained and approved by the Commission in direct response to the need to comply with regulations of the United States Environmental Protection Agency (EPA) or New Hampshire Department of Environmental Services (DES) and where such compliance involves the need to make material investment in, or upgrades to, the material water supply facilities that service Milford. In Section 5(c), the Proposed Contract contains language that the Volumetric Rate includes modifications made from time to time by adjustments to the Qualified Capital Adjustment Charge, as approved by the Commission.

5. The discovery also resulted in slight revisions to the original COSS and rates. The revised Excel version of the revised COSS is included with this Settlement Agreement as Attachment C.<sup>3</sup> A motion for protective treatment of the live Excel workbook will be filed under separate cover.

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<sup>2</sup> Milford agreed to pay these costs over 20 years at an interest rate equivalent to PWW's most recent defined cost of funds, which was PWW's April 2022 issued bonds that had an average coupon rate of 4.277920% (rounded to 4.28%).

<sup>3</sup>This COSS is the same as the version originally provided with PWW's response to DOE Set 3, "Attachment DOE 3-1." To avoid unnecessary duplication, Attachment Supplemental DOE 3-1 has not been included in the data responses provided in Attachment B. Instead, it is stand-alone Attachment C. It is important to note that Attachment C supersedes all prior versions of the COSS filed with the Commission. In PWW's preparation of its response to DOE 3-1, PWW discovered that the COSS originally filed with the Commission was not the then-current version.

6. PWW agrees to file a fully signed version of the Proposed Contract within thirty (30) days from the Commission's order approving the Proposed Contract.

**E. REQUEST FOR APPROVAL WITHOUT ADDITIONAL HEARING**

PWW and the DOE request the Commission approve the proposed contract and reconciliation without a hearing. Under RSA 378:18,

“nothing herein shall prevent a public utility from making a contract for service at rates other than those fixed by its schedules of general application, if special circumstances exist which render such departure from the general schedules just and consistent with the public interest and...the commission shall by order allow such contract to take effect.”

Adjudicative process and agency hearings are required when hearings are “required by law”. *In re Support Enforcement Officers I*, 147 N.H. 1, 7 (2001), it states that in determining whether a proceeding is a “contested case” thereby triggering RSA 541-A:31-36, the Court looks to “whether an agency hearing is ‘required by law’”. Here, no hearing is expressly required under RSA 378:18, and PWW and the DOE agree to the disposition of the docket by settlement agreement.

Therefore, because RSA 378:18 does not require a hearing, PWW and the DOE recommend that the Commission approve the Proposed Contract without a hearing. See, *Pennichuck Water Works, Inc.*, Order No. 26,597 (March 25, 2022) (Commission approved special contract with Merrimack Village District without additional hearing).

PWW and the DOE contend that there is ample support in the record, which includes this settlement agreement and attachments, to find that special circumstances exist that warrant continued departure from the general schedules as just and consistent with the public interest.

PWW and the DOE agree that the Proposed Contract is necessary to provide appropriately priced

water service to Milford under the terms of the Proposed Contract and that the Proposed Contract does not shift costs to other ratepayers or effect PWW's current tariff rates.

**F. CONDITIONS**

The parties expressly condition their support of this agreement upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept the provisions in their entirety, without change or condition, any party hereto, at its sole option exercised within fifteen (15) days of such Commission order, may withdraw from this agreement, in which event it shall be deemed to be null and void and without effect and shall not be relied upon by any party to this proceeding or by the Commission for any purpose.

The Commission's acceptance of this agreement does not constitute continuing approval of, or precedent regarding, any particular principle or issue in this proceeding, but such acceptance does constitute a determination that the adjustments and provisions set forth herein in their totality are just and reasonable and consistent with the public interest.

The discussions that produced this agreement have been conducted on the explicit understanding that all offers of settlement relating thereto are and shall be confidential, shall be without prejudice to the position of any party or participant representing any such offer or participating in any such discussion, and are not to be used in connection with any future proceeding or otherwise.

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IN WITNESS WHEREOF, the parties have caused this agreement to be duly signed by their respective fully authorized representatives.

**Pennichuck Water Works, Inc.**

Date: January 4, 2023

*Marcia A. Brown*  
By its Attorney, Marcia A. Brown

**New Hampshire Department of Energy**

Dated: January 4, 2023

*/s/ Suzanne G. Amidon*  
By its Attorney, Suzanne G. Amidon