

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-070

PENNICHUCK WATER WORKS, INC.

Petition for Approval of Special Contract with Town of Milford

ORDER *NISI* APPROVING SPECIAL CONTRACT

O R D E R N O. 26,763

January 20, 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 Milford (Milford, or the Town) for the back-up wholesale supply of water from PWW to the Town.

On October 21, 2022, PWW filed a petition (Petition) for approval to enter into a new contract with Milford. The New Hampshire Department of Energy (DOE) filed an appearance on October 26, 2022. No petitions to intervene or appearances were filed. A prehearing conference was held on December 15, 2022. On January 4, 2023, PWW filed a settlement agreement (Settlement) reached with DOE, with a motion for confidential treatment of certain proprietary information. Also on January 4, 2023, PWW filed a motion for waiver of a *nisi* period and proposed an effective date prior to February 5, 2023. The Settlement reflects certain amendments to the initial, proposed new 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/2022/22-070.html.

I. PETITION

In its Petition, PWW requested approval pursuant to RSA 378:18 to enter into a new special contract with Milford to supply water on a wholesale basis to the Town for an initial term of 5 years followed by three 5-year automatic renewals. In support of its Petition, PWW filed the direct testimony of Chief Operating Officer Donald L. Ware, with related attachments, including: (1) a new Milford-specific cost of service study (COSS) prepared by PWW's consultant, Raftelis Financial Consultants (Raftelis), in support of the rates proposed in the new contract (Attachment DLW-1); (2) a copy of the new, proposed contract (Attachment DLW-2); (3) a statement of special circumstances (Attachment DLW-3); (4) a copy of the current 2002 contract between PWW and the Town (Attachment DLW-4); and (5) a letter of support for the new contract from the Town of Milford (Attachment DLW-5).

Under the existing 20-year contract, PWW provides Milford with wholesale water supply as a second source of supply in the event that one of the Town's three existing wells becomes non-operational or the well field becomes contaminated, resulting in the loss of both wells. That contract expires on February 5, 2023. The proposed new contract would continue PWW's agreement to supply water to the Town under amended terms.

II. SETTLEMENT AGREEMENT

The following chart, included in the Settlement, lays out the proposed changes to the existing contract between PWW and Milford, as adjusted by the Settlement:

	Current Contract	Proposed Contract
Base Annual Fixed Fee	\$81,000 per annum	\$105,943 per annum
Volumetric Rate	\$1.5383 per 100 cubic feet	\$1.6669 per 100 cubic feet
Minimum Purchase	None	120,000 GPD per year

Annual Average Daily/Maximum Volume	450,000/2,000,000 GPD	180,000/350,000 GPD
Peak Hour	2,000,000 GPD	900,000 GPD
Monthly Fixed Meter Charge for 4" meter in new booster station	N/A	\$66.17 per month
Term	20 years with 2 ten-year automatic renewals	Five-year Initial Term with 3 five-year automatic renewals

In support of the new contract terms, the Settlement notes PWW's statements in its Petition that: (1) Milford's circumstances have changed and the Town no longer needs to reserve 2 million gallons per day of supply from PWW; (2) Milford will pay for the cost to construct a new booster pump station and 100 percent of the costs for the COSS and the legal fees associated with regulatory approval of the proposed contract;; (3) Milford owns water storage facilities, which results in the Town's usage being steady and consistent, with PWW's supply needed only as a second source in the event one or more of the Town's wells are rendered inoperable; and (4) the retention of Milford as a customer will provide PWW with guaranteed fixed monthly contributions towards fixed costs, and a contribution to variable expenses related to PWW's General, Administrative, Water Supply, and Distribution costs, to the benefit of both the Company and its other customers. Settlement at 4-5; Attachment DLW-3 (Statement of Special Circumstances) and Settlement Agreement, Att. B-part 1 (PWW 11-04-22 response to DR No. DOE 1-1).

III. COMMISSION ANALYSIS

A. Special Contract

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. 26,756 (January 6, 2023) (approval of special contract for bulk water supply to the Town of Hudson to remedy lack of adequate water supply due to well contamination, and to account for costs to provide increased wholesale supply, where Hudson has its own water storage tanks and service infrastructure).

The Settlement provides a statement of special circumstances supporting approval of the proposed contract, including Milford's need for a secondary source of water supply in the event of a loss of one or more of its existing wells. The Settlement further notes that the retention of Milford as a customer for the next 5 to 20 years will provide PWW and its other customers with two essential benefits: (1) guaranteed fixed monthly contributions toward PWW's fixed costs, and (2) a contribution to PWW's variable expenses, both of which will defray a portion of costs that would otherwise be borne in full by PWW's other customers.

Based on the record before us, we find that the special contract proposed in this proceeding by PWW and Milford, as supported by the testimony of Mr. Ware and the Settlement reached between the Company and DOE, meets the applicable statutory standards for approval. We therefore approve the new contract for effect from February 6, 2023 until February 5, 2028, with three automatic extensions of five-year terms unless written notice is delivered by the Town to PWW at least six months prior to the conclusion of the then-existing term. In approving this contract, we expect both

PWW and the Town of Milford 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.

PWW requested that the new contract go into effect prior to the expiration of the existing contract on February 5, 2023. Because we find that the contract meets applicable statutory requirements and that the terms are intended to permit continued service from PWW in the event the Town of Milford is subject to an unexpected shortage of water to serve its customers, we issue this decision by order *nisi*, effective February 6, 2023.

B. Motion for Protective Order and Confidential Treatment of Proprietary Information

In its motion for a protective order, PWW requested protective treatment of the live formulae included in the COSS prepared by Raftelis as confidential, commercial, or financial information protected under RSA 91-A:5, IV. PWW asserted that Raftelis considers the live formulae to be proprietary and confidential, its work product, and a trade secret. Accordingly, PWW argued, Raftelis has a privacy interest in its proprietary software and would be subject to a competitive disadvantage upon public disclosure, as competitors could use the methodologies and processes developed by Raftelis for their own financial gain.

The Commission has routinely protected as confidential similar proprietary business models and software formulae provided in support of utility rate filings in the past. *See, e.g., Abenaki Water Company*, Order No. 25,840 (November 13, 2015); *Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 26,376 (June 30, 2020); *Pennichuck Water Works, Inc.*, Order No. 26,711 (October 4, 2022); and *Pennichuck Water Works, Inc.*, Order No. 26,726 (November 18, 2022). Here, we find that the identified information constitutes confidential and sensitive commercial or

financial information under RSA 91-A:5, IV, and that PWW has a privacy interest in protecting the proprietary software of its consultant. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by the privacy interests of PWW and its consultant in information that, if disclosed, could pose legitimate financial harm or privacy risk to PWW, including the retention of experts in aid of future regulatory rate filings.

Accordingly, pursuant to Puc 203.08(a), we grant PWW's motion for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED NISI, that, subject to the effective date of this order, the new special contract between PWW and the Town of Milford, as presented and supported by the Settlement filed on January 4, 2023, is hereby **APPROVED** to take effect beginning February 6, 2023, as set forth herein above; and it is

FURTHER ORDERED, that the request of PWW to terminate its existing special contract with the Town of Milford, 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 the effective date of this Order *Nisi*; and it is

FURTHER ORDERED, that PWW shall cause a copy of this Order *Nisi* to be published on its company website no later than January 23, 2023, and once in a statewide newspaper of general circulation or of circulation in those portions of the

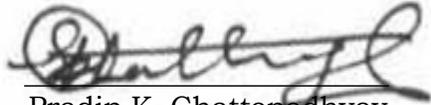
state where operations are conducted, such publication to be no later than January 30, 2023, and to be documented by affidavit filed with the Clerk's Office on or before February 3, 2023; and it is

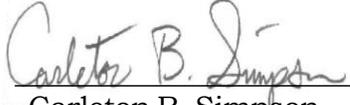
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than February 2, 2023, for the Commission's consideration; and it is

FURTHER ORDERED, that that any party interested in responding to such comments or request for hearing shall do so no later than noon on February 3, 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 obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date, in which case the existing contract shall extend until all requirements and actions noted herein are effectuated.

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


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-070

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