

**DW 04-228**

**PENNICHUCK WATER WORKS, INC.**

**Petition for Special Contract for Service to Anheuser-Busch, Inc.**

**Order *Nisi* Approving Third Special Contract**

**ORDER NO. 24,441**

**March 4, 2005**

**I. BACKGROUND**

On December 8, 2005, Pennichuck Water Works, Inc. (PWW), a public utility providing water service in communities in southern New Hampshire, petitioned the New Hampshire Public Utilities Commission (Commission) for authority, pursuant to RSA 378:18, to provide service to Anheuser-Busch, Incorporated (AB), pursuant to the terms of a proposed Special Contract entered into by PWW and AB, dated October 5, 2004. AB owns and operates a brewery in the town of Merrimack and currently receives service under the terms of a special contract approved by the Commission in Order No. 21,681 (June 6, 1995) in Docket No. DR 95-046 (Second Contract). The Second Contract superseded a prior special contract between PWW and AB that was approved by Commission Order No. 9,685 (April 25, 1969) (First Contract). The Second Contract expires June 30, 2005.

In this Petition, PWW seeks approval of a proposed third special contract (Third Contract) to replace the Second Contract. The Petition was accompanied by a copy of the executed Third Contract as well as a Statement of Special Circumstances in accordance with N. H. Code of Admin. Rules, Puc 1606.03(b).

Puc 1606.05(c) (2) requires submission of a title page that identifies the serial number of any special contract being superseded by the special contract. The Second Contract

between PWW and AB did not bear a serial number, and thus PWW could not reference that number in its title page. PWW filed a motion for a waiver from the requirements of N. H. Puc Code of Admin. Rules Puc 1606.5 (a) and (c) (1) and (2).

In support of the Petition, PWW submitted prefiled testimony of Stephen J. Densberger, Executive Vice President of PWW. Mr. Densberger identified the terms and conditions of the proposed Third Contract as well as the particular circumstances that render a departure from PWW's general schedules just and consistent with the public interest, pursuant to RSA 378:18. PWW stated that its 2001 Cost of Service study demonstrated that the cost to serve AB is significantly below the costs that would result from application of general metered rates under PWW's tariff. This cost difference constituted a special circumstance supporting charging AB for service pursuant to a special contract.

On March 2, 2005, the Commission Staff (Staff) filed a letter recommending approval of the Third Contract. Staff attached to its letter a copy of PWW's responses to Staff's data requests received on January 31, 2005. Staff indicated that for many years PWW has been supplying water service to AB under terms of special water supply contracts at a rate other than that specified in PWW's tariff. This lower rate was established after a Cost of Service study was performed which identified the amount of annual revenue needed to satisfy costs allocated to AB. This revenue was recovered through a rate equal to a certain percentage, approximately one half, of PWW's lowest declining block rate. In a subsequent rate proceeding, PWW established a single block rate and AB's contract rate continues to be a percentage of PWW's single block metered rate. The most recent PWW Cost of Service study on file with the Commission, dated July, 2001, indicates that AB should be responsible for 4.8% of the total annual revenues of PWW. That translates to \$0.79 per 100 cubic feet. AB's rate is subject to adjustment in rate

cases in the same percentage as any change in the volumetric rate for general metered service applied to PWW's core. For instance, whatever percentage rate increase is applied to the general metered service rate as a result of PWW's current rate case, Docket No. DW 04-056, would also be applied to AB's consumption rate.

According to PWW and Staff, during calendar year 2003, AB used 710 million gallons of water or 1.95 million gallons per day. AB is PWW's largest customer and this amount is over six times the amount of water taken by PWW's next largest customer. Under the Third Contract, PWW would maintain facilities capable of continuously delivering 2.0 million gallons per day, and up to 3.0 million gallons per day provided AB gives one year's notice of its intention to increase consumption as provided in Section 6 of the Third Contract. As with the Second Contract, the term of the Third Contract is ten years.

Similar to the Second Contract, the Third Contract also contains a minimum payment provision whereby AB can reduce its water consumption by 10% per year commencing in 2005, by 50% in the years beginning July 1, 2009-2011, by 60% in years 2012-2014, the last three years of the contract, as set forth in Schedule A of the Third Contract. According to Schedule A, the minimum revenue from AB will range from \$682,571 in year one to as low as \$303,365 in the last three years of the Third Contract. Finally, in order to afford PWW an opportunity to react to a sudden loss in revenue resulting from the loss of AB as a customer, AB will pay 90% of the Base Adjusted Minimum Annual Charge<sup>1</sup> for the annual period beginning on the first of July following AB's notice, two-thirds of the Base Adjusted Minimum Annual Charge for the period beginning on the second July first following AB's notice, and one-third of

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<sup>1</sup> Base Adjusted Minimum Annual Charge is the minimum charge determined by taking into consideration the prior period's obligations and calculating the percent reduction therefrom.

the Base Adjusted Minimum Annual Charge on the third July first following AB's notice to discontinue taking service.

According to Staff, the proposed Third Contract provides benefits for PWW's customers in the form of additional revenue while satisfying the needs of AB in conducting its operations in the town of Merrimack. AB's water consumption is approximately 14.8% of PWW's average daily demand, and Staff agreed that the special contract would help stabilize overall demand and reduce the need to increase rates to PWW's other customers. Staff identified that the Third Contract provides revenue stability in the event of sudden reductions in usage from AB in the form of Minimum Payment Obligations and Early Termination provisions. Staff further noted that the Third Contract provides contingencies in the event of municipalization of PWW's assets, an issue presently before this Commission in Docket No. DW 04-048. In the event PWW's assets are taken, PWW's obligations under the contract terminate and, to the extent permissible, would be assumed by the relevant governmental entity.

## **II. COMMISSION ANALYSIS**

Under 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." The Commission may deviate from this general rule and approve special contracts for services by a public utility "if special circumstances exist which render such departure from the general schedules just and consistent with the public interest. . . ." RSA 378:18. Based on our review of the proposed Third Contract between PWW and AB, Staff's recommendation, and discovery, we find that service to AB constitutes a special circumstance because of its high level of consumption and the low level of cost associated with providing that

service. PWW serves no other customer(s) with similar usage requirements; in fact, the next highest customer usage is significantly lower than AB. We recognize PWW's need for stability in usage and revenues and believe the provisions of the Third Contract regarding minimum payment obligations and maximum water use address those needs.

We take administrative notice that the City of Nashua has before us, in Docket No. DW 04-048, a petition seeking valuation of PWW's assets relative to the City of Nashua's eminent domain authority under RSA 38. The Third Contract contains language terminating PWW's obligations to AB in the event of a municipal take-over of assets necessary to serve AB and provides, to the extent permissible, for transfer of those obligations to an acquiring governmental entity. We believe such a clause is reasonable and demonstrates that both PWW and AB recognize that although the term of the special contract runs through June 30, 2015, this contract may be impacted by developments in DW 04-048.

For the above reasons, we find special circumstance exist which justify departure from PWW's schedules of general application. We further find that the departure described in the terms and conditions of the Third Contract with AB are just and reasonable, and consistent with the public good in accordance with RSA 378:18.

With respect to PWW's request that this Commission waive application of Puc 1606.05(a) and (c) (1) and (2), we find the solution articulated in Staff's recommendation of assigning a year and sequential number to the contract reasonable. Accordingly, we will grant PWW's waiver request and order PWW's Third Contract be numbered 2005-1 and that the Second Contract be numbered 1995-1. Any other special contracts entered into by PWW shall be numbered by year and sequentially according to this example, regardless of the identity of the other contracting party.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that pursuant to RSA 3748:18, Pennichuck Water Works, Inc. Third Contract with Anheuser-Busch, Inc. with an effective date of July 1, 2005 is APPROVED; and it is

**FURTHER ORDERED**, that Pennichuck Water Works, Inc.'s motion to waive the requirements of N. H. Puc Code of Admin. Rules Puc 1606.05 (a) and (c) (1) and (2) is GRANTED; and it is

**FURTHER ORDERED**, that the Petitioner 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 March 14, 2005 and to be documented in an affidavit filed with this office on or before April 4, 2005; 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 March 21, 2005 for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than March 28, 2005; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective April 4, 2005, 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 fourth day of  
March, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary