

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**DW 10-091
DW 11-018**

PENNICHUCK WATER WORKS, INC.

**Permanent Rate Proceeding
Special Contract with Anheuser-Busch, Inc.**

**Order Approving Temporary/Permanent Rate Recoupment,
Granting Motion for Confidential Treatment, and
Granting Recovery of Certain Rate Case Expenses**

ORDER NO. 25,278

October 21, 2011

I. BACKGROUND

On June 9, 2011, by Order No. 25,230, the Commission approved a settlement agreement in this docket that, among other things, established new permanent rates for Pennichuck Water Works, Inc. (PWW) and called for PWW to file a reconciliation report to recover the difference between temporary and permanent rates in the proceeding. The Commission also authorized PWW to recover rate case expenses incurred in the instant docket and directed PWW to file within 30 days of the order a calculation of its rate case expenses as well as a proposed surcharge to recover the expenses.¹

A. Reconciliation

On June 20, 2011, PWW filed its reconciliation of the difference between temporary rates effective June 16, 2010, and permanent rates approved on June 9, 2011. On August 10, 2011, Staff filed a letter recommending the Commission approve PWW's proposal. Staff stated that it had reviewed PWW's temporary/permanent rate reconciliation report and recommended that the

¹ A more complete description of the procedural history of this proceeding may be found in Order No. 25,230.

Commission approve the proposed recoupment and refund amounts. Staff stated that PWW's proposal was consistent with Order No. 25,230 as well as with the rates set forth in PWW's May 24, 2011 revised cost of service study, Exhibit 14.

B. Rate Case Expenses

On June 20, 2011, pursuant to the provisions of the approved settlement agreement, PWW submitted to Staff and OCA its proposal to recover \$144,552.70 in rate case expenses. On August 4, 2011, Staff filed a letter and recommended the Commission eliminate \$30,255.62 from PWW's requested rate case expenses based upon three adjustments and allow PWW to recover \$114,297.08, through a \$4.32 surcharge per customer collected over a 12-month period at \$0.36 per customer per month. Staff stated that PWW concurred with Staff's recommendation.

On August 12, 2011, OCA filed a response to PWW's rate case expense request. OCA requested that the Commission deny \$70,369.30 in expenses and authorize PWW to recover only \$74,183.70. On August 19, 2011, PWW responded to OCA's arguments, urging the Commission to deny OCA's request to adjust PWW's rate case expenses and approve recovery of its rate case expenses, as adjusted and supported by Staff. PWW also requested leave to submit additional rate case expense information to cover expenses incurred in responding to OCA's filing.

C. Confidentiality

On August 16, 2011, PWW filed an additional motion for confidential treatment regarding hourly billing rate information provided to the Staff and OCA in the form of invoices attached to PWW's rate case expense reimbursement request. PWW provided copies of redacted invoices with the motion.

On September 15, 2011, PWW supplemented its motion for protective order and requested a waiver of the filing time requirement under Puc 203.08(d) and (e). PWW sought to protect information contained in its responses to Data Requests Staff 4-5 and OCA 2-31. PWW also withdrew its request to protect the 2% salary increase information and the 2009 total annual salary information contained in its response to Data Request Staff 2-8 because this was previously disclosed or could be gleaned from other public information. PWW submitted a revised redacted Attachment Staff 2-8 with its motion.

II. POSITIONS OF THE PARTIES

A. PWW

With respect to recovering the difference between temporary rates approved in Order No. 25,153 and permanent rates approved in Order No. 25,230, PWW proposes to bill a surcharge to recover the difference over twelve equal monthly installments. The proposed recoupment for the general-metered (GM) class would total \$1,087,888.14. An average residential customer would see an annual recoupment of \$35.56 or \$2.96 per month (\$858,517.58 divided by 24,144 customers). Recoupment amounts proposed for Anheuser-Busch, Inc. would be \$77,231.24; the Town of Milford, \$16,659.86; and the Town of Hudson, \$31,899.70. Proposed Recoupment for Public Fire Hydrants for Nashua is \$73,582.42; the Town of Bedford, \$5,127.86; the Town of Merrimack, \$2,806.32; the Town of Amherst, \$10,467.84; and the Town of Derry, \$1,124.69. Because the permanent private Fire Protection rate was substantially lower than the temporary rate for this service, PWW's 806 private Fire Protection customers would be refunded a total of \$70,802.82.

With respect to its motions for confidential treatment concerning responses to discovery requests Staff 2-8, Staff 4-5, OCA 2-31, AB 2-1, AB 2-2, and the hourly billing rate information

contained in rate case expenses provided to Commission Staff and OCA, PWW argued that the information is expressly exempt from public disclosure pursuant to RSA 91-A:5, IV. PWW stated that the discovery responses involve records pertaining to internal personnel practices as well as confidential, commercial, or financial information. PWW argued that the employee payroll cost information provided in response to Staff 2-8 falls squarely within RSA 91-A:5, IV. PWW contended that release of such information to the public would not advance any substantial public benefit and would invade the privacy of those PWW employees involved. PWW stated that its response to data request AB 2-1 includes confidential customer water consumption and cost data as well as proprietary computer model formulas. PWW asserted that release of the information would harm Anheuser-Busch, Inc. and would likely result in competitive disadvantage to its cost of service consultants.

PWW also requested that the Commission waive Puc 203.08 (e) requiring that a motion for confidential treatment be filed before the final hearing in a docket and find that a waiver will not disrupt the orderly, efficient, and timely resolution of this matter and that the public will not be prejudiced by the waiver. PWW stated that it described the confidential material and that the description provides the public with sufficient information regarding the nature of the materials. PWW asserted that prompt resolution of this matter will advance the public's interest.

With respect to rate case expenses, PWW argued that OCA is estopped from challenging the process PWW used for seeking recovery of its rate case expenses because OCA participated in the settlement agreement approved by the Commission. The settlement agreement required PWW to submit its expenses in the manner that it did, and made clear that the issue reserved for subsequent review and consideration was the amount of the reasonable and prudent rate case expenses, not the process for submitting those expenses. PWW argued having participated in the

settlement agreement and chosen not to seek reconsideration of the order approving the settlement agreement; OCA cannot now argue that the process is improper.

PWW disputed OCA's characterization of the rate case expense phase of this docket as a separate adjudicative proceeding and stated that the elements of an adjudicative proceeding have been satisfied because OCA had an opportunity to conduct discovery on PWW's rate case expense filing and to file its position with the Commission. PWW stated that there is no legal basis for OCA's argument that a hearing must be held prior to Commission approval of the rate case expenses. PWW asserted that a Commission decision on rate case expenses without a hearing does not violate state or federal due process rights. Further, PWW argued that any change in the process for requesting recovery of rate case expenses should be applied to all utilities on a prospective basis.

PWW defended its rate case expenses as reasonable and prudently incurred and stated that although it requested recovery of a total of \$144,552.70, it did not contest the dollar amount of \$114,297.08 recommended by Staff. PWW stated that the expenses comprised legal, consulting, administrative, and publication expenses that related only to Docket No. DW 10-091 and were direct expenses that are not otherwise recovered by PWW through its existing rates. PWW stated that the amount of the expenses is reasonable given the length of the case and nature of the issues involved.

PWW asked the Commission to reject OCA's argument that PWW's rate case expenses ought to be reduced based on the timing of the rate case filing, PWW's method of engaging outside consultants, and issues concerning the special contract with Anheuser-Busch, Inc. PWW stated that if OCA believed PWW should not have filed another rate case, it could have opposed the rate increase rather than agree to it in the settlement agreement. PWW stated that OCA

provided no basis for its position that PWW's consultant expenses should be disallowed because the consultants were used in prior cases. PWW argued that it would be improper for the Commission to impose new standards, such as an RFP process for rate case services, retrospectively. PWW denied that, absent a written agreement between PWW and its outside legal counsel, there would be no objective basis by which the Commission could verify that outside legal counsel performed in accordance with any pre-defined terms of service and scope of work. PWW stated it provided detailed invoices that were more probative than any written contract.

PWW requested that the Commission reject OCA's argument to reduce by nearly half the costs related to negotiating the special contract with Anheuser-Busch, Inc. PWW stated that Docket No. DW 11-018 was consolidated into the rate case proceeding. PWW asserted that the cost of service study update was necessary to address issues raised by OCA and to ensure Anheuser-Busch, Inc. was paying its fair share of PWW's costs while remaining a customer of PWW.

PWW asserted that OCA's arguments concerning \$210.07 in mileage reimbursement and other expenses were unfounded. PWW objected to OCA's allusions to possible charges for first-class air travel, courier delivery, and limousine services. PWW stated that it did not have any travel costs for consultants and that the only travel expenses incurred were for minimal employee mileage expense. PWW denied that \$210.07 was excessive and stated that if the Commission adopts the review of the minutia OCA seeks, utilities will lose discretion on how best to run their affairs. PWW stated that it performs most of its own rate case preparation, testimony, exhibits, and responses in-house and should be commended for its prudent judgment and careful cost control.

PWW objected to OCA's request that the Commission deny PWW interest on the amount of rate case expenses because PWW failed to follow the Commission's rules regarding the filing of motions for confidential treatment. PWW stated such a remedy would be far beyond the bounds of any remedy previously imposed by the Commission for such a procedural matter. PWW requested the Commission deny OCA's request in its entirety, approve the rate case expenses recommended by Staff, and grant PWW leave to file additional rate case expense information for PWW's efforts to respond to OCA's filing regarding rate case expense.

B. OCA

OCA took no position on PWW's proposed temporary/permanent rate recoupment filing and did not oppose the granting of PWW's motions for protective order. OCA requested the Commission deny PWW recovery of \$70,367.74 in rate case expenses. OCA cites as reasons that PWW: had received authorization to recover more than \$119,000 in rate case expenses less than eight months prior to the instant rate case docket; did not competitively bid any of its contracts for outside consultants; has no written agreement for services provided by its outside legal counsel; and, included excessive costs related to the eminent domain proceeding, the negotiation of the special contract with Anheuser-Busch, Inc., and excessive travel mileage.

OCA recommended that the Commission allow PWW to recover only \$74,183.70 in rate case expenses and also requested that the Commission deny PWW interest on this amount for PWW's failure to abide by the Commission's rules. Specifically, OCA noted that PWW failed to file its rate case expenses with the Executive Director and failed to serve all parties to the docket. *See*, Puc 203.02, .03, .04 and .05. Also, OCA stated that PWW failed to file its motion for confidential treatment in accordance with Puc 203.08(d) and (e).

OCA argued that PWW's filing of a new rate case and incurrence of more than \$144,000 in expenses so soon after its last rate case concluded was not just, reasonable, or in the public interest. OCA stated that PWW's consultant's charges for the 2010 rate case should have reflected economies for having worked on PWW's 2008 rate case. OCA took issue with PWW's use of sole-source contracts for its consultants because OCA and the Commission must use formal public competitive bidding when procuring consultants. OCA stated that PWW's lack of a written contract for its outside legal counsel makes it difficult to have an objective basis by which to verify that PWW defined any terms of service or scope of work before the consultant began providing services. OCA recommended the Commission disallow 50% of legal fees, or \$35,736.54, and thus split the cost between shareholders and ratepayers. OCA requested the Commission require PWW to formally memorialize all contracts, including terms and scope of service, for all future rate cases.

OCA requested that the Commission reject \$28,622.62 in expenses because these expenses related to PWW's eminent domain proceeding. OCA noted that PWW keeps these expenses in a deferred account and has already agreed not to seek recovery of its eminent domain expenses if the City of Nashua acquires it. OCA stated that the expenses themselves are not just and reasonable and cited PWW's use of five attorneys when OCA and Staff were represented by just one attorney each. OCA noted PWW's attorneys spent \$2,600 on Westlaw research for one issue and this expense alone equates to half of OCA's annual Westlaw budget. OCA also requested that the Commission disallow \$5,798.51 in expenses relating to negotiation of the special contract with Anheuser-Busch, Inc. This amount is \$2,260 more than Staff's recommended disallowance and relates to the cost of service study performed in October 2010.

OCA argues that the October study was not related to the rate case and was unnecessary for the settlement reached in the rate case.

OCA requested the Commission disallow \$210.07 in mileage expenses associated with three PWW employees traveling to the Commission in separate cars rather than carpooling. OCA argued the Commission should replace that expense with one round trip from PWW's main office in Merrimack to the Commission at the mileage rate of 50 cents per mile set by the IRS for 2010. OCA argued that the Commission should split four other mileage expenses between PWW's rate case and Pittsfield Aqueduct Company, Inc.'s rate case, Docket No. DW 10-090, because the employees' attendance at the Commission was for both companies.

OCA also recommended disallowance of costs related to first-class air travel, courier delivery, limousine or private car service, hotel room service, and alcohol, among other things. OCA requested that the Commission order PWW to affirmatively deny or confirm whether its proposed recovery amount includes these costs. OCA stated that it propounded discovery upon PWW and was unable to determine if such costs were included. OCA also argued that the Commission should require PWW to retain and produce itemized receipts in the future.

OCA requested that in all future rate cases the Commission require that PWW use a competitive bidding process and engage the provider with the lowest bid unless there is an adequate justification for doing otherwise. In light of PWW's failure to competitively bid for services, OCA sought disallowance of interest recovery on PWW's approved rate case expenses.

Lastly, OCA stated that PWW failed to comply with Commission rules and argued that the Commission should require PWW to file all future rate case expense filings with the Commission and should consider penalizing PWW pursuant to RSA 365:41. OCA also

requested that the Commission formally commence rulemaking pursuant to RSA 365:8, X relative to standards and procedures for determination and recovery of rate case expenses.

C. Staff

Staff reviewed PWW's calculation of temporary/permanent rate recoupment and agreed that PWW's calculation was consistent with Order No. 25,230 as well as the May 24, 2011 cost of service study. Staff recommended that the Commission approve the recoupment surcharges and refund. Staff noted, however, that the Report of Proposed Rate Changes, Exh. 16, provided at hearing incorrectly reported the percentage increase attributed to the proposed permanent rates for the Private Fire Protection and Public Fire Protection classes. Specifically, Exh. 16 indicated Private Fire Protection rates would increase by 18.15% when the increase should have been 2.56% and that the Public Fire Protection rates would increase by 6.38% when the increase should have been 11.51%. Staff stated that the rates otherwise represented at hearing were correct, only the percentages attributed to the rates for these two customer classes were incorrectly calculated and stated. Staff said the error became apparent when PWW proposed a refund, rather than a surcharge, for the Private Fire Protection customers. The refund resulted from the difference between the temporary overall rate increase of 10.81% and the permanent increase of 2.56% for Private Fire Protection.

With respect to rate case expenses, Staff recommended the Commission disallow \$30,255.62 in expenses and authorize PWW to recover \$114,297.08 in expenses. In discovery, Staff stated that PWW agreed that \$3,538.51 should be withdrawn because it related to negotiation of the Anheuser-Busch, Inc. special contract. Also, PWW agreed that \$10.50 should be removed because it was an expense related to the Pittsfield Aqueduct Company, Inc. rate case. Lastly, Staff recommended \$26,727.61 be disallowed because it represented legal charges

incurred relative to PWW's initial proposal to include recovery of certain eminent domain costs in customer rates.

III. COMMISSION ANALYSIS

A. Reconciliation

Upon the final disposition of a rate proceeding in which temporary rates were in effect, RSA 378:29 requires the utility to reconcile the difference between temporary rates and the permanent rates finally determined in the proceeding. The proposed surcharge or refund is based on usage between June 16, 2010, the effective date of temporary rates pursuant to Order No. 25,153, and June 9, 2011, the date permanent rates were approved by Order No. 25,230. The surcharge is proposed for twelve equal monthly installments consistent with the approved settlement agreement. The only irregularity, as noted by Staff, is that while the calculation of the temporary/permanent recoupment was correct, the percentage increases as represented at hearing for the Private Fire Protection and Public Fire Protection classes were incorrect. The permanent rates proposed and approved by the Commission for these classes remain correct. While we note this calculation error, we recognize that it is not an error that impacts revenues, rates, or the reconciliation and thus does not warrant any further Commission action. Having reviewed PWW's calculations and Staff's recommendation, we find the temporary/permanent recoupment amounts to be just and reasonable and consistent with RSA 378:29 and RSA 378:7. Based on the above, we will approve the rate recoupment surcharges and refund proposed by PWW.

B. Confidentiality

RSA 91-A:5, IV states, in relevant part, that records of "confidential, commercial, or financial information" are exempted from disclosure. *See Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009). In determining whether commercial or

financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* This is similar to the Commission's rule on requests for confidential treatment. *See* N.H. Code Admin. Rules Puc 203.08.

The Commission has previously found hourly billing rate information to be exempt from disclosure. *See, Unital Energy Systems, Inc.*, Order No. 24,746, 92 NH PUC 109, 114 (2007). Disclosure of PWW's hourly billing rate information, records pertaining to internal personnel practices, employee payroll cost information, customer water consumption and cost data, and proprietary computer model formulas would reveal internal business decisions and financial information, which could harm Anheuser-Busch, Inc., the McLane law firm, AUS Consultants, and Guastella Associates, and could result in a competitive disadvantage to PWW's service consultants. As such, disclosure would invade the privacy interests of PWW, its consultants, and Anheuser-Busch, Inc. and could damage competitive positions, potentially to the detriment of ratepayers. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. In balancing the interests of PWW, its consultants, and Anheuser-Busch, Inc. in protecting information with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interests in disclosure and, therefore, we grant PWW's motions and supplemental motion. Consistent with Puc 203.08(k), our grant of these motions is subject to our on-going authority, on our own

motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination.

N.H. Code Admin. Rules Puc 203.08(d) states that “[i]n lieu of immediately filing a motion for confidential treatment, a party providing a document to the commission staff” in discovery may accompany the submission with a statement that the party has a good faith basis for seeking confidential treatment of the document and that prior to hearing, the party intends to submit a motion for confidential treatment. In this instance, PWW did not submit the motion prior to the hearing pursuant to Puc 203.08(d) and has requested a waiver of the rule. We first consider whether the pre-hearing filing requirement would be onerous to PWW, or inapplicable given the circumstances, and whether the purpose of the rule would be satisfied by an alternative method, pursuant to Puc. 201.05(b).

The purpose of the rule is to promote order and ensure that prior to hearing parties know what potential evidence a party deems confidential. PWW informed the parties of the information for which it would seek confidential treatment, but PWW did not file its motion prior to hearing. It can be argued that the purpose of the rule was satisfied, in that PWW informed the parties of the confidential nature of the information. PWW’s filing of rate case expenses was made following the final hearing in the matter and thus it would not have been possible for PWW to comply with the pre-hearing filing requirement found in Puc 203.08(d). Under these circumstances, we find that a waiver of the rule serves the public interest and will not disrupt the orderly and efficient resolution of this matter. Accordingly, we grant the waiver request.

C. Rate Case Expenses

The Commission has historically treated prudently incurred rate case expenses as a legitimate cost of business appropriate for recovery through rates. *Hampstead Area Water Company, Inc.*, Order No. 25,025, 94 NH PUC 563, 565 (2009). After a review of PWW's rate case expenses, Staff recommends disallowance of three expenses totaling \$30,255.62 and reduction of the total rate case expenses to \$114,297.08. PWW does not object to Staff's proposed reduction. OCA recommends that the Commission disallow \$70,367.74 and approve \$74,183.70 in expenses. PWW objects to OCA's recommendation.

In its Summary of Relief Requested in sections A., B., and C.e. from its August 9, 2011 filing, OCA requests that the Commission require PWW to "affirmatively deny or confirm" whether expenses include costs for first-class air travel, courier delivery, limousine or private car services, hotel room service, entertainment, recreational activities or services, personal services, or alcoholic beverages and reduce PWW's rate case expenses for such costs. In its August 19, 2011 response to OCA, PWW cites its response to Data Requests OCA 7-5 and 7-11 and states that it informed OCA in discovery that the only travel it incurred was for minimal employee mileage expense.

Data Request OCA 7-5 asks that PWW identify and explain any charges related to the list set forth above. PWW's response, in its entirety, states: "On June 20, 2011, the Company provided a summary of rate case expenses that includes a description of services rendered. *The only expenses related to the above are overnight mail through Unishippers.* (emphasis supplied) As the Company performs much of the rate case filing preparation and discovery internally to reduce costs, the Company will need to occasionally send time sensitive documents to its consultants." The response to Data Request OCA 7-5 is sufficiently clear that costs of the type

listed by OCA are not included in the Company's proposed rate case expenses that it would be unnecessary to make PWW reiterate the point. Accordingly, we deny the related OCA requests.

In section C.a., the OCA proposes a reduction of \$35,736.54 in outside legal costs for the Company's "failure to memorialize the terms or scope of service." PWW counters that the scope of work is set forth in extensive detail in the bills. Having reviewed the bills, we are satisfied that the detail reflects the terms of service and scope of work in a manner that allows an assessment of the reasonableness of the work provided and the fees charged. While there may be better methods of memorializing the scope of work, the facts before us do not warrant a disallowance. Accordingly, we deny OCA's request to disallow \$35,736.54, or 50%, of PWW's legal expenses of \$71,473.07.

In section C.b., OCA requests that the Commission disallow \$28,622.62 in expenses related to eminent domain costs, which is \$1,895.01 more than recommended by Staff. *See* OCA August 9, 2011 filing, p.9. It identified legal bills from February 2010 for \$79 and \$434.50 and argues they are related to eminent domain issues and that PWW has already stated it would not otherwise seek recovery of these costs. Upon review of these bills and Staff's recommendation, we note that PWW did not include these bills in its request for recovery of rate case expenses. Therefore, we need not rule on these expenses. With respect to the \$424.51 charge OCA seeks to disallow, according to the record, the Westlaw search was for "legal authority regarding customer information." *See* pages 91 and 92 of PWW's rate case expense invoices. Because it does not appear to be related to PWW's eminent domain costs, we will allow the expense. With respect to two legal bills totaling \$726.00 on February 7 and February 11, 2011, the record shows that these charges were incurred after discovery on the eminent domain issue was due, February 4, 2011, and they do not relate to eminent domain work. Thus we will allow these

expenses. Finally, OCA disputes a bill for legal services rendered on February 4, 2011, as related to eminent domain. We agree. According to the rate case expense documentation, this charge was incurred on the last day of discovery on the eminent domain issue. The entry for the service states: “review and comment on data responses.” *See* page 108 of PWW’s rate case expense invoices. There is sufficient evidence to conclude that this bill pertained to eminent domain work and, accordingly, we will disallow the \$231 charge as a rate case expense.

In section C.c., OCA requests the Commission disallow recovery of \$5,798.51 in costs related to negotiation of the Anheuser-Busch contract. This amount is \$2,260 more than the amount of \$3,538.51 that Staff recommended for disallowance, and to which PWW agreed. Thus, we focus our consideration on the \$2,260 that OCA states is contained in a bill from PWW’s cost of service consultant for services rendered in October 2010. The work is described as “the development of revised cost of service allocations and rate design based on planned changes to the [Anheuser Busch, Inc.] contractual flow requirements.” OCA avers that this expense did not relate to the rate case and relates instead to the preparation for negotiations with Anheuser-Busch, Inc. OCA directs our attention to PWW’s response to Staff 6-2 and OCA 7-6. PWW argues that the October 2010 costs were necessary because PWW needed to address issues raised by OCA. PWW further states that the costs warrant approval as rate case expenses because the special contract was an integral part of the rate case and was necessary to its overall resolution. The description of the service states that it related to the development of revised cost of service allocations and rate design. These issues were ultimately addressed in the settlement agreement. We cannot find in the evidence presented by OCA that these costs related solely to negotiations between PWW and Anheuser-Busch, Inc. PWW’s response to Staff 6-2 contains PWW’s agreement to withdraw certain expenses from consideration as rate case expenses but,

notably, the \$2,260 is excepted. PWW argued that it is properly included as a rate case expense. Staff agreed. PWW also defended inclusion of this expense as a rate case expense in its response to OCA 7-6. Having reviewed the arguments and record, we find that the \$2,260 in expenses relate to PWW's rate case. Accordingly, we deny OCA's request to disallow this amount.

In section C.d., with respect to the \$210.07 in mileage expense OCA asks us to disallow, we do not find it excessive. In this case, there is no dispute that PWW employees travelled to the Commission for a meeting in this docket. PWW has explained that the individuals who attended the meeting had other obligations that day that prevented them from carpooling. We accept this explanation and find the \$210.07 mileage expense reasonable. As a result, we will allow PWW to recover this expense as a rate case expense.

In section D., OCA appears to argue that PWW's expenses should be further reduced by an amount equal to 50% of OCA's proposed reductions in order, among other things, to incent the Company to control its costs and encourage it to give more scrutiny to the frequency of its rate cases. RSA 378:7 provides that the Commission is "under no obligation to investigate any rate matter which it has investigated within a period of two years, but may do so within said period at its discretion." *See Appeal of Pennichuck Water Works*, 120 N.H. 562, 568 (1980). Notwithstanding RSA 378:7, the Commission is under an "obligation to fix a rate of return which will meet the constitutional standards not only at the time the order is made but for a reasonable period of time thereafter." *Appeal of Pennichuck Water Works*, 120 N.H. at 568 (1980) *citing New England Tel. & Tel. Co. v. State*, 113 N.H. 92, 96, (1973). The "[C]ommission attempts to adhere to the general rule of waiting the two years unless there are unusual circumstances or a possible confiscation of property." *Public Service Co. of New Hampshire*, 64 NH PUC 295, 296 (1979). In light of PWW's statutory and constitutional rights

to seek rate increases, and having found it just and reasonable to increase PWW's revenue requirement in the instant docket, we cannot agree that PWW be penalized for making its filing. Furthermore, arbitrarily reducing PWW's rate case expenses by half as an incentive to control future expenses is not supported by the record or legally sound. We therefore deny OCA's request.

In section E., the OCA urges the disallowance of interest on the amount approved for recovery due to the Company's purported failure to abide by Commission rules and in section G. OCA requests that the Company "formally file" its rate case request pursuant to the rules related to filings in adjudicative proceedings. The proposed disallowance appears to relate to the fact that the Company submitted its rate case expense request and supporting documentation directly to Staff and OCA for review, did not copy the other parties or the Commission's Executive Director, and did not include a motion for confidentiality. The Company's submission to Staff and OCA did not violate the Commission's rules and was consistent with the Settlement Agreement approved in this case and with past practice. Furthermore, the Company did not seek to recover interest. Accordingly, the request to disallow interest is not supported by the record. At the same time, we conclude that the better practice is for companies to provide copies of their rate case requests not only to Staff and OCA but to the parties to a proceeding and we will take the steps necessary to implement this practice prospectively.

In section F. OCA proposes requirements for future rate cases and in section K. it proposes a rulemaking. Though we have denied the bulk of requests for reduction in rate case expenses as they have been presented, we share the concerns of OCA that the expenses in this and many cases are a burden on ratepayers and that the standards for recovery could benefit from greater delineation. In Docket No. DG 08-009, a National Grid rate case, the Commission

directed Staff to review rate case expenses in New Hampshire by industry “with attention to factors such as use of inside versus outside counsel and experts, use of competitive bidding practices, and possible models in use elsewhere.” Staff filed its report on June 30, 2010. While it would be beyond the scope of this proceeding to implement OCA’s specific proposals, some may have merit and a rulemaking docket, which we will undertake, is the appropriate forum to consider the Staff report and proposals such as those made here by OCA.

In sections H., I. and J. OCA focuses on the posting of the Company’s rate case request on the Commission’s website and on the confidential treatment of the request. To the extent such issues are not moot, they will be addressed separately as administrative matters.

In conclusion, we will approve PWW’s requested rate case expenses as reduced by Staff and further reduced by \$231. This results in a total approved rate case amount of \$114,066.08. The surcharge to PWW’s 26,438 customers would amount to \$4.31 per customer, and divided into twelve monthly charges, pursuant to the settlement agreement, would result in a \$0.36 per customer monthly charge. We find the surcharge to be just and reasonable and we will authorize PWW to recover this amount via surcharges to customer bills.

Based upon the foregoing, it is hereby

ORDERED, that Pennichuck Water Works, Inc. is authorized to recover the difference between the temporary rates approved in Order No. 25,153 and the permanent rates approved in Order No. 25,230 through a surcharge or refund to customer bills as discussed above; and it is

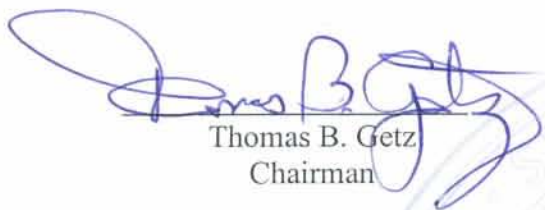
FURTHER ORDERED, that Pennichuck Water Works, Inc.’s motions for confidential treatment and waiver request are hereby granted; and it is

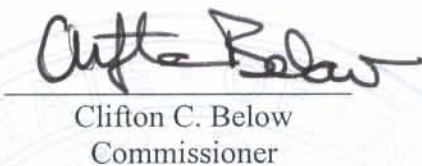
FURTHER ORDERED, that Pennichuck Water Works, Inc. is authorized to recover \$114,066.08 in rate case expenses through a surcharge to customer bills of \$0.36 per customer

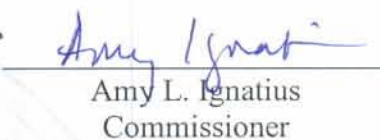
per month for twelve months, as discussed above, or until the approved total rate case expense amount is fully recovered, whichever comes first; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. file a compliance tariff within 10 days of the date of this order.

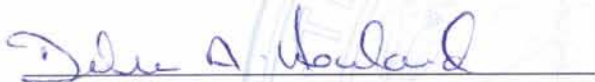
By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

