

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 16-806**

**PENNICHUCK WATER WORKS, INC.**

**Permanent and Temporary Rate Proceeding**

**Order Authorizing Temporary Rate Recoupment and Recovery of Rate Case Expenses,  
And Granting Motion for Confidential Treatment**

**ORDER NO. 26,114**

**March 20, 2018**

In this order, the Commission authorizes Pennichuck Water Works, Inc., to recoup the difference between its temporary and permanent rates and to recover its rate case expenses. The Commission also grants a motion for confidential treatment of the Company's attorneys' billing rates.

**I. PROCEDURAL HISTORY**

On February 17, 2017, the Commission approved temporary rates for Pennichuck Water Works, Inc. (PWW or the Company). The Commission set temporary rates at the same level as PWW's then current rates. *Pennichuck Water Works, Inc.*, Order No. 25,990 at 4 (February 17, 2017). Subsequently, the Commission approved a 3.12 percent permanent rate increase for PWW. *Pennichuck Water Works, Inc.*, Order No. 26,070 at 5, 17, and 19 (November 7, 2017). The Commission directed PWW to document the difference in revenues the Company would have collected had the Commission set temporary rates at the level of permanent rates. The Commission also directed PWW to propose a surcharge for recovering that difference from customers, and to file the Company's request for rate case expenses. *Id.* at 19-20.

On December 7, 2017, PWW submitted the required rate reconciliation. On December 8, PWW filed a request for recovery of rate case expenses along with a motion for confidential treatment of certain of those expenses. Commission Staff (Staff) filed a recommendation for the Commission's consideration on February 23, 2018.

## **II. POSITIONS OF THE PARTIES**

### **A. Pennichuck Water Works, Inc.**

In its rate reconciliation filing, PWW proposed to recover a \$99,815.58 revenue differential between temporary and permanent rates. In accordance with Commission Order No. 26,070, PWW submitted different recovery amounts for its Core Water System (Core) customers – those customers located in the City of Nashua – and its Community Water System (CWS) customers. Order No. 26,070 at 12 and 19. Core customers were assessed a Water Infrastructure and Conservation Adjustment (WICA) charge during the recoupment period. *Id.* at 12. PWW proposed recoupment of \$37,363.27 from Core customers, to be recovered through a one-time surcharge. Unlike Core customers, CWS customers were not required to pay a WICA surcharge during the recoupment period. PWW proposed recoupment of \$62,452.31 from CWS customers, to be recovered over a 12-month period through monthly surcharges.

PWW proposed recovery of rate case expenses totaling \$148,248.68 over a 12-month period. PWW proposed to recover that amount by collecting from each customer \$5.28 over the course of a year through a monthly \$0.44 surcharge. PWW also submitted a motion for confidential treatment of the hourly rates PWW paid outside legal counsel for services performed during the course of the rate proceeding. The Company argued that disclosure of their attorneys'

hourly rates would cause competitive harm to those attorneys and could have a detrimental effect on the Company's competitive bidding efforts in the future with respect to outside legal services.

### **B. Commission Staff**

Staff recommended that the Commission approve the Company's proposed recoupment of the difference between temporary and permanent rates. In particular, Staff indicated that the average one-time surcharge for residential Core customers will be \$1.01. For residential CWS customers, Staff indicated that the average total recoupment amount will be \$20.10, or \$1.68 per month, over the proposed 12-month collection period.

With regard to rate case expenses, Staff reported that PWW reduced its request for recovery by \$273.18 to an amount of \$147,975.50. Staff recommended two additional adjustments to the Company's proposed rate case expense recovery amount. Those adjustments would result in a further reduction of \$2,609.50. The first adjustment, in the amount of \$109.50, pertains to Staff's audit of PWW. According to Staff, the Commission has historically rejected the inclusion of expenses related to Staff audits from rate case expenses because the Commission deems those costs to have already been included in customer rates. The second adjustment, in the amount of \$2,500.00, pertains to legal expenses for submitting rate case schedules that were missing from its original rate case filing. Staff argued that such charges are inappropriate for rate case expense recovery and thus should be excluded. As a result, Staff recommended a total amount of \$145,366.00 in recoverable rate case expenses. Staff further recommended that PWW be allowed to recover that amount over a 12-month period via a monthly customer surcharge of \$0.43.

Staff supported PWW's motion for confidential treatment, agreeing with the Company that disclosure of the hourly billing information of its attorneys could have a detrimental effect on PWW and, ultimately, its customers. Staff stated that the Commission has granted confidential treatment of similar information in the past.

Staff reported that both the OCA and the Company concur with Staff's recommendations.

### **III. COMMISSION ANALYSIS**

#### **A. Temporary-Permanent Rate Recoupment**

RSA 378:29 requires the Commission to allow utilities to amortize and recover the difference between temporary and permanent rates over the effective period of the temporary rates if, upon the final disposition of the rate proceeding, the rates ultimately approved exceed the earlier-imposed temporary rates. Here, the temporary rates were lower than the rates we ultimately approved. This created a revenue shortfall that the Company is entitled to recoup from its customers.

The revenue shortfall totals \$37,363.27 for PWW's Core system customers and \$62,452.31 for its CWS customers. We approve recovery of the proposed revenue differential through a one-time surcharge for PWW's Core system customers and 12 monthly surcharges for PWW's CWS customers.

#### **B. Rate Case Expense Recovery**

The Commission has historically treated prudently-incurred rate case expenses as a legitimate cost of service appropriate for recovery through rates. *Lakes Region Water Co., Inc.*, Order No. 24,708, 91 NH PUC 586, 587 (2006). Consistent with that policy, we have reviewed PWW's rate case expenses as well as Staff's recommendation. In its recommendation, Staff

identified certain adjustments that reduce the Company's original proposal by \$2,882.68, from \$148,248.68, to \$145,366.00. No other party objected to the amount of rate case expenses proposed by Staff. Consequently, we find the rate case expenses for PWW of \$145,366.00 to be just and reasonable, and we approve the Company's recovery of this amount over a 12-month period through a monthly customer surcharge of \$0.43.

### **C. Motion for Confidential Treatment**

According to PWW, disclosure of its outside attorneys' billing rates may adversely affect the attorneys' competitive position in negotiating with other parties. The Company argues that the billing rates are "confidential, commercial, or financial information" and that confidential treatment of that information would be consistent with RSA ch. 91-A (the New Hampshire Right-to-Know law) and prior Commission orders.

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether documents should be kept from disclosure as "confidential, commercial, or financial information" under RSA 91-A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)); *Sprint Communications Co. L.P.*, Order No. 25,607 at 2 (December 19, 2013). Under that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* "Finally, *Lambert* directs the Commission to balance those competing interests and decide whether disclosure is appropriate." *Id.* (citing *Lambert*, 157 N.H. at 383).

The Commission has previously found hourly billing rate information exempt from disclosure. *See Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,586

(October 22, 2013) (citing *Unitil Energy Systems, Inc.*, Order No. 24,746, 92 NH PUC 109, 114 (2007)). We find that disclosure of their billing rates could result in a competitive disadvantage to PWW's attorneys. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. PWW has provided total invoice amounts for its attorneys to inform the public of its expenses and we deem this sufficient for purposes of informing the public. We therefore grant the Company's motion.

Consistent with past practice, 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 Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

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

**ORDERED**, that PWW is authorized to recover \$37,363.27 from its Core system customers through a one-time surcharge, and \$62,452.31 over a 12-month period from its CWS customers, representing the difference between its temporary rates approved in Order No. 25,990 and the permanent rates approved in Order No. 26,070; and it is

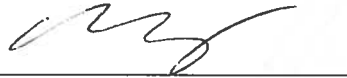
**FURTHER ORDERED**, that PWW is authorized to surcharge its customers for recoupment of temporary and permanent rates as reflected in its revenue recoupment filing, until the full amounts of the respective temporary and permanent rate recoupments are recovered; and it is

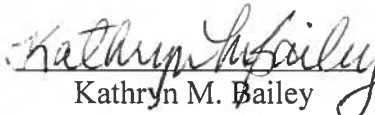
**FURTHER ORDERED**, that PWW is authorized to recover \$145,366.00, representing its just and reasonable rate case expenses; and it is


**FURTHER ORDERED**, that PWW is authorized to collect a surcharge in the amount of \$0.43 per customer per month, for 12 months, to recover its rate case expenses; and it is

**FURTHER ORDERED**, that PWW shall file compliance tariffs within 14 calendar days of the date of this order reflecting the recoupment and rate case expense surcharges approved herein.

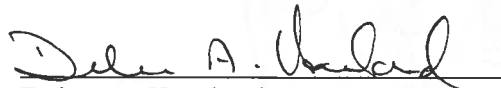
By Order of the Public Utilities Commission of New Hampshire this twentieth day of March, 2018.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director