RESOLUTION

AUTHORIZING THE MAYOR TO GIVE PRIOR WRITTEN CONSENT TO PENNICHUCK WATER WORKS, INC. PROPOSED FOURTH CONTRACT WITH ANHEUSER-BUSCH, INCORPORATED

CITY OF NASHUA

In the Year Two Thousand and Eleven

RESOLVED *by the Board of Aldermen of the City of Nashua* that

WHEREAS on November 11, 2010 the city of Nashua and Pennichuck Corporation entered into an Agreement and Plan of Merger whereby the City will purchase all the outstanding stock of Pennichuck Corporation, and will own and operate what is now the Pennichuck Water Works, Inc. water system, and

WHEREAS § 5.01(b)(xii) of that Merger Agreement provides that the City must give written approval of any material contract entered into by Pennichuck Water Works, Inc. prior to the closing of the stock purchase, and

WHEREAS Pennichuck Water Works, Inc. has negotiated the attached agreement to provide water service to Anheuser-Busch Incorporated for a ten year period and has submitted the agreement with the attached petition and pre-filed testimony for approval by the New Hampshire Public Utilities Commission, and

WHEREAS that agreement is a material contract subject to the terms of the Agreement and Plan of Merger,

NOW THEREFORE, BE IT RESOLVED *by the Board of Aldermen of the City of Nashua* that the mayor is authorized to give written approval of the attached Fourth Contract for Water Service Between Anheuser-Busch, Incorporated and Pennichuck Water Works, Inc.

LEGISLATIVE YEAR 2011

RESOLUTION: R-11-87

PURPOSE: **Authorizing the mayor to give prior written consent to Pennichuck Water Works, Inc. proposed fourth contract with Anheuser-Busch, Incorporated**

ENDORSER(S): **Mayor Donnalee Lozeau**
Alderman-at-Large Brian S. McCarthy

COMMITTEE ASSIGNMENT:

FISCAL NOTE: **None**

ANALYSIS

This resolution authorizes the mayor to provide written approval of a water supply contract between Pennichuck Water Works, Inc. and Anheuser-Busch, Incorporated. The Agreement and Plan of Merger between the city and Pennichuck Corporation requires the city to approve all material contracts of this nature.

Approved as to form: **Office of Corporation Counsel**

By: _____

Date: January 21, 2011

FOURTH CONTRACT FOR WATER SERVICE BETWEEN
ANHEUSER-BUSCH, INCORPORATED
AND
PENNICHUCK WATER WORKS, INC.

Agreement made as of this ___ day of January 2011 by and between Anheuser-Busch Incorporated, a Missouri corporation having a place of business in Merrimack, New Hampshire and a mailing address of 221 Daniel Webster Highway, P.O. Box 610, Merrimack New Hampshire 03054-0610 (hereinafter referred to as "AB") and Pennichuck Water Works, Inc. a New Hampshire Corporation with its principal place of business at 25 Manchester Street, Merrimack New Hampshire 03054 (hereinafter referred to as "PWW").

WHEREAS, PWW is engaged in business as a public utility in the City of Nashua and in a limited area in the Town of Merrimack, among other places, in gathering and distributing water to the public; and

WHEREAS, AB owns and operates a brewery in the Town of Merrimack on the Daniel Webster Highway at a point about 2.4 miles north of the boundary line between the Town of Merrimack and the City of Nashua ("AB's Premises") to which PWW has supplied water since 1970 pursuant to a Contract for Water Service between AB and PWW dated March 3, 1969 (the "First Contract"), another contract between AB and PWW dated July 1, 1995 (the "Second Contract"), and another contract between AB and PWW dated October 5, 2004 (the "Third Contract"); and

WHEREAS, pursuant to the First Contract, AB compensated PWW for the installation of (i) a 24-inch water main running from its water treatment plant in the City of Nashua northerly along the Daniel Webster Highway to a point opposite the westerly boundary line of AB's Premises in Merrimack, New Hampshire, (ii) a water service connection of 20-inch size running from said 24-inch pipeline to and through the westerly property line of AB to a meter vault, and (iii) metering and associated equipment, all for the purpose of enabling PWW to supply water to AB; and

WHEREAS, PWW filed a revised Cost of Service Study pursuant to Paragraph 3 of the Third Contract on May 7, 2010 prompting AB to invoke early termination provisions under Section 5 of the Third Contract on June 30, 2010; and

WHEREAS, PWW has entered into an Agreement and Plan of Merger ("Merger Agreement") with the City of Nashua, New Hampshire (the "City") whereby the City will purchase all the outstanding stock of PWW's parent company, Pennichuck Corporation, and will own and operate what is now PWW's water system, and whereas § 5.01(b)(xii) of the Merger Agreement provides that the City must approve any material contract entered into by PWW prior to the closing of the stock purchase, and whereas PWW affirmatively represents that the City has approved this Fourth Contract; and

WHEREAS, AB desires that PWW continue to provide water service to AB's Premises and PWW desires to continue to provide such service upon the terms and conditions set forth in this Fourth Contract.

NOW, THEREFORE, AB and PWW for and in consideration of the mutual covenants and agreements hereinafter set forth do hereby agree as follows:

1. Firm Supply of Water; Minimum Pressure. PWW agrees that during the Term (as defined in Paragraph 2 below) of this Fourth Contract it will maintain facilities capable of delivering water to AB continuously at the rate of 1.0 million gallons per day. PWW agrees to provide a continuous, regular and uninterrupted supply of water, subject to interruptions by reasons of acts of God, accident, strike, legal process, State or Federal law, regulation, order or directive or other causes beyond its control. PWW agrees to maintain a water pressure under normal operating conditions of approximately 70 psig at its meter installation on AB's Premises, but it is understood that sudden increases in consumption either by AB or others, equipment failures, or other causes beyond the reasonable control of PWW may temporarily result in pressures of less than 70 psig. PWW shall not be liable for damages to AB by reason of inadequate pressure or volume or failure to provide water for any cause whatever except to the extent such damages to AB occur by reason of inadequate pressure or volume or failure to provide water resulting directly from intentional or grossly negligent conduct of PWW or violations with PWW's knowledge and failure to take reasonable corrective action of any safety-related or health-related statutes or regulations by PWW in providing water service to AB.

2. Term. The Term of this Fourth Contract shall be ten (10) years commencing on the date of its approval by the New Hampshire Public Utilities Commission ("the Commission") (said date, the "Effective Date") which approval the parties intend shall take place as a part of the PWW rate case filed May 7, 2010 (hereinafter, "DW 10-91") and noticed to PWW's customers June 16, 2010, unless earlier terminated in accordance with Paragraph 6 of this Fourth Contract (as ultimately determined, the "Term"). Irrespective of the timing of a Commission decision in DW 10-91, in no case shall the Term of this Fourth Contract extend beyond June 30, 2021. For the purposes of this Fourth Contract, the first Annual Period shall consist of the first twelve (12) monthly billing periods immediately following the Effective Date. Each subsequent Annual Period shall consist of the subsequent twelve (12) monthly billing periods.

3. Rate. PWW shall invoice AB monthly for all water taken by it, and for other charges, pursuant to the terms of this Fourth Contract. Under DW 10-91, the Commission has granted to PWW a temporary rate increase of 10.8% effective for bills rendered on and after October 8, 2010. Furthermore, the permanent rate order under DW 10-91 will become effective for services rendered on and after June 16, 2010. The parties acknowledge that any difference between the temporary rate increase that has been granted and the permanent rates ultimately approved by the Commission for purposes of

this Fourth Contract will be reconciled upon the approval of such permanent rate increase pursuant to NH RSA 378:29.

4. For the purposes of this Fourth Contract, AB shall be billed on a monthly basis with the bill consisting of three charges (as set forth in this Paragraph 4 below): a Monthly Meter Charge, a Base Monthly Fixed Fee and a Monthly Volumetric Charge ("Monthly Volumetric Charge"). In addition to the AB monthly bill, AB shall be billed on an annual basis an Annual Volume Shortfall charge if applicable. The three charges associated with the AB monthly bill shall be calculated as follows:

a. The AB Monthly Meter Charge shall be equal to the standard General Metered monthly customer charge for a six inch meter approved by the Commission in the PWW tariff for each of AB's 6" water meters during the Term of the Fourth Contract ("Monthly Meter Charge"). The AB Monthly Meter Charge may only be adjusted by the same percentage and at the same time as any future change in the meter charge for all PWW 6" water meters, as adjudicated by the Commission. In the event that PWW requests the Commission to increase or otherwise increases the Monthly Meter Charge above $1830 per meter per month, AB shall have the right to terminate this Fourth Contract as provided for in Paragraph 6.

b. The Base Monthly Fixed Fee will be $30,952.54 per month ("Base Monthly Fixed Fee"). PWW may only adjust the Base Monthly Fixed Fee in the event a new cost of service allocation study is obtained by PWW (a "Cost of Service Study") and approved by the Commission in direct response to a regulatory change by the United States Environmental Protection Agency and/or the New Hampshire Department of Environmental Services which requires a material investment in, or upgrade to, the material water supply facilities that serve AB including, for example, one or more of PWW's Nashua water treatment plant, the Pennichuck Brook Dams and the Fifield Tanks. The Base Monthly Fixed Fee shall only be adjusted to the extent that the material upgrade required by the regulatory change as adjudicated by the Commission is directly attributable to AB's cost of service.

c.. The parties intend the initial Volumetric Rate for purposes of calculating the Monthly Volumetric Charge to be $0.9178 per 100 cubic feet (subject to the actual initial determination of the Volumetric Rate by the Commission, the "Volumetric Rate"). Said actual initial Volumetric Rate will be the permanent rate set by the Commission for AB as part of DW 10-91. Thereafter, the Volumetric Rate may only be adjusted by the same percentage and at the same time as any future change in the volumetric rates for general metered service, as adjudicated by the Commission, which PWW charges to its core system customers in the City and the Town of Merrimack. In the event that PWW requests the Commission to increase or otherwise increases the Volumetric Rate above $1.50 per 100 cubic feet, AB shall have the right to terminate this Fourth Contract as provided for in Paragraph 6.

The Monthly Volumetric Charge shall be calculated by multiplying the Volumetric Rate then in effect by AB's actual monthly water usage in 100 cubic feet.

d. In the event that the total volume of water actually taken by AB within any Annual Period ("Actual Annual Usage") during the Term of this Fourth Contract is less than the Minimum Annual Usage (as defined below) for such Annual Period, AB shall within 30 days after receipt from PWW of an invoice, pay to PWW an amount equal to the difference between the Minimum Annual Usage and the Actual Annual Usage for such Annual Period, multiplied by the applicable Volumetric Rate as determined under Paragraph 4(c) (said amount, the "Annual Volume Shortfall Charge").

The Minimum Daily Usage shall be 86,900 cubic feet and will remain unchanged during the Term of the Fourth Contract ("Minimum Daily Usage"). The Minimum Annual Usage ("Minimum Annual Usage") shall be calculated by multiplying the Minimum Daily Usage of 86,900 cubic feet by the number of days within the Annual Period.

5. Maximum Water Take. Pursuant to Paragraph 1 above, PWW has agreed that during the Term of this Fourth Contract it will maintain facilities capable of delivering water continuously at the rate of 1.0 million gallons per day. In no instance, and under no conditions, shall the quantity of water taken under this Fourth Contract during any 24-hour period exceed 1.5 million gallons, nor shall the quantity of such water taken under this Fourth Contract during any one-hour period, multiplied by 24, exceed 2.0 million gallons ("Maximum Water Take Limits").

6. Early Termination. During the Term of this Fourth Contract, AB shall have the ongoing right, for any reason or for no reason, to terminate this Fourth Contract, provided that it gives PWW at least twenty-four (24) months advance notice (the "Notice Period").

Notwithstanding the foregoing, if at any time during the Term of this Fourth Contract PWW requests the Commission to increase or otherwise increases either the Monthly Meter Charge above $1830 per meter per month or the Volumetric Rate above $1.50 per 100 cubic feet as discussed in Paragraph 4, AB shall have the right, but not the obligation, to terminate this Fourth Contract upon giving twelve (12) months prior written notice to PWW; provided that AB gives such notice within ninety (90) days following the earlier to occur of the increase request or the actual increase.

If an early termination causes the last Annual Period before the early Termination Date (as defined herein below) to end before the full twelve (12) months of that Annual Period ("Final Partial Annual Period"), the Minimum Annual Usage for the Final Partial Annual Period shall be 86,900 cubic feet per day times the number of days within the Final Partial Annual Period.

The effective date of the early termination of this Fourth Contract pursuant to this Paragraph 6 shall be defined as the "Termination Date". Termination of this Fourth Contract under any of the conditions set forth in this Paragraph 6 shall result in AB being

billed for all usage after the Termination Date at the rates then in effect, from time to time, for General Metered customers or the non-regulated equivalent thereof.

7. Definitions. Where the words "day," "daily," or "24 hours" are used in this Fourth Contract, they shall refer to the 24-hour period between the daily meter readings.

8. Exceptions for Emergencies. In the event of a fire, a main break, or any other catastrophe requiring an emergency supply of water, the Maximum Water Take Limits in Paragraph 5 may be exceeded for up to five days, contingent upon prompt notice to PWW that the emergency exists."

9. AB Indemnification. AB agrees to indemnify, defend and hold PWW harmless from and against any and all claims, injuries, judgments, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, and court costs (including those incurred at the trial and appellate levels) (hereinafter "claims") to the extent such claims arise solely out of AB's negligence or willful misconduct.

10. PWW Indemnification. PWW agrees to indemnify, defend and hold AB harmless from and against any and all claims, injuries, judgments, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, and court costs (including those incurred at the trial and appellate levels) (hereinafter "claims") to the extent such claims arise solely out of PWW's negligence or willful misconduct.

11. Books and Records. During the Term hereof and for a period of at least two years thereafter, PWW shall maintain such books and records (collectively "Records") as are necessary to substantiate that PWW is in compliance with this Fourth Contract, including that (i) all representations and warranties made by PWW in this Fourth Contract are true and correct in all respects, (ii) all invoices and other charges submitted to AB for payment were valid and proper, and (iii) no payments have been made, directly or indirectly, by or on behalf of PWW to or for the benefit of any AB employee or agent who may reasonably be expected to influence either AB's decision to enter into this Fourth Contract or the amount to be paid by AB pursuant hereto. (As used herein, "payments" shall include money, property, services, and all other forms of consideration.) All Records that are accounting records shall be maintained in accordance with generally accepted accounting principles consistently applied. AB and its representatives shall have the right at any time during normal business hours, and upon reasonable notice, to examine the Records, make copies and take extracts therefrom and discuss the Records with PWW's officers, employees and independent public accountants as AB deems reasonably necessary.

12. Regulatory Approval. PWW agrees that, upon reaching general agreement with AB as to the form and content of this Fourth Contract, it shall file the same with the Commission and request the required approval. PWW agrees to use all commercially reasonable efforts to secure the regulatory approval of this Fourth Contract by the

Commission. PWW shall not, however, be liable to AB for any damages, direct or indirect, resulting from its failure to obtain said approval. The performance by the parties of their obligations under this Fourth Contract is subject to the condition that PWW shall obtain from the Commission approval of this Fourth Contract as required by law. The parties recognize that this Fourth Contract is not binding or enforceable without regulatory approval by the Commission.

13. Methods of Treatment of Water. The parties recognize that the existing water treatment facilities and methods of treatment by PWW result in water suitable for use by AB. PWW agrees to give AB at least 60 days written notice of any contemplated change in its treatment of water which would significantly change its chemical composition or otherwise adversely affect to a material extent the suitability of said water for use by AB. At the request of AB, the parties will confer with respect to any such contemplated change, and subject to its obligations under then-existing applicable law and regulations, PWW will use its best efforts not to institute a change which, to the best of its knowledge, would have an adverse effect to a material extent upon the suitability of water for use by AB.

14. Acquisition by Third Party. In the event any third party or group of third parties acquires the properties, assets and/or facilities of PWW necessary for PWW to perform its obligations under this Fourth Contract, or otherwise gains ownership and/or control of PWW's business operations, PWW's obligations hereunder shall be assumed in full by the acquiring third party.

15. Entire Agreement. Effective as of the Effective Date of this Fourth Contract, the Third Contract between the parties shall be terminated and this instrument shall constitute the entire agreement between the parties and is executed by each without reliance upon any representations made by either to the other during the course of the negotiations with respect thereto; provided, however, that the parties understand and agree that, except to the extent it is inconsistent with this Fourth Contract, the terms of PWW's tariff on file with the Commission shall govern the parties' relationship.

16. Successors and Assigns. Each party covenants and agrees that the benefits and burdens of this Fourth Contract shall be binding upon the successors and assigns of each including any successor in title to all or substantially all of the properties of each.

17. Notices. Except as otherwise provided herein, all notices hereunder shall be in writing and shall be deemed to have been duly given for all purposes (i) when delivered in person, or (ii) three days after the date on which deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, or (iii) one day after the same is delivered to an express courier service guaranteeing overnight delivery, or (iv) when sent by telecopy transmission if receipt is confirmed and a copy is sent by regular first class mail, postage prepaid, in each case directed to the party to receive the same (which, in the case of PWW, is the President and in the case of AB is the General Manager) at its address stated above or at such other address as may be substituted by notice given as herein provided.

18. Amendment. This Fourth Contract may be amended only by written agreement by and between AB and PWW and, if required by applicable law or regulation, only if approved by the Commission. If AB desires to extend the Term of this Fourth Contract, it shall give notice thereof to PWW not later than October 1, 2020. If PWW is willing to consider such an extension, the parties shall then discuss the terms and conditions thereof and if agreement is reached with respect to such terms and conditions, such agreement shall be evidenced in writing and, if required by applicable law or regulation, shall be submitted to the Commission for its approval.

19. Applicable Law. The parties agree that this Fourth Contract shall be governed by the laws of the State of New Hampshire, without regard to its conflict of laws provisions.

20. Headings. The headings in each paragraph of this Fourth Contract are for convenience of reference only, and do not form a part hereof and in no way modify or shall be used to interpret or construe the meaning of this Fourth Contract.

IN WITNESS WHEREOF the parties have caused their corporate names to be subscribed by a duly authorized officer.

PENNICHUCK WATER WORKS, INC.

By: _____
Name:
Title: , duly authorized

ANHEUSER-BUSCH, INCORPORATED

By: _____
Name:
Title: , duly authorized

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Pennichuck Water Works, Inc.
Petition for Special Contract for Service to Anheuser-Busch, Inc.

DW 11-____

Direct Testimony of Donald L. Ware

January 21, 2011

1 **Professional and Educational Background**

2 Q. **What is your name and what is your position with Pennichuck Water**
3 **Works, Inc.?**

4 A. My name is Donald L. Ware. I am the President of Pennichuck Water Works,
5 Inc. (the "Company"). I have worked for the Company since 1995. I am a
6 licensed professional engineer in New Hampshire, Massachusetts and Maine.

7 Q. **Please describe your educational background.**

8 A. I have a Bachelor in Science degree in Civil Engineering from Bucknell
9 University in Lewisburg, Pennsylvania and I completed all the required
10 courses, with the exception of my thesis, for a Masters degree in Civil
11 Engineering from the same institution. I have a Masters in Business
12 Administration from the Whittemore Business School at the University of New
13 Hampshire.

14 Q. **Please describe your professional background.**

15 A. Prior to joining Pennichuck, I served as the General Manager of the Augusta
16 Water District in Augusta, Maine from 1986 to 1995. I served as the District's
17 engineer between 1982 and 1986. Prior to my engagement with the District, I
18 served as a design engineer for the State of Maine Department of
19 Transportation for six months and before that as a design engineer for
20 Buchart-Horn Consulting Engineers from 1979 to 1982.

21 Q. **What are your responsibilities as President of the Company?**

22 A. As President, I am responsible for the overall operations of the Company,
23 including water quality and supply, distribution, engineering and water system

24 capital improvements. With regard to capital improvements overseen by the
25 Company's Engineering Department, I work closely with the Department and
26 the Company's Chief Engineer regarding project selection, project design,
27 project management and construction management.

28 **Q. What is the purpose of your testimony?**

29 A. The purpose of my testimony is to describe the Company's history with regard
30 to special contracts with Anheuser-Busch ("AB"), to explain why the Company
31 has entered into a new special contract with AB, to summarize the terms and
32 conditions of the proposed new contract, and to explain why the proposed
33 contract is in the public interest and should be approved.

34 **Q. Please describe the historical background of PWW's relationship with**
35 **AB.**

36 A. In 1969, Pennichuck entered into a 25 year special water supply contract with
37 AB which became effective March 15, 1970 (the "First Contract") which was
38 approved by Commission Order 9,685 in Docket IR 12,984. Under the First
39 Contract, AB compensated Pennichuck for the installation of a 24 inch water
40 main to a point opposite AB's new brewery in Merrimack, as well as related
41 water supply equipment. Under the First Contract and continuing under the
42 Second Contract (described below), PWW has delivered water to AB at a
43 discounted price, consistent with the costs shown in PWW's cost of service
44 study. Initially, the rate charged to AB (referred to as the "AB Rate") was one-
45 half of PWW's lowest, or tailblock, rate (at that time, Pennichuck's general
46 metered rate had three blocks or levels). Subsequently, and to this day under

47 the existing Third Contract, the AB Rate has been approximately 51% of the
48 volumetric rate for general metered service per 100 cubic feet. In addition to
49 the volumetric rate, AB also pays the tariffed meter charge.
50 When the First Contract was expiring, PWW was able to negotiate the
51 Second Contract, under which PWW agreed to continue to provide service to
52 AB at a rate that reflected the cost to provide service and AB agreed to a
53 minimum level of annual charges as well as minimum payments even if AB
54 were to shut down its operations or otherwise stop taking water service from
55 PWW. That contract had a term of ten years, beginning on July 1, 1995 and
56 ending on June 30, 2005 and was approved by the Commission in Order No.
57 21,681 in Docket DR 95-046. When the Second Contract was expiring, PWW
58 was able to negotiate the Third Contract, under which PWW agreed to
59 continue to provide service to AB at a rate that reflected the cost to provide
60 service and AB agreed to a minimum level of annual charges as well as
61 minimum payments even if AB were to shut down its operations or otherwise
62 stop taking water service from PWW. That contract had a term of ten years,
63 beginning on July 1, 2005 and ending on June 30, 2015 and was approved by
64 Commission Order 24,441 in DW 04-228.
65 Q. **What caused AB to seek to terminate the Third Contract two years**
66 **early?**
67 A. In preparing for the filing of the current PWW rate case ("DW10-091"), PWW
68 had a cost of service study ("COSS") completed. Based on the terms of the
69 Third Contract, which required PWW to deliver certain flows under certain

70 operating conditions, the COSS concluded that AB's current rates were
71 insufficient to pay for the cost of the water service it was being provided.
72 Based on the recommendations of the COSS, AB's rates would have
73 increased by 64%. AB believed that the increase was not warranted and
74 sought to terminate the Third Contract and began to evaluate its supply
75 alternatives.

76 **Q. What is the primary reason why the current rates are insufficient to**
77 **cover AB's cost of water service?**

78 A. The Third Contract was dependent upon AB using large volumes of water to
79 cover its share of the fixed costs of the assets providing its water service as
80 well as paying for a share of PWW's administrative and general costs and the
81 variable costs associated with producing water to AB. When the AB contract
82 was developed in 2005, AB used an average of 1,950,556 gallons per day
83 (GPD) for the year ending in 2004. In 2010, AB used an average of 987,407
84 GPD. At the same time AB's usage was dropping dramatically, the
85 Company's water supply facility expenses that AB's rates were supposed to
86 support were increasing greatly in value. During the same period, the
87 variable rate paid by AB increased from $0.795 per hundred cubic feet (CCF)
88 to a projected rate of $1.793 per CCF (assuming the Third Contract remained
89 in effect and PWW was granted its requested 19.91% increase sought in
90 DW10-091). The result of the projected increase in AB rates (from 2004 to
91 2010) in conjunction with the actual decreases in AB usage (from 2004 to
92 2010) is a projected net increase in the revenues to be paid by AB of 14.2%.

93 This net increase to PWW revenues would just barely cover any inflationary
94 increases in PWW's operating expenses over the 6 years between the end of
95 2004 and 2010, leaving no additional revenues required to cover AB's share
96 of fixed expenses associated with improvements that were made over that
97 time frame to the Water Treatment plant, the replacement of one the Fifield
98 tanks and the rebuild of the Supply Pond Dam. The Net Book Value
99 associated with these assets increased from $9,308,196 at the end of 2004 to
100 $46,670,612 at the end of 2009 or over a 500% increase. It is clear that the
101 use of the pure volumetric rate as developed for AB under the Third Contract
102 is insufficient to cover AB's share of the expenses required to provide AB
103 water service given the large drop in AB's usage.

104 Q. **The Third Contract required that AB buy a minimum amount of water**
105 **each year. Didn't this provide a way for PWW to react to the revenue**
106 **loss from AB through the rate making process?**

107 A. The Third Contract provided a way for PWW to recover lost AB revenues via
108 the rate making process. However, this minimum revenue mechanism did not
109 anticipate that there would be over a 500% increase in the water supply rate
110 base associated with providing water service to AB in the ensuing years at
111 the same time that AB's usage would be dropping dramatically. If AB's
112 volumes had not dropped by over 50% since the last COSS, the revenues
113 collected under the Third Contract would have been sufficient to pay for AB's
114 cost of water service.

115 Q. **Please summarize the key provisions of the Fourth Contract.**

116 A. The key provisions of the Fourth Contract are as follows:

117 1. AB's contract requires PWW to provide up to an average annual flow of
118 1.0 MGD, a peak day flow of 1.5 MGD and a maximum hourly flow rate of 2.0
119 MGD.

120 2. AB will pay a monthly bill consisting of three parts, a monthly meter
121 charge, a monthly fixed charge and a monthly volumetric charge which will be
122 based on the actual volume of water used during the month.

123 3. In the event that AB's annual usage averages less than 650,000 Gallons
124 per Day (GPD) then AB will be required to make a payment at the end of the
125 contract year known as the Annual Volume Shortfall charge. The Annual
126 Volume Shortfall charge will be calculated by taking the volumetric rate in
127 effect for AB at the end of the contract year times the difference between
128 650,000 GPD times the number of days in the contract year less the actual
129 usage during the contract year.

130 Q. **Please explain how each of the charges comport with the**
131 **recommendations of the Cost of Service Study.**

132 A. The charges match those detailed in the amendment to the COSS based on
133 the AB Contractual rates of 1.0 MGD Average Day, 1.5 MGD Maximum Day
134 and 2.0 MGD Maximum Hour.

135 The monthly meter charge provides PWW with the vehicle to collect the
136 customer related charges associated with the meter charge that are not
137 collected elsewhere in the AB charges. The costs associated with this charge

138 are primarily variable and as such this charge will increase at the same rate
139 as the 6" meter charge for PWW's General Metered customers in this and
140 future rate cases. The COSS set this rate at $1,122.67 for a 6" water meter.
141 The initial rate set in the Fourth Contract for each of AB's two six inch meters
142 will be set equal to the permanent rate approved by the Commission as part
143 of DW10-091 and will be based on the final accepted COSS. This rate will be
144 subject to the proposed Step Increase being sought in DW10-091.
145 The monthly fixed charge insures that that AB will pay its share of the
146 expenses associated with the water supply facilities that provide service to AB
147 regardless of its actual usage. This charge is fixed for the length of the
148 contract unless PWW is required to make an investment in the water supply
149 facilities required to service AB in which case a new COSS will be completed
150 to determine the proper allocation of PWW's expenses and return on the
151 investment in its water supply facilities that would be allocable to AB. The
152 COSS set this rate at $30,952.54 per month based on the allowed usage
153 volumes specified in the proposed Fourth Contract. The final fixed monthly
154 charge for AB will be established as part DW 10-091. This rate will not
155 change during the duration of the Fourth Contract unless PWW must make
156 additional investment in the water supply facilities that service AB and a new
157 COSS that establishes the appropriate sharing of the new investment that is
158 approved by the Commission. Finally, this rate is charged each month
159 regardless of whether AB uses any water or not.
160 The AB volumetric charge was determined in the COSS as the rate

161 necessary to pay for the variable costs associated with producing AB's water
162 as well as providing a prorated contribution from AB toward PWW's
163 Administrative and General costs. The volumetric rate established for AB by
164 the COSS was $0.9178 per CCF. The initial AB volumetric rate for the Fourth
165 Contract will be established as part of DW 10-091. This rate will be subject to
166 the proposed Step Increase being sought in DW 10-091.
167 The Annual Minimum Annual Usage charge provides rate stability in the event
168 AB uses less water then the minimum amount.
169 The term of the Fourth Contract is ten years running from its effective date
170 which will be the date that the final rate in order is issued in DW 10-091.
171 Q. **Why is it important that this special contract be approved in conjunction**
172 **with the permanent rate order issued in DW 10-091?**
173 A. By approving the AB special contract simultaneously with the final permanent
174 rate order in DW 10-091, a proper reconciliation of the final permanent rates
175 and AB's special contract rates as set in the Fourth Contract can be made
176 back to June 16, 2010.
177 Q. **Why should AB have a special contract? Please explain how they are**
178 **different from PWW's other customers.**
179 A. As was the case when the Third Contract was approved by the Commission,
180 AB is far and away PWW's largest customer in terms of demand. During
181 calendar 2010, AB used approximately 360,405,100 gallons of PWW water,
182 which amounts to an average per day take of approximately 0.987 million
183 gallons, or about 8.3% of PWW's total average daily usage in 2010. By way

184 of contrast, PWW's second largest customer used 59,742,760 gallons of
185 water in 2010, an average per day take of 163,679 gallons.
186 Besides being PWW's largest customer, AB also has on site storage which
187 results in AB's usage being relatively steady without troublesome peaks
188 during seasonal peaking periods. In addition, AB paid for the entire cost of
189 constructing the water main that provides water service to it directly from the
190 plant to AB. As noted above, the AB Rate was arrived at using a cost of
191 service approach and is appropriate under the circumstances because it is
192 more reflective of the cost to serve AB based on the facts detailed above than
193 the tariffed rate that would otherwise apply absent a special contract. Finally,
194 PWW is convinced that if it does not provide fair rates to a large water user
195 such as AB, it will ultimately either obtain its water supply independently from
196 its own premises or simply leave the State of New Hampshire. The loss of
197 AB as a customer would result in its share of the fixed costs associated with
198 PWW's water supply facilities having to be paid for by the general metered
199 customers.
200 Q. **What is the economic advantage of the proposed Fourth Contract to**
201 **AB?**
202 A. If AB were to be billed as a GM customer, it would be billed a monthly meter
203 charge for two 6" water meters at a rate of $1,122.67 per month and a
204 volumetric rate $3.016 per CCF (based on the permanent rates established
205 by the COSS) which would result in annual bill to AB for a 2009 test year,
206 based on 551,400 CCF of usage, in the amount of $1,667,513. If AB had not

207 terminated the Third Contract, the COSS had determined that AB's annual bill
208 for 2009 would have been $1,390,148. Under the provisions of the Fourth
209 Contract, AB's annual bill for 2009 would have been $904,449.

210 Q. **What are the termination provisions in the proposed Fourth Contract?**

211 A. AB may terminate the Fourth Contract in any of the following three ways:
212 1. Providing Two Years notice. Notice may be issued without cause.
213 2. If the Company requests that the Commission increase AB's volumetric
214 rate above $1.50 per CCF, AB has the right to terminate the Fourth Contract if
215 it notifies PWW of its intent to terminate within 90 days of the PWW rate filing.
216 The Fourth Contract would terminate 1 year after the notification of
217 termination. In the event AB terminates under this clause, it would allow
218 PWW to make a pro forma adjustment to its filed rate case reflecting the loss
219 of AB as a customer.
220 3. If the Company requests that the Commission increase AB 6" meter rate
221 above $1,830 per 6" meter, AB has the right to terminate the Fourth Contract
222 if it notifies PWW of its intent to terminate within 90 days of the PWW rate
223 filing. The Fourth Contract would terminate 1 year after the notification of
224 termination. In the event AB terminates under this clause, it would allow
225 PWW to make a proforma adjustment to reflect the loss of AB as a customer.

226 Q. **What is the purpose of the minimum payment obligation and early**
227 **termination provisions of the Fourth Contract?**

228 A. With these provisions, PWW is attempting to protect its financial integrity
229 while allowing some flexibility to AB to reduce its costs. In exchange for the

230 continuation of a special rate, AB is agreeing to accept the minimum payment
231 provisions. Among other things, the two year notice period would give PWW
232 time to file for a rate case to recover the portion of the AB revenues required
233 to cover the fixed expenses associated with the water supply facilities that
234 provide service to AB.

235 Q. **Do you have anything else you would like to add?**

236 A. Yes. PWW believes that the Fourth Contract is just and reasonable for both
237 AB and all of PWW's customers. The Fourth Contract results in AB paying its
238 fair share of PWW's costs to serve it while allowing AB the benefit of further
239 conservation efforts regarding its water usage. Retaining AB as a customer
240 for the next 10 years provides PWW and its customers a guaranteed
241 contribution to the fixed expenses associated with its water supply facilities
242 that will not change regardless of whether AB is a customer or not. The
243 annual minimum usage requirement insures that AB will pay its fair share of
244 PWW's Administrative and General Costs for the duration of the Contract. In
245 sum, PWW believe that the Fourth Contract is just and consistent with the
246 public interest.

247 Q. **Are there approvals other than the Commission's that are required for**
248 **the Fourth Contract?**

249 A. Yes. PWW has entered into an Agreement and Plan of Merger ("Merger
250 Agreement") with the City of Nashua, New Hampshire whereby the City will
251 purchase all the outstanding stock of PWW's parent company, Pennichuck
252 Corporation, and will own and operate what is now PWW's water system.

253 Under Section 5.01(b)(xii) of the Merger Agreement, the City must approve
254 any material contract entered into by PWW prior to the closing of the stock
255 purchase. The City's Board of Alderman will be voting on the Fourth Contract
256 at a meeting next week. The Company will provide the Commission with a
257 copy of that vote once it occurs.

258 **Q. Does that complete your testimony?**

259 A. Yes.

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

RE: PENNICHUCK WATER WORKS, INC.

DOCKET NO. DW 11-__

PETITION FOR APPROVAL OF SPECIAL CONTRACT WITH ANHEUSER-BUSCH INCORPORATED

Pennichuck Water Works, Inc. ("PWW") hereby petitions the Public Utilities Commission for authority, pursuant to RSA 378:18, to provide service to Anheuser-Busch, Incorporated ("AB") pursuant to the terms of a special contract entered into by PWW and AB on January 18, 2011. In support of this Petition, PWW states as follows:

1. PWW currently provides service to AB under the terms of a special contract approved by this Commission in its Order No. 24,441 in Docket DW 04-228 (the "Third Contract"). The Third Contract superseded a prior special contract between PWW and AB that was approved by this Commission in its Order No. 21,681 in Docket DR 95-0469 (the "Second Contract") when the Second Contract expired in 1995.

2. PWW and AB have entered into a fourth special contract (the "Fourth Contract") in light of Anheuser-Busch's termination of the Third Contract. The Fourth Contract is being submitted contemporaneously with this Petition and includes a Statement of Special Circumstances in accordance with N.H. Code of Admin. Rules Puc 1606.03(b).

3. Also accompanying this Petition is the prefiled testimony of Donald L. Ware, which discusses the history of the Company's special contracts with Anheuser-Busch, the events that led to the notice of termination of the Third Contract, the terms and conditions of the Fourth

Contract, and the special circumstances that make it just and consistent with the public interest to authorize PWW to provide service to AB on terms that depart from the terms of PWW's tariff on file with the Commission.

4. For the reasons set forth in the prefiled testimony of Mr. Ware and the Statement of Special Circumstances submitted with the Fourth Contract (both of which are hereby incorporated by reference), PWW believes and therefore avers that special circumstances exist which render such departure from the general schedules of PWW just and consistent with the public interest and that, therefore, the Fourth Contract should be approved and PWW should be authorized to provide service to AB in accordance with the terms of such contract.

WHEREFORE, Pennichuck Water Works, Inc. respectfully requests that the Commission:

A. Approve the Fourth Contract;

B. Authorize PWW to provide service to AB in accordance with the terms of the Fourth Contract; and

C. Grant such other and further relief as may be just and reasonable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: January 21, 2011

By: Sarah B. Knowlton

Sarah B. Knowlton
100 Market Street, Suite 301
Portsmouth, NH 03801
Telephone: (603) 334-6928
Email: sarah.knowlton@mclane.com

Certificate of Service

I hereby certify that a copy of the foregoing Petition has been forwarded this 21st day of January, 2011 to Meredith Hatfield, Esq., Consumer Advocate, and John Alexander, counsel for Anheuser-Busch, Incorporated.

Sarah B. Knowlton

Sarah B. Knowlton

RESOLUTION **R-11-87**

Authorizing the mayor to give prior written consent to Pennichuck Water Works, Inc. proposed fourth contract with Anheuser-Busch, Incorporated

IN THE BOARD OF ALDERMEN

1ST READING JANUARY 25, 2011

Referred to:

PENNICHUCK WATER SPECIAL COMMITTEE

2nd Reading FEBRUARY 22, 2011

3rd Reading

4th Reading

Other Action

Passed FEBRUARY 22, 2011

Indefinitely Postponed

Defeated

Attest: City Clerk

President

Approved Mayor's Signature

2/23/11
Date

Endorsed by

MAYOR

MCCARTHY

VITALE

PRESSLY

TABACSKO

MELIZZI-GOLJA

COX

SHEEHAN

WILSHIRE

Vetoed:

Veto Sustained:

Veto Overridden:

Attest: City Clerk

President