

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 20-__

Pennichuck Water Works, Inc.

Emergency Petition of Pennichuck Water Works, Inc.
for Financing Approval Under SBA Paycheck Protection Program

Pennichuck Water Works, Inc. (“PWW” or the “Company”), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a public utility subject to the jurisdiction of the New Hampshire Public Utilities Commission (the “Commission”), hereby petitions the Commission for approval and authority under RSA 369:1-4 to enter into a loan of \$2,543,662 under funding through the Paycheck Protection Program (“PPP”) authorized by Congress in response to the COVID-19 pandemic. As is noted in the prefiled testimony of Larry Goodhue, the Company expects that all or virtually all of the borrowed funds will be subject to the loan forgiveness, and as such, all or virtually all of the “loan” will be treated more akin to a grant with no repayment obligation. The reason for requesting emergency relief and waiver of multiple rules is that, in order to take advantage of this program, all approvals must be received, and all documents executed on or before **Friday May 8, 2020**. In support of its Petition, PWW respectfully represents as follows:

1. PWW is a New Hampshire public utility corporation providing retail water service to customers in the towns of Nashua, Amherst, Merrimack, Milford, Hollis, Bedford, Derry, Plaistow, Epping, Salem, and Newmarket New Hampshire. PWW is wholly-owned by Pennichuck Corporation (“Pennichuck”), which, in turn, is wholly-owned by the City of Nashua.

2. This emergency petition is filed in the context of a national pandemic that is having unprecedented impacts on citizens and business in New Hampshire. Governor Sununu issued his first Emergency Order (“EO”) on March 15, 2020 that addressed public education issues. Within twenty-four hours, the Governor’s second EO placed limits on public gatherings. EO #3 issued on March 17, 2020 placed a prohibition on providers of water, among others, from disconnecting service for non-payment. By March 26, the Governor issued EO #17 that shut down non-essential businesses and contained a stay-at-home order. *See* <https://www.governor.nh.gov/news-media/emergency-orders>.

3. As is described in Mr. Goodhue’s testimony and as the Commission knows, not only is PWW an essential business under the Governor’s EOs, it is a business that every customer of the Company depends upon for drinking water. As such, PWW has retained all of its employees throughout this pandemic in order to continue providing the essential services and product every day, twenty-four hours per day. Nevertheless, the impact from the EOs is having ripple effects throughout the economy, which is resulting in direct impacts to PWW’s revenues.

4. Because the Company no longer has access to private equity markets as a method of financing, any shortfalls must be recovered through debt financing. As described below and in Mr. Goodhue’s testimony, the financing that is the subject of this Petition presents the Company with the opportunity to obtain \$2.5 Million in financing that will likely be subject to debt forgiveness in either its entirety or nearly its entirety. As such, the Company acknowledges that the time frame in which the Company is seeking an order is extremely unusual, but the opportunity has been presented because these are extraordinary circumstances.

5. On March 27, 2020, President Trump signed into law the CARES Act, which contained \$376 billion in relief for American workers and small businesses. *See*

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>. That law created the PPP, but which funds were quickly exhausted. On April 27, 2020, the Small Business Administration (“SBA”) resumed accepting PPP applications following additional funding authorized by Congress and signed into law by the President. *See* <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

6. One of the key elements of the PPP is loan forgiveness if certain conditions are met. As described by the SBA:

The loan will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll). Loan payments will also be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees. Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease. This loan has a maturity of 2 years and an interest rate of 1%.

7. As is explained in Mr. Goodhue’s testimony, the Company fully intends to utilize these funds in accordance with the terms and conditions of the loan forgiveness requirements.

8. In response to the renewed application period, the Company received Board approval to seek PPP funds and an application was filed almost immediately after loan applications were being accepted. On Monday, April 27, 2020 the Company was notified by its lender TD Bank, NA (“TD Bank”) that its loan was accepted and on Tuesday, April 28, 2020, the Company received preliminary approval of its loan application. Formal notification of the loan approval, with a loan number assigned by the SBA, was received on April 30, 2020.

9. As is described in Mr. Goodhue’s testimony, the Company anticipates 100%, or nearly 100%, of the loan will be subject to loan forgiveness, essentially converting the “loan” into a grant with no debt repayment obligation.

10. An essential element of the PPP, and the reason the Company is seeking approval on an emergency basis. Under interim rules published by the SBA, lenders have **10 calendar days** to send funds to PPP loan applicants whose applications have been approved. An application is considered “approved” for these purposes when the applicant is assigned a loan number by the SBA. As such, the deadline within which the Company must obtain all approvals and take all steps to complete the loan process is **May 8, 2020**

<https://www.sba.com/funding-a-business/government-small-business-loans/ppp/faq/do-ppp-loans-need-to-fund-in-10-days/>

11. As is described in detail in the testimony of Mr. Goodhue, the funds are to be used are expected to be at least 75% for payroll and payroll benefits costs (except for employees under \$100K in annual compensation), and up to 25% for other limited non-payroll costs, including: rents, lease payments, and interest on certain indebtedness as well as utility costs. The funds must be used in an eight-week period following the acceptance of the funds. If used in this manner and the other requirements are met, the borrowed money used that qualifies will be subject to debt forgiveness and converted to a grant. The Company expects that all, or nearly all, of the loan will be used in a manner that will make is subject to debt forgiveness.

12. Although the Company expects it will be able to meet all of the requirements for loan forgiveness under the SBA’s rules, any amount of the debt that is not subject to forgiveness has a maturity of two years and an interest rate of 1%.

13. Attached as Exhibit LDG-1 to Mr. Goodhue’s testimony is the actual financial position of the Company as of December 31, 2019 and the pro forma financial position reflecting certain adjustments pertaining to the proposed \$2.5 million PPP financing. LDG-1 reflects the pro forma adjustments to record the overall impact of these PPP funds, as if they were wholly

maintained as debt funds, without forgiveness (a worst case scenario for this filing, as it is anticipated that all or nearly all of these funds will qualify for forgiveness).

14. Schedule LDG-2 presents the actual operating income statement of PWW for the year ending December 31, 2019, and the pro forma income statement reflecting adjustments pertaining to the proposed financing.

15. PWW needs to have all approvals in place and execute all documents in sufficient time to allow the TD Bank to send funds to the Company within the ten (10) day deadline. As such, the Company is seeking an order that (1) finds the requested financing is routine making the Order effective upon issuance; and (2) is issued on or before May 6, 2020 to allow all necessary documents to be executed with the lender.

16. The Company is filing a motion for waiver of certain rules with this Petition, which seeks waiver of Puc 609.03 (2), (5) and (7) and the Company is seeking approval of that motion with its order on this Petition.

17. The proposed financing is authorized under RSA Chapter 369 for the purposes set forth in this petition and the testimony that accompanies this petition and Mr. Goodhue further explains that the financing is consistent with the public good because the terms of the financing are favorable and will provide a source of potential revenue that to pay salary and other expenses described in Mr. Goodhue's testimony and, by using them as anticipated, the loans will be subject to repayment forgiveness. Even under the loan terms if not subject to forgiveness, the interest rate of 1% is not otherwise available to the Company, which is entirely debt funded.

18. As is described in Mr. Goodhue's testimony, the proposed financing have been given preliminary approval by Pennichuck's Board of Directors and which has authorized management to pursue all steps necessary to complete the transaction, on behalf of the Company

or any of its subsidiaries. The approval is attached to Mr. Goodhue's testimony as Exhibits LDG-3. PWW's and Pennichuck's Board of Directors will also approve the final structure and terms of the proposed financing in their meetings on May 2, 2020, the results of which will be filed with the Commission once secured.

19. PWW is preparing concurrently with this filing, a request for approval to the City of Nashua. The Board of Aldermen have scheduled an emergency meeting on Monday May 4, 2020, to consider and vote on this financing. The Company will supplement this Petition with documentation showing written confirmation from the City of Nashua upon receipt.

20. For the reasons described in Mr. Goodhue's testimony, including the desire to consummate the transactions by May 8, 2020, PWW respectfully requests that the Commission issue an order no later than May 6, 2020 if possible.

21. Finally, the Company avers that Issuance of debt under the terms provided by the SBA and TD Bank and use of the proceeds for the purposes described above and in Mr. Goodhue's testimony is consistent with the public good as contemplated by the New Hampshire Supreme Court's ruling in *Appeal of Easton*, 125 N.H. 205,211 (1984).

WHEREFORE, by this petition, PWW requests that the Commission:

(a) Find that the issuance of the \$2.5 Million proposed loan in accordance with the terms and purposes described in this petition and in the prefiled testimony is consistent with the public good;

(b) Pursuant to RSA 369:1, 3 and 4, authorize the Company to do all things, take all steps, and execute and deliver all documents necessary or desirable to implement and carry out the proposed financing;

(c) Approve the requested financing for the principal amount of \$2.5 Million by finding the proposed loan qualifies as a routine financing; and

(d) Take such further action and make such other findings and orders as in its judgment may be just, reasonable, and in the public good.

Respectfully submitted,

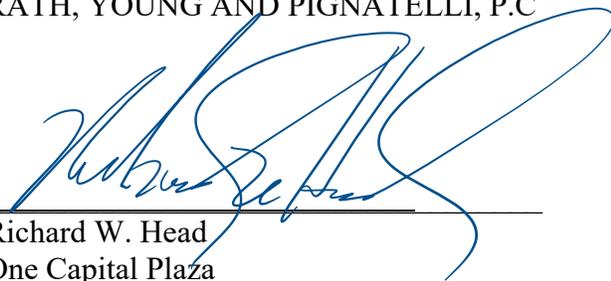
PENNICHUCK WATER WORKS, INC.

By Its Attorneys

RATH, YOUNG AND PIGNATELLI, P.C

Dated: May 1, 2020

By:

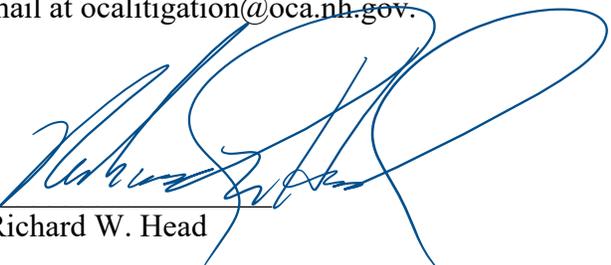


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Certificate of Service

I hereby certify that a copy of this petition for approval of financings, including the pre-filed testimony referred to in the Petition and exhibits, have this day been forwarded to the Office of Consumer Advocate via electronic mail at ocalitigation@oca.nh.gov.

Dated: May 1, 2020



Richard W. Head