

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. 20-064

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

MOTION FOR MODIFICATION OF ORDER NO. 26,424

NOW COMES, Pennichuck Water Works, Inc. (“PWW” or the “Company”), and respectfully moves the New Hampshire Public Utilities Commission (the “Commission”) to modify the reporting date contained on Page 3 of Order No. 26,424 (May 2, 2021). In support of its motion, PWW states as follows:

1. This docket relates to PWW’s request to borrow funds under the federal Paycheck Protection Program (“PPP”), which is administered by the federal Small Business Administration (“SBA”).
2. On May 6, 2020, the Commission approved the financing request. In doing so, the Commission ordered, in relevant part, as follows:

FURTHER ORDERED, that Pennichuck Water Works, Inc., will file detailed information pertaining to the loan’s use after the eight week period runs, as described above, including a copy of the request for loan forgiveness that the Company submits to TD Bank; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc., will file detailed financial information regarding the Company’s expenditures during the same period the Paycheck Protection Program loan funds are used, as detailed above, including but not limited to analysis of the revenue shortfall the Company would experience during that time if the Paycheck Protection Program loan funds were not available;

Order No. 26,354 at 10.

3. Since the issuance of the Order, PWW has provided the Commission with two updates, the first on August 14, 2020 and the second on September 1, 2020.

4. Due to modification of the rules and requirements under the PPP loan program by the Federal Government and the SBA, it led to delays in TD Bank's, PWW's lender, ability to establish protocols for accepting applications for loan forgiveness. That alone created barriers to the Company's ability to apply for loan forgiveness and provide the required reports to the Commission.

5. In light of the regulatory uncertainty at the time, PWW also received an opinion from Melanson Heath, PWW's accounting firm, advising the Company that it should not file its application for loan forgiveness until 2021. *See* email from Deborah Tarbox, CPA, attached as Exhibit A.

6. As is described in Ms. Tarbox's email, she identified three specific issues that require additional regulatory guidance before the application should be filed: (1) the taxability of the amount of loan forgiven; (2) the timing of forgiveness relative to which tax year will apply; and (3) the full-time equivalent calculation related to the comparison and rehire periods. *See* Exhibit A.

7. In light of the regulatory uncertainty, PWW decided for the reasons stated above that it would not file its application for loan forgiveness until 2021. Until PWW files its loan forgiveness application, PWW could not provide the Commission with the reports required under Order 26,354.

8. On October 28, 2020, in light of the regulatory uncertainty and the CPA's advice to wait for the regulators to address the key issues identified above, PWW moved to request that the Commission modify Order No. 26,354 to allow the reporting required under the Order be filed on or before May 2, 2021.

9. In support of its motion, PWW stated that under the terms of the PPP loans, the application for loan forgiveness must be filed within ten months after the Company's Covered Period. For PWW, at the time of filing the motion, the Covered Period was May 14, 2020 - July 2, 2020; therefore, the deadline for application was May 2, 2021.

10. On November 24, 2020, PUC granted the motion to modify Order No. 26,354 extending the reporting deadline to May 2, 2021 by Order No. 26,424.

11. The Federal Government and Small Business Administration again modified the rules and requirements under the PPP loan program. The timeframe for spending PPP loan proceeds was extended from eight (8) weeks to twenty-four (24) weeks. In addition, the SBA amended the filing deadline for applications for loan forgiveness any time up to the maturity date of the loan (instead of 10 months previously). See PPP Loan Forgiveness Guidance, U.S. Small Business Administration, <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness>, attached as Exhibit B.

12. The SBA also modified the rules to state that if a borrower does not apply for forgiveness within 10 months after the last day of the covered period, then PPP loan payments are no longer deferred, and the borrower will begin making loan payments to their PPP Lender.

13. PWW utilized PPP loan proceeds for a period of twenty-one (21) weeks starting in mid-August 2020; therefore, ten (10) months from its covered period is mid-June 2021. The maturity date of the PPP loan is May 7, 2022.

14. PWW anticipates filing its application for loan forgiveness prior to June 15, 2021 or within the 10 months after the last day of the covered period.

15. In addition to the modifications to the PPP program, the legislative uncertainty cited in the October 28, 2020 motion and in Exhibit A of that motion still exists. Currently, New Hampshire Senate Bill SB-3 is pending in the Legislature which would make loan forgiveness on PPP loans tax exempt. PWW anticipates that this legislation while pending would provide certainty as to whether the PPP loan forgiveness is taxable.

16. In Order No. 26,383 in Docket DW19-084, the Commission set PWW on a three-year rate cycle to file its rate cases. See Order No. 26,383, p. 10. PWW last filed its rate case on July 1, 2019 in Docket No. DW19-084, with the next anticipated full rate case filing by July 2022, as consistent with the Commission's order.

17. The purpose of the PPP loans approved in Order 26,354 was to provide funds to PWW to maintain critical staffing essential for full and continuous operations as a resulted public water supplier to its customers. It also allowed the company to provide for adequate cash flows to mitigate the possible impact of remaining in compliance with the Governor's Executive Order which prevented the termination of water service to ratepayers for nonpayment. By granting authority to utilize the PPP loan proceeds, this represented a cost avoidance to PWW in allowing it to avoid lay-offs or furloughs of its workforce due to insufficient cash resources, or lack of sufficient credit line availability to fund full operations, or avoid borrowing funds through other

higher-interest credit facilities, as it awaited rate relief from its pending rate case and the closure of its taxable bond issuance in early September 2020, which refilled its RSF fund and reimbursed its line of credit for usage in support of that depleted RSF fund.

18. PWW does anticipate negligible impact on rates of the PPP loans; however, those impacts will be better understood upon filing its application for forgiveness, a decision on its application, as well as some resolution regarding the taxable treatment of the forgiveness with pending legislation. Those negligible impacts can also be balanced against the benefits of borrowing the PPP loans at a lower debt-service cost (notwithstanding forgiveness) and other costs avoided with prevented layoffs or furloughs to maintain service to ratepayers.

19. PWW respectfully requests to defer filing the information required in Order No. 26,424 until PWW files the next full rate case in approximately one (1) year, as appropriate to balance the impacts of the PPP program, allow time for application and a loan forgiveness decision, as well as clarity on tax treatment of that forgiveness given pending legislation, all against the overall rates presented with the next rate case.

20. Staff has reviewed the request sought in this Motion and assents to the relief sought in this Motion.

WHEREFORE, PWW respectfully requests that the Commission:

- A. Grant this Motion to Amend; and
- B. Provide such other relief as is just and equitable.

Respectfully submitted,

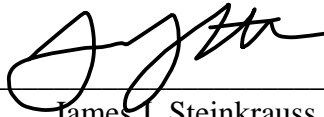
PENNICHUCK WATER WORKS, INC.

By its Attorneys,

RATH, YOUNG AND PIGNATELLI, PC

Date: April 19, 2021

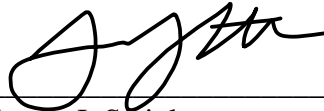
By:



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Certificate of Service

I hereby certify that on this 19th day of April, a copy of this motion has been served electronically with the Docket's Service List.



James J. Steinkrauss