

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 20-064**

**PENNICHUCK WATER WORKS, INC.**

**Emergency Petition for Financing Approval  
Under the Federal Paycheck Protection Program**

**Order Approving Financing**

**ORDER NO. 26,354**

**May 6, 2020**

This order permits Pennichuck Water Works to borrow up to \$2,543,662 from the federal Small Business Administration Paycheck Protection Program. The order also waives certain finance petition filing requirements.

**I. BACKGROUND AND PROCEDURAL HISTORY**

Pennichuck Water Works, Inc., (PWW or the Company), is a regulated water utility serving customers in Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Nashua, Newmarket, Plaistow, and Salem. As a public utility operating in New Hampshire during this time of the Novel Coronavirus pandemic (COVID-19), PWW is also considered a provider of an essential service, pursuant to Governor Sununu’s Emergency Order #17 Exhibit A issued on March 26, 2020.<sup>1</sup> Under Exhibit A, “[e]ntities that fall under this guidance [must] continue to operate with necessary staff to complete critical and essential functions” which includes “[e]mployees needed to operate and maintain public and private drinking water.” On May 1, Governor Sununu issued Emergency Order #40, extending and modifying Emergency Order #17 and again including the list of providers of essential services contained in Exhibit A.

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<sup>1</sup> The Governor’s Exhibit A of Emergency Order #17 can be found at <https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-17-ex-a.pdf>.

The Company is also subject to the Governor's Emergency Order #3 pursuant to Executive Order 2020-04 (Emergency Order #3), issued on March 17, which imposed temporary prohibitions on disconnection or discontinuance of certain essential services, including the provision of water. Under Emergency Order #3, providers of water in the state are prohibited from disconnecting or discontinuing service for non-payment, for the duration of the state of emergency based on the novel coronavirus.

At the end of the state of emergency, all customers having arrearages accrued during the state of emergency must be provided the opportunity to make a reasonable payment arrangement over no less than a six-month period and shall not be charged any fees for late payment for arrearages accrued during the state of emergency; however, customers are not relieved of their obligation to pay bills for receipt of any service covered by Emergency Order #3. *All Public Utilities and New Hampshire Electric Cooperative, Inc.*, Order No. 26,343 (March 31, 2020) at 1-2.

On May 4, 2020, PWW filed a financing petition (PWW Petition) seeking approval to borrow up to \$2,543,662 from the Paycheck Protection Program (PPP), which is administered by the federal Small Business Administration (SBA).

The PPP is a federal loan program originating from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law on March 27, 2020. The PPP is a "loan designed to provide a direct incentive for small businesses to keep their workers on the payroll."<sup>2</sup> The funds borrowed are subject to partial or full loan forgiveness if certain requirements are met, as detailed below.

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<sup>2</sup> See: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-7>.

The first round of funds totaling \$349 billion was rapidly exhausted. The SBA resumed accepting application for PPP funds on April 27, 2020, after additional funding was authorized. PWW filed an application that same day.

On April 28, the Company received notification from its lender, TD Bank, that its loan application received preliminary approval, followed by formal notification of approval and assignment of a loan number by the SBA on April 30. In order for PWW to receive those funds, TD Bank must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval.<sup>3</sup> Accordingly, the loan must be dispersed to PWW by May 11, 2020, in order for the Company to take advantage of the financing.<sup>4</sup>

The Company was given approval to enter into this financing by its Board of Directors and its parent company, Pennichuck Corporation's Board of Directors on May 2. The Company also received approval from Nashua's Board of Aldermen on May 4.

On May 5, the Office of the Consumer Advocate filed a letter indicating its intent to participate in the docket.

PWW's Petition and subsequent docket filings, other than any documents for which confidential treatment has been requested of or granted by the Commission, are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-064.html>.

## II. PWW'S POSITION

### A. Purpose

In support of the PWW Petition, the Company filed the testimony of its chief executive officer, Larry D. Goodhue, (LDG Testimony). PWW represents that it would use the proceeds

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<sup>3</sup> See: <https://www.sba.gov/sites/default/files/2020-04/Interim-Final-Rule-on-Disbursements.pdf> at 5 (providing information on PPP loan disbursements).

<sup>4</sup> See: *id.* at 5, n1 (“[i]f the tenth calendar day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day”).

of the loan to finance its operation during the COVID-19 emergency and in response to the Governor's emergency orders. LDG Testimony at 15. As an essential service provider, PWW has retained its full workforce. Retention of a full workforce has forced the company to incur its entire payroll costs.

Pursuant to Emergency Order #3, PWW cannot suspend water service for non-payment. While not substantial at this time, the Company has begun to experience an increase in its customers' past due amounts. PWW asserts that the Company expects the arrearages to grow over time. The Company is unsure at this time if, how, and when it will be able to collect the revenue shortfall.

As an all-debt utility with no access to equity markets, PWW currently utilizes its \$4 million line of credit with its parent company, Pennichuck Corporation, to cover the shortfall of its current working capital needs, including payroll costs.<sup>5</sup> LDG Testimony at 16. That inter-company debt includes an interest rate of 3.33 percent. *Id.* at 26. The PPP loan will allow the Company to access debt at a lower rate of 1 percent. The financing, furthermore, provides the opportunity for partial or full forgiveness if certain conditions, as described below, are met. PWW contends that most, if not all, of the PPP loan will be forgiven, which would essentially provide the Company with a grant.

#### *B. Public Good*

The Company argues that the financing is in the public good because the "terms of the financing are favorable and will provide a source of potential revenue ... to pay salary and other expenses." PWW Petition of May 4, 2020, at 6. PWW also contends that the PPP loan is likely to be forgiven. In the event the loan is not forgiven in its entirety, the PPP would replace more

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<sup>5</sup> See: Order No. 26,070 (November 7, 2017) (approving PWW's most recent modifications to its unique, all-debt ratemaking structure).

expensive debt that is currently being incurred by the Company to meet its payroll expenses, at a lower interest rate. The Company concludes that the lower interest rate will ultimately produce customer savings, which is in the public good.

*C. PPP Loan Terms and Customer Impact*

The anticipated PPP loan terms include a 2-year maturity at an interest rate of 1 percent. A portion or all of the loan can be forgiven if all employees are kept on the payroll for eight weeks and the following additional conditions are met:

if the funds are used for payroll costs [with the salary capped at \$100,000 on an annualized basis for each employee] 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.<sup>6</sup>

In order to receive loan forgiveness, PWW must submit documentation verifying the use of the funds with its request for forgiveness to its lender, TD Bank. TD Bank must render a decision within 60 days.<sup>7</sup>

The Company contends that all, or virtually all, of the borrowed funds will be subject to the loan forgiveness. PWW argues that, as such, all or most of the funds would convert into a grant. The Company also expects the cost to accept the funds will be *de minimis*, pertaining mostly to regulatory approval and legal costs. The Company, however, did not provide a specific amount in its supporting attachments. LDG Testimony at 18.

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<sup>6</sup> See: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-2>.

<sup>7</sup> See: <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>.

PWW contends that it is likely that all, or nearly all, of the financing will be forgiven, thus providing a great savings to ratepayers as the Company could avoid financing \$2.5 million; a cost ultimately borne by ratepayers. In the event the PPP loan is not forgiven, PWW estimated that customers would still realize a savings of 0.16 percent on the average customer bill.

*D. Motion for Waiver of Certain Finance Petition Requirements*

Pursuant to New Hampshire Administrative Rule Puc 201.05, the Company also petitioned for waiver of certain subsections of Puc 609.03. PWW requested waiver of three financing petition requirements: Puc 609.03(b)(2), a statement in reasonable detail of any proposed additions, construction, or working capital requirements together with any proposed construction budget; Puc 609.03(b)(6), a statement of capitalization ratios after giving effect to the proposed financing;<sup>8</sup> and Puc 609.03(b)(7), the weighted average cost of debt.

The Company argued that waiver of Puc 609.03(b)(2) should be granted as the information requested is not relevant to the financing request and production of the information would be unnecessary. PWW further argued that waiver of Puc 609.03(b)(6) and Puc 609.03(b)(7) should be granted as the requirements no longer apply due to the Company's all-debt capital structure. The Company contended that waiver of the rules is in the public interest and will not disrupt the orderly and efficient resolution of the proceeding as the information required is not relevant or does not apply.

### **III. COMMISSION ANALYSIS**

RSA 369:1 states that a utility may, "with the approval of the commission but not otherwise, issue and sell ... notes and other evidences of indebtedness payable more than 12 months after the date thereof for lawful corporate purposes." A hearing is not required, but

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<sup>8</sup> PWW requests a waiver of Puc 609.03(b)(5), however, it describes Puc 609.03(b)(6). As such, we interpret the Company's request as a waiver of Puc 609.03(b)(6).

the Commission “after such hearing or investigation as it may deem proper, shall determine the actual or probable cost incurred or to be incurred; and, if in its judgment the issue of such securities upon the terms proposed is consistent with the public good, it shall authorize the same to an amount sufficient, at the price fixed in accordance with the laws applicable thereto, to provide funds for defraying the cost as so determined” RSA 369:4. The Commission reviews the amount to be financed, the reasonableness of the terms and conditions, the proposed use of the proceeds, and the effect on rates. *Appeal of Easton*, 125 N.H. 205, 211 (1984).

The rigor of an *Easton* inquiry varies depending upon the circumstances of the request. As the Commission has previously noted, “certain financing related circumstances are routine, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing.” *Public Service Company of New Hampshire*, Order No. 25,050 at 14 (December 8, 2009). We engage in a more limited review for routine financing requests. *Id.* at 13-14. A routine request is one “that will have no discernible impact on rates or deleterious effect on capitalization, [and] in which the funds are to enable numerous investments appropriate in the ordinary course of utility operations.” *Id.* at 13.

The Commission finds PWW’s request to be routine. As the Company’s current structure is comprised entirely of debt, the proposal will have no effect on the Company’s capitalization. In the event that PWW is not able to meet the requirements of loan forgiveness for part or all of the loan amount, the minimal interest rate of 1 percent will have no discernible impact on rates, as the loan would replace higher-cost debt. In fact, the Company asserts that use of the debt will provide a savings to rate payers as it replaces the higher cost debt of the inter-company line of credit with the lower cost PPP loan. The lower cost financing should benefit ratepayers in the long term. Because the request is routine, the Commission will conduct the more limited

examination of whether the “use of financing proceeds [is] in the public good without further review of possible alternative uses of the funds.” *Id.* at 16. The underlying standard applied is whether the use of the financing proceeds is consistent with the public good. RSA 369:4.

According to the Company, at least 75 percent of the PPP will be used to meet the Company’s payroll costs, in order to keep all employees on the payroll, for eight weeks after disbursement of the loan. If any funds are leftover from its payroll costs, the Company will put the funds towards rent, mortgage, interest, or utility costs. PWW stated it is certain that at least most, if not all, of the loan amount will be forgiven. In the event that it is not, the remainder will be subject to a 1 percent interest rate, which still results in reasonable financing costs to be borne by PWW ratepayers in comparison to alternative financings. In reliance on the Company’s representation regarding loan costs, we find that the actual or probable costs of obtaining the loan are *de minimis*. See LDG Testimony at 18. We therefore find that the proposed financing is consistent with the public good, and we approve PWW’s request.

Our approval does not limit or preclude the Commission from reviewing in a future rate case, directly or indirectly, the prudence, use, and usefulness of any specific project financed by the loan. RSA 378:28. The Commission and Staff also retain the authority under RSA 374:4 to be kept informed of PWW’s use of the financing independently and apart from any review under RSA 378:28. As such, we require the Company to submit to the Commission and Staff detailed documentation regarding the use of these funds. PWW may comply with this requirement, at least in part, by filing with the Commission a copy of the request for loan forgiveness that it submits to TD Bank, within ten days of the request.

We are relying on the Company’s assertions that this financing and loan forgiveness will result in ratepayer savings, and accordingly we will require PWW to utilize the funds to the greatest extent possible to qualify for loan forgiveness, and to prioritize the use of funds in that

manner. We will also require PWW to demonstrate that all proceeds of the financing and/or loan forgiveness have been accounted for and applied in a manner that reduces rates or otherwise provides ratepayer benefit. We will also require PWW to submit detailed company financial information pertaining to the time period during which the PPP loan funds were used, including but not limited to analysis of the revenue shortfall the Company would experience during that time if the PPP loan funds were not available. All of the required information shall be filed as a report to the Commission no later than October 1, 2020. That will allow Staff and the Commission to ensure that the direct benefit of the financing flows to PWW's ratepayers.

In consideration of the Company's waiver request of Puc 609.03(b)(2), Puc 609.03(b)(6), and Puc 609.03(b)(7), pursuant to Puc 201.05, the Commission shall waive provisions of its rules when the waiver would serve the public interest and would not disrupt the orderly and efficient resolution of the matters before it. N.H. Admin. R., Puc 201.05. A waiver serves the public interest if compliance with the rule would be onerous or inapplicable under the circumstances, or the rule's purpose would be satisfied by a proposed alternative method. *Pennichuck East Utility, Inc.*, Order No. 26,311 at 4 (November 27, 2019).

The purpose of those rules is to require the Company to submit necessary financial information to determine whether a proposed financing should be approved. The Company asserts that the information required is not relevant or no longer applies to PWW's current all-debt structure.

Regarding Puc 609.03(b)(2), we find that PWW has provided sufficient detail that it will use the financing for working capital at a lower interest rate than would otherwise be available and that no waiver of that rule is necessary.

We agree with the Company's assertion that Puc 609.03(b)(6) is no longer applicable given the Company's all debt capital structure and grant the waiver of that rule.

Finally, with respect to Puc 609.03(b)(7), we find that the rule would be inapplicable if the financing is ultimately forgiven, and if not entirely forgiven, that the resulting weighted cost of debt would be lower if the financing is ultimately a 1 percent loan.

Accordingly, we find that waiving the filing requirements of Puc 609.03(b)(6), and Puc 609.03(b)(7), as requested by PWW, would serve the public interest in this instance and that waiver of Puc 609.03(b)(2) is unnecessary. We also find that waiver of Puc 609.03(b)(6), and Puc 609.03(b)(7) will not disrupt the orderly and efficient resolution of matters before the Commission.

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

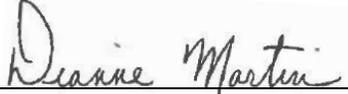
**ORDERED**, that authority for Pennichuck Water Works, Inc., to undertake a loan of up to \$2,543,662, under the terms and conditions described in this order, and for the purposes as outlined herein, is GRANTED; and it is

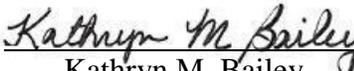
**FURTHER ORDERED**, that Pennichuck Water Works, Inc., will file detailed information pertaining to the loan's use after the eight week period runs, as described above, including a copy of the request for loan forgiveness that the Company submits to TD Bank; and it is

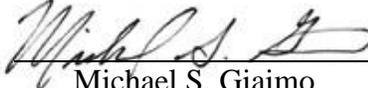
**FURTHER ORDERED**, that Pennichuck Water Works, Inc., will file detailed financial information regarding the Company's expenditures during the same period the Paycheck Protection Program loan funds are used, as detailed above, including but not limited to analysis of the revenue shortfall the Company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

**FURTHER ORDERED**, that the request for waiver of N.H. Admin. R., Puc 609.03(b)(6), and Puc 609.03(b)(7), by Pennichuck Water Works, Inc., is GRANTED.

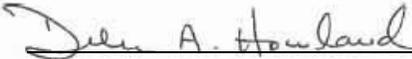
By order of the Public Utilities Commission of New Hampshire this sixth day of May,  
2020.

  
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Dianne Martin  
Chairwoman

  
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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

# Service List - Docket Related

Docket#: 20-064

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