

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 24-___

Pennichuck Water Works, Inc.

**2024 Petition of Pennichuck Water Works, Inc. for Approval of
Financing Under the New Hampshire Department of Environmental Services PFAS
Remediation Grant and Loan Fund for Upgrades to the Nashua Water Treatment Facility**

Pennichuck Water Works, Inc. (“PWW” or “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”), petitions the Commission for approval and authority under RSA 369:1-4 to enter into a loan up to \$11,450,000 from the New Hampshire Department of Environmental Services (“NHDES”) Per- and Polyfluoroalkyl (“PFAS”) Remediation Grant and Loan Fund (“PFAS Remediation Loan”) for necessary upgrades to the Nashua Water Treatment Facility (“WTF”) including the chemical feed and storage systems. 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. PWW is seeking authority to enter into a loan up to \$11,450,000 from the PFAS Remediation Loan to fund the design and construction of a new Chemical Feed and Storage Improvement project at the Company’s Nashua WTF to provide treatment of PFAS in water.

See Pre-Filed Direct Testimony of George Torres at 3-4. The new building will accommodate additional bulk chemical storage at the WTF for ferric chloride, the primary coagulant chemical used in the treatment process and primary bulk storage for sodium hypochlorite, the primary disinfectant. The proposed upgrade will also replace existing chemical feed equipment, obsolete programmable logic controllers, and other miscellaneous related chemical feed systems to improve operations and treatment at the WTF. See Pre-Filed Direct Testimony of George Torres at 5, and Pre-filed Direct Testimony of Christopher J. Countie at 3.

3. The WTP was originally constructed in 1980 to ensure compliance with the federal Safe Drinking Water Act. It was significantly re-built in 2006-2009 to ensure compliance with more stringent standards of the Safe Drinking Water Act, Surface Water Treatment Rule. During this time of reconstruction, most of the major components related to the water treatment process were either rebuilt or replaced. New treatment technologies were also added to enhance the facilities ability to meet both current and future anticipated regulations. See Direct Testimony of Christopher J. Countie at 3.

4. The WTP uses two primary sources of surface water supply; (1) the Pennichuck Brook Reservoir (PBR), and (2) the Merrimack River (MR). Historically, the Merrimack River was used only in the summer months of the year when daily demand in the system exceeded 13 million gallons per day. This is the safe yield of the PBR system. The design parameters used by the engineering firm chosen to complete the 2006 – 2009 WTP enhancements used this mode of operation as their fundamental assumption when considering chemical feed capacity related to pumping equipment as well as storage. Furthermore, the basis for feed rate for chemicals was based on limited historical water quality information both for raw and finished water parameters. The WTP operated as designed with ample storage for chemicals and adequate pumping

equipment for all anticipated water quality conditions and flows. See *Id.* at 4.

5. In 2014, as a part of the Federal EPA's Unregulated Contaminant Monitoring Rule ("UCMR"), water suppliers of a certain size were required to test for a variety of Per- and Polyfluoroalkyl Substances ("PFAS"). At that time, the Minimum Reliable Detection Limits ("MRDL") of the available laboratory equipment, could not detect the levels present in the PBR and therefore, the system's reported results were below the MRDL. As science and technology evolved related to determining the presence and proliferation of these PFAS chemicals and their impacts to human health, the State of NH proactively set drinking water standards, or Maximum Contaminant Levels ("MCL"), in 2019 for certain PFAS chemicals. The new MCL's for two chemicals were below the now detectable levels of 1.4 to 1.8 parts per trillion (ppt) in the PBR. The PFAS chemicals detected above the newly established MCL were Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS). See *Id.* at 4-5.

6. The upgraded treatment process at the WTP fortunately utilizes filters containing Granular Activated Carbon (GAC) which is considered one of the most effective means of removal of PFAS chemicals from drinking water. However, the capacity to remove PFAS is limited, and it was determined through frequent testing, that the GAC's ability to adsorb PFAS would be exhausted in less than six months based on the PFOA and PFOS levels in the PBR (Average PFOA level of 15.6 ppt and average PFOS level of 4.11 ppt). The cost of the most recent partial changeout of the GAC media in the plant performed in 2023 when extended to a complete change out of all filter GAC media would be about \$2.1 million. See *Id.* at 5.

7. Raw water from the MR contains PFAS chemicals that are significantly lower than the PBR (Average PFOA level of 2.87 ppt and average PFOS level of 3.82 ppt) and lower than the State of NH MCL for PFOA and PFOS. Rather than changing GAC from the filters as

frequently as twice per year at a total cost of approximately \$4.2 million, the decision was made to switch from using PBR as the primary source of supply using MR all year (as opposed to just seasonally) to lessen the loading of PFAS chemicals on the filters. This extends the life of the GAC media while still providing finished water meeting all state and federal drinking water regulations. See *Id.* at 5.

8. The raw water from the MR, although very similar in typical water quality parameters to the PBR, generally requires a greater amount of coagulant chemical to meet treatment goals for clarity and disinfection by-product pre-cursor removal. Furthermore, changes in water quality due to climate change and its relationship to the frequency of major storm events, have caused extended periods where the MR raw water has a much stronger coagulant demand. Over time, this dynamic has raised the average coagulant demand beyond the maximum feed rate of the existing chemical feed system. Along with this, the capacity of the bulk storage system for this chemical no longer meets the targeted, Ten State Standard design volume of 30 days of bulk storage at average demand and chemical usage. The current available storage for ferric chloride is 18,000 gallons which translates to 22 days of storage at average flows and coagulant demand. During the summer months the demand for Ferric Chloride is as high as 3–4000-gallon bulk deliveries per week. If the supply of ferric was interrupted for as little as 10 days, the WTP would run out of ferric chloride. See *Id.* at 5-6.

9. In 2023, as a result of a temporary shortage of ferric in 2022, as well as ongoing operational indicators that the system requires more bulk chemical storage, an evaluation was performed by CDM Smith to review historical records of raw water quality, system capacity and projections of future chemical demand. In addition, a condition and capacity assessment was performed for all chemical feed systems in the plant. From this comprehensive evaluation, a

project scope and opinion of cost was finalized. CDM Smith was chosen after a comprehensive review of statements of qualifications and project approach submissions from multiple firms.

See *Id.* at 6-7.

10. To proceed with the project, financing outside of the Company's typical means will be required. Since the timeline of the project design and construction will be over two years, the Company will not be able to utilize PWW's Fixed Asset Line of Credit (FALOC) to provide the short-term capital necessary to complete this project. The Company's arrangement with TD Bank, who provides the FALOC, stipulates that it be paid off on an annual basis by finances obtained through a bond offering through the NH Business Finance Authority. Annual bond financing can only be performed for projects that are completed within one year. Because of the timeline of this project, alternative financing was sought and has been determined to be available subject to NHPUC approval. See *Id.* at 7.

11. Given the restrictions on use of the FALOC and bonding, the Company sought funds through the New Hampshire Drinking Water and Groundwater Trust Fund (DWGTF) in February 2024. The DWGTF Board did not issue a decision and advised the Company to first explore financing through the State of New Hampshire PFAS Remediation Grant and Loan Fund. As a result of an application to this fund, the Company was approved for a loan in the amount of up to \$11,450,000 for 20 years at an APR of 3.5% through the PFAS Remediation Grant and Loan Fund. See *Id.* at 7.

12. As discussed in the Pre-filed Direct Testimony of George Torres, the Company's Chief Financial Officer and Treasurer, he describes the terms and purposes of the proposed financing, including the terms of the PFAS Remediation Loan. Substantially all of the funding for this project is anticipated to be provided by the loan at the following terms: (1) amounts

advanced to PWW during construction will accrue at an interest rate of one percent (1%) per annum, and the total accrued interest will be due upon substantial completion of the projects; and 2) the terms of the loan requires repayment of the loan principal plus interest over a twenty (20) year period commencing six months after the project is substantially complete. The current stipulated interest rate for this borrowing is 3.50% per annum. See Direct Testimony of George Torres at 8.

13. The loan will be unsecured, and the Company's parent company, Pennichuck Corp. will provide an unsecured corporate guarantee for the repayment of the loan. See Direct Testimony of George Torres at 8. The Company will supplement its petition to provide the Commission with the PFAS Remediation Loan documents once the documents are finalized and executed. See *Id.* at 8.

14. The anticipated issuance costs for the PFAS Remediation Loan is anticipated total \$8,000 to \$15,000 related primarily to legal costs which will be incurred to (i) review and revise the necessary loan documentation prepared by NHDES, and (ii) obtain Commission approval of the loan. The issuance costs will be amortized over the life of the PFAS Remediation Loan. The annual amortization expense of \$750, associated with the issuance costs, has not been reflected in schedules attached in Exhibits GT-2 through 3 to Mr. Torres' testimony due to its immateriality with respect to the overall analysis and impact of this proposed financing. See *Id.* at 9.

15. In accordance with Puc 609.03 and Form F-4, Mr. Torres' testimony at pages 11-13 describes the estimated costs of the proposed financing, and includes the following attachments:

- Schedule GT-1, pages 1 and 2, presents the actual financial position of the

Company as of December 31, 2023, and the pro forma financial position reflecting certain adjustments pertaining to the proposed PFAS Remediation Loan at \$11,450,000 term loan financing. Schedule GT-1, page 1, reflects the pro forma adjustments to record the net assets related to the capital projects funded by the PFAS Remediation Loan, and to record the net amount needed to record a full year of depreciation (as an adjustment to the half-year convention already booked for the assets as of 12/31/2023); there are no amounts reflected to adjust Plant Assets for the \$11,450,000 cost of the net assets or to reflect the Cost of Removal, of \$371,152, as the actual amounts for these entries and projects have already been included in the 12/31/2023 financial statements for these used and useful assets as of year-end. Schedule GT-1, page 1, also records the use of funds to support some of the related expenses.

- Schedule GT-1, page 2 (Asset Line of Credit funds), establishes the total PFAS Remediation Loan up to \$11,450,000 that are anticipated to be funded out of the Company's working capital and intercompany borrowings from Pennichuck in the amount of \$558,875. This schedule also reflects the income impact on retained earnings related to costs associated with the financing, as reflected on Schedule GT-2.
- Schedule GT-2, pages 1 and 2, presents the Company's Operating Income Statement for the Twelve Months Ended December 31, 2023. As indicated previously, the issuance costs associated with the financing are not expected to be significant or material and are not reflected in Schedule GT-2, page 1. Schedule GT-2, page 1, contains three pro forma adjustments. The first adjustment records

the estimated increase in interest expense related to additional debt raised at interest rates of 3.50% per annum. The second adjustment records the estimated depreciation and property taxes on the new assets. The third adjustment records the income tax effect of the additional pro forma interest expense, depreciation and property tax expenses, using an effective combined federal and state income tax rate of 27.00%.

- Schedule GT-3, the Company's Pro Forma Capital Structure for Ratemaking Purposes for the Twelve Months Ended December 31, 2023, demonstrating the Company's pro forma total capitalization as of December 31, 2023. Schedule GT-3 is consistent with the Statement of Capitalization Ratios filed as Exhibit 5 to the Form F-4 pursuant to PUC Rule 609.03(b)(6).
- Schedule GT-4A, the Company's Projected Rate Impact on Single Family Residential Homes illustrates the Company's pro forma impact from this financing on the average single-family residential home's water bill, as it pertains to the rates that were approved under Docket No. DW 22-032.
- Schedule GT-4B, the Company's Weighted Average Cost of Long-Term Debt, demonstrates the Company's pro forma impact from this financing on its overall annual weighted average cost of Long-Term debt, inclusive of loans already in existing on the Company's books as of December 31, 2023. This schedule is consistent with Exhibit 6 of Form F-4 pursuant to PUC Rule 609.03(b)(7). See Direct Testimony of George Torres at 12-13.

16. The PFAS Remediation Loan was approved by Penn Corp's and the Company's

Boards of Directors on May 4, 2024. Copies of the approvals are attached as Exhibits GT-6 and GT-7. The PFAS Remediation Loan approvals are being submitted contemporaneously with this filing, for approval by Penn Corp's sole shareholder, the City of Nashua. A copy of the letter sent on June 20, 2024, submitted by the Company to the City of Nashua is attached hereto as Exhibit GT-8. The Company will supplement its Petition with documentation showing the City's approvals when available.

17. Section 6(c)(vi) of the Loan Agreement between Pennichuck and TD Bank, NA provides an exception for the Company to borrow either tax-exempt or taxable bonds or state revolving fund loans without prior consent of TD Bank, NA but with thirty (30) days advance notice. On June 20, 2024, the Company submitted a letter to TD Bank NA to provide the thirty (30) days advanced notice of intent to enter into the PFAS Remediation Loan. A copy of the letter to TD Bank, NA is attached as Exhibit GT-5. See Direct Testimony of George Torres at 10-11. Once confirmation and response from TD Bank, NA is provided, the Company will supplement its Petition with the response.

18. The Company expects to obtain all necessary approvals and consents, and satisfy all other conditions, to allow closing with NHDES on the PFAS Remediation Loan by November 30, 2024. In order to close the loan as soon as the Company can obtain an Order *NISI* from the Commission (including its perfection at the end of the public comment period). In order to accomplish this, and given the timing to fully prepare, vet and review the loan documents for closing, the Company respectfully requests a perfected and effective Order from the Commission no later than October 30, 2024. See Direct Testimony of George Torres at 11. Closing on this financing in this timeframe will allow the Company to begin design of the WTF upgrade in the most economically favorable manner for customers, as to rate impact.

19. The Company avers that it is entitled to issue notes evidencing the financing described above, for the purposes set forth herein, and that the issuance of such notes will be consistent with the public good. Issuance of long-term debt under the terms provided by the PFAS Remediation Loan and use of the proceeds from the issuance for the WTF upgrade as described above and in Mr. Countie’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). Mr. Torres further explains that the proposed financing through the PFAS Remediation Loan is consistent with the public good because it would enable PWW to upgrade the WTF to continue to provide safe, adequate, reliable water service to its customers, at the most cost-effective means as further described in Mr. Countie’s direct testimony. Additionally, the terms of the financing through the NHDES, are very favorable when compared to other alternatives such as commercial loans or bonds, and therefore should result in lower financing costs than would be available through all other current debt financing option. See Direct Testimony of George Torres at 12.

20. Furthermore, the Company asserts that this petition qualifies as a routine financing consistent with the Commission’s decision *In re PSNH*, Order No. 25,050, 94 NH PUC 691,699 (December 8, 2009), in Docket DW 18-133, regarding PWW in Order 26,197 (December 3, 2018), and most recently for a PEU CoBank loans approved in Docket No. DW 22-025 and Docket No. DW 23-046. See Order No. 26,640 (June 10, 2022) at 3-4 and Order No. 26864 (July 28, 2023) at 4-5. 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.” See *In re PSNH*, Order No. 25,050 at 13 (December 8, 2009). Here, the Company avers that the proposed financing will not

have a significant impact on rates and the financing will facilitate customary improvements made in the ordinary course of PWW's business.

WHEREFORE, by this petition, the attached testimony and exhibits, and pursuant to RSA 369, including RSA 369:1-4, PWW respectfully requests that the Commission:

(a) Find that the proposed PFAS Remediation Loan in the amount of up to \$11,450,00 and the purposes set forth herein, and in the manner and on the terms described herein, as well as in the pre-filed testimony are consistent with the public good;

(b) Find that the use of the proceeds to fund the WTF Upgrade, in the manner set forth in this petition and as described in the pre-filed testimony is prudent and consistent with the public good;

(c) Authorize PWW to do all things, take all steps, and execute and deliver all documents necessary or desirable to consummate, implement and carry out the proposed financing;

(d) Grant the requested approval of the PFAS Remediation Loan in a total aggregate amount not to exceed \$11,450,000 by finding the proposed loan qualifies as routine financing and issue an Order *Nisi* by October 30, 2024; and,

(e) 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: July 3, 2024

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, have this day been forwarded to the Office of Consumer Advocate via electronic mail at ocalitigation@oca.nh.gov.

Dated: July 3, 2024



James J. Steinkrauss