

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 19-084

Pennichuck Water Works, Inc.
Permanent Rate Proceeding

REPLY TO THE OCA'S OBJECTION TO
PENNICHUCK'S MOTION FOR TEMPORARY RATES

NOW COMES, Pennichuck Water Works, Inc. ("PWW" or "Company"), and requests leave to reply and replies to the Office of the Consumer Advocate's ("OCA") objection to PWW's motion for temporary rates as follows:

1. As stated in the Company's motion, RSA 378:27 authorizes the Commission to grant temporary rates if, in its opinion, the public interest so requires and the records of the utility on file with the Commission indicate it is not earning a reasonable return on its property used and useful in the public service. The Company is asking the Commission to exercise its plenary authority to set rates and allow reconciliation or recovery of unbilled revenues, so as to address the constitutional issue of confiscatory rates. The relief sought by the Company, however, does not extend back to the filing of this rate case, even though as explained in its motion, that would be allowed. Instead the Company is only seeking temporary rates back to the date of the filing of its motion on March 16, 2020.

2. The OCA objects to the March 16, 2020 effective date. Although the OCA cites the temporary rate statute and administrative rule, it does not address the Commission's plenary authority, the constitutional issue of confiscatory rates, the actual financial harm that will occur to customers if the requested temporary rates are not allowed, or distinguish those cases in which

the Commission has done exactly what the Company is asking for in its motion (and indeed, in past orders the Commission has gone beyond the relief the Company is currently seeking).

3. Because of the unprecedented situation facing the Company today, the Company wishes to bring to the Commission's attention additional factual developments that further support the Company's request:

- The Company will not stop delivering water, even as COVID-19 results in lost jobs, reduced capacity of consumers to pay, and inevitable delays, at best, of payments while the Company continues to do its work. PWW has taken all necessary and reasonable steps to ensure reliable delivery of drinking water to its customers at this very challenging time. Reliable delivery of water requires prompt assurance of just and reasonable rates that allow the Company to recover the costs of providing this vital service. The Company's request for the Commission to exercise its clear legal discretion to set rates that include a recovery for service after March 16 is entirely consistent with these obvious principles.
- The Company recognized early on what COVID-19 was going to do to supply chains. As a result, the Company acted prudently and wisely by taking steps to ensure that it has in stock and/or access to essential chemicals and supplies that are required to serve drinking water that complies with all regulatory requirements. These prudent steps, which the Company began to take *ahead* of the declaration of a state of emergency by the Governor and in *anticipation* of that declaration, have positioned the Company to perform its essential function without interruption. These precautionary steps, however, required up-front expenditures of money. For example:
 - The Company obtained full inventory coverage for distribution materials and treatment chemicals and, for essential components, including stocking a 60-day supply of essential chemicals and materials.
 - The Company has identified alternative suppliers of essential chemicals and materials which will back fill existing suppliers, if necessary, albeit at potentially higher cost.
 - The Company has established remote working environments for personnel whose job function allow it by making enhancements to the Company's Informacast System and other systems.
 - The Company modified payroll processing to allow payroll to be completed externally.
- Each month of lost recoupment results in approximately \$260,000 in lost revenue to the Company. These revenues are required to pay actual and reasonable costs of providing vital delivery of water service. If the Company cannot recover these

revenues through recoupment, the resulting cash deficit would need to be filled by new and additional borrowings, which will come with an interest cost that is uncertain in this very challenging current environment. Failure to allow the Company's very reasonable recoupment request (as compared to the traditional request for recoupment attributable to service provided after the filing of the rate case) will result in additional borrowing to refill the Company's already significantly depleted the RSF funds. Such borrowing would directly and negatively impact PWW's customers.

- If the OCA's proposal is adopted, the Company would be required to wait until the Commission issued an order and published the notice in the newspaper before the recoupment date could be set. That would leave the Company to the vagaries of regulatory lag and to when newspapers can publish a notice. By logical extension, if a month or more elapsed between the Company's filing date and the order and publication, the Company would lose \$260,000 in lost revenue per month. Although the OCA did not request notification beyond legal publication, the OCA cited Puc 203.12 which authorizes the Commission to require additional notice. If the Commission ordered the Company to undertake a mass mailing to customers to get the notice date established as soon as possible, that direct mailing would cost approximately \$22,000. This expense would become a rate case expense, resulting in another direct and negative impact on PWW's customers. If the Company simply waited for the next round of billing, that would save the direct mailing costs, but the Company would suffer another \$260,000 of lost revenue per month.
- Furthermore, not only is the Commission's docket full and orders inevitably take time, during this current state of emergency, it is even more difficult to set hearings and process orders. Even a relatively short regulatory lag of another 30-60 days would result in \$260,000 - \$520,000 in lost revenue.

4. As the Company stated at the conclusion of its motion, based on the books and records on file with the Commission and the testimony filed with the motion, PWW has demonstrated that it is under earning and eligible for the temporary rate relief requested. The current COVID-19 emergency situation further exacerbates the financial burden on the Company and reinforces the need for the Commission to exercise its constitutional, statutory, and regulatory authority to grant the Company's request for temporary rates effective March 16, 2020.

WHEREFORE, for the reasons set forth in its motion for temporary rates, as supplemented by this reply, the Company respectfully requests that the Commission:

- A. Grant the Company leave to reply to the OCA's objection;
- B. Fix, determine, and prescribe, pursuant to RSA 378:27, temporary rates for PWW at its current rate levels, effective March 16, 2020; and
- C. Grant such other relief as is just and equitable.

Respectfully submitted,

Pennichuck Water Works, Inc.

By its Attorney,

NH BROWN LAW, PLLC

Date: March 27, 2020

By: *Marcia A. Brown*
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Certificate of Service

I hereby certify that on this day, a copy of this motion has been emailed to the official service list for this proceeding.

Date: March 27, 2020

Marcia A. Brown
Marcia A. Brown, Esq.