

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**  
**PENNICHUCK EAST UTILITY, INC.**  
**AND**  
**PITTSFIELD AQUEDUCT COMPANY**

**DW 17-\_\_**

**VERIFIED PETITION OF PENNICHUCK EAST UTILITIES, INC.**  
**AND PITTSFIELD AQUEDUCT COMPANY FOR WAIVER**  
**OF RULE 1905.04 – COMPETITIVE BIDDING**

Pennichuck East Utility, Inc. (“PEU”) and Pittsfield Aqueduct Company, Inc. (“PAC”) (jointly the “Companies”), corporations duly organized and existing under the laws of the State of New Hampshire and operating as public utilities subject to the jurisdiction of the New Hampshire Public Utilities Commission (the “Commission”), in accordance with N.H. Admin. Rule Puc 201.05 hereby requests waiver of N.H. Admin. Rule Puc 1905.04 regarding the competitive bidding requirements to obtain legal counsel to assist with anticipated rate case filings. In support of this Petition, the Company respectfully represents as follows:

1. The Companies are, along with Pennichuck Water Works (“PWW”), Pennichuck Water Service Corporation (“PWS”) and The Southwood Corporation (“Southwood”), all subsidiaries of Pennichuck Corporation. The Companies and PWW operate as public utilities subject to the jurisdiction of the Commission.

2. In 2012, the City of Nashua, New Hampshire completed its acquisition of 100% of the outstanding shares of Pennichuck Corporation and thus became Pennichuck Corporation’s sole shareholder. As a result of the acquisition, Nashua controls the shares of Pennichuck Corporation and its subsidiaries as sole shareholder, and Pennichuck Corporation operates under the direction of an independent Board of Directors.

3. Prior to completing the acquisition, Nashua and Pennichuck Corporation filed a petition with the Commission seeking approval of the acquisition. Docket DW 11-026. On November 23, 2011, the Commission approved a Settlement Agreement in Order No. 25,292. That Order approved the acquisition and further approved a special, modified rate-setting methodology.

4. The corporate structure, regulatory status and rate-setting methodology are all unique, not only to New Hampshire, but perhaps nationally. This uniqueness presents multiple layers of complexity due the Companies' status as being indirectly wholly-owned by the City of Nashua. These issues include: application and modification of the rate setting methodology reflected in the Settlement Agreement; harmonization of rates with the migration of the Companies' capital structure from a balanced debt-equity capitalization common to traditional investor-owned utilities to a unique, debt-financed structure more customary to a municipally-owned utility; and communication of rate case concerns with Pennichuck Corporation's sole shareholder, the City of Nashua, and the public generally.

5. Rath, Young & Pignatelli ("RYP") is in a unique position to represent the Companies in their anticipated rate cases. RYP, through Attorney William Ardinger, acted as the lead attorney for the City of Nashua with respect to all aspects of the 2011 acquisition, including all aspects of the Commission's proceeding which led to the issuance of Order No. 25,292. RYP is intimately familiar with the terms and conditions approved by the Commission in Order No. 25,292, and the modified rate structure set forth in the Settlement Agreement, including: the purpose and structure of the City Bond Fixed Revenue Requirement, the Municipal Acquisition Regulatory Asset, and the Rate Stabilization Fund, the importance of continued regulated status for the Pennichuck utilities; and the need to maintain the corporate

governance structure now implemented through the current Pennichuck Board of Directors to address both the fact that the Pennichuck utilities serve customers located in over 30 municipalities and to provide continued assurance to the capital markets.

6. Directly relevant to this Petition is the fact that RYP currently represents PWW in its rate case pending before the Commission. *See* DW 16-806. On April 15, 2016, less than one year ago, Pennichuck Corporation issued a Request for Fee Proposal for legal services to identify a law firm to represent PWW in its rate case. By letter dated May 27, 2016, Pennichuck Corporation notified RYP that it had been selected as legal counsel for the PWW rate case. In its letter, Pennichuck Corporation stated it took the following factors into consideration:

- Proposed fee structure, stratified by attorney and associate provider level;
- Proposed allocations of time needed by elements and level of attorney and associate provider within each firm;
- Relative strength of firm with regards to:
  - Overall experience in processing rate filings with the NH Public Utilities Commission;
  - Blend of areas of expertise with regards to overall business issues in support of rate filings, including:
    - business operating structure of our utility companies;
    - existing capitalization structure and background in arriving at that structure;
    - knowledge pertaining to our current modified rate structure;
    - knowledge relating to our restructured debt profile and the background in arriving at that structure;
    - understanding of the current population of stakeholders pertaining to our rate case filing, and the possibility of working optimally with potential allowed intervenors on this rate filing;
    - understanding of the overall consolidated structure of the corporation, and the contributions to that structure from each of the corporation's subsidiaries; and
    - understanding of the tangential business issues relating to the overall financial structure of the corporation.

*See* Exhibit A, Letter from Pennichuck Corporation to William Ardinger.

7. Virtually all of the issues presented in PWW's pending rate case and the associated request for modifications to the rate making methodology will be presented in the rate cases filed

on behalf of the Companies. Thus, given that RYP was recently selected to represent PWW through a competitive process and the issues that are presented in PWW's rate case are virtually identical to those that may be raised in the anticipated rate filings by the Companies, the Companies are seeking to hire RYP as counsel for the Companies in order to utilize its resources in the most efficient manner possible.

8. N.H. Admin. Rule Puc 1905.04 provides (emphasis added):

(a) All utilities serving 600 customers or more and hiring service providers for use in a full rate case *shall acquire such services through a competitive bidding process* if the expense for such service is estimated to be or is \$10,000 or greater.

(b) Except if not necessary under (a), for each service provider used, *the utility shall also include a certification that: (1) The utility used a competitive bidding process*, and in selecting the winning bidder, considered information concerning the availability, experience, customary fees for similar services, quality, and cost of the service provider; and (2) The time spent on the rate case by the service provider was undertaken in an efficient and cost effective manner.

(c) If a utility is required to use a competitive bidding process pursuant to Puc 1905.04(a) and engages a service provider who is not the lowest bidder in a competitive bidding process, the utility shall provide clear and convincing justification of its decision to do so.

9. In considering a waiver request, the Commission shall waive the provisions of any of its rules if the commission finds that: (1) The waiver serves the public interest; and (2) The waiver will not disrupt the orderly and efficient resolution of matters before the commission.

N.H. Admin. Rule Puc 201.05.

10. In determining the public interest, the Commission shall waive a rule if: (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) The purpose of the rule would be satisfied by an alternative method proposed. N.H. Admin. Rule Puc 201.05.

11. This waiver request meets the requirements of N.H. Admin. Rule Puc 201.05 for a waiver of the competitive bid requirement.

12. RYP is uniquely qualified to represent the Companies in their upcoming rate cases. The issues presented in PWW's case will closely parallel the issues in the Companies' rate cases. RYP has been actively involved in the discovery and settlement negotiations with Staff and the Office of Consumer Advocate in PWW's rate case. The Companies anticipate that RYP's historical involvement in creating the corporate structure and approval through the Commission's 2011 Order No. 25,292, as well as RYP's active involvement in Docket DW-806 on behalf of PWW will significantly reduce the Companies' overall legal expenses in their respective rate cases if RYP provides legal services on behalf of the Companies.

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13. The utility utilized a competitive bidding process to select RYP to represent PWW in its rate case. In selecting RYP, Pennichuck Corporation considered information concerning the availability, experience, customary fees for similar services, quality, and cost. *See Exhibit A.* That process was completed less than a year ago.

14. Initiating a new request for proposal process will create delay and will place an unnecessary burden on staff of Pennichuck Corporation and its subsidiaries. The request itself would need to be drafted and published with allowance for sufficient time to allow for receipt of responses from qualified vendors. The submissions would need to be reviewed, compared and scored for determination of the ultimate successful bidder. Given that this process has recently been completed under very similar circumstances, resulting in the selection of RYP, initiating a new request for proposal process at this time would create an unnecessary burden on the Companies with no corresponding public benefit.

15. For the reasons stated above, the Commission's granting of PWW's waiver requests is in the public interest and will not disrupt the orderly and efficient resolution of the Companies' rate cases.

16. The Commission's Staff and the Office of the Consumer Advocate have both reviewed this motion and assent to the relief requested.

WHEREFORE, PWW respectfully requests that the Commission:

- A. Grant this Motion for Waiver of Certain Provisions of Puc 1604.01(a); and
- B. Provide such other relief as is just and equitable.

Respectfully submitted,

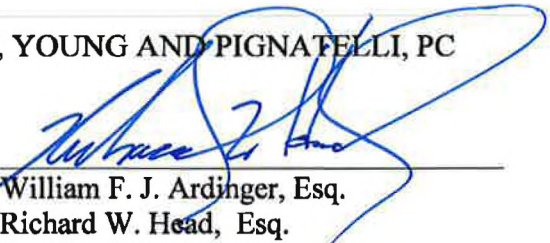
PENNICHUCK CORPORATION

By its Attorneys,

RATH, YOUNG AND PIGNATELLI, PC

Date: 4-6-17

By:

  
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William F. J. Ardinger, Esq.  
Richard W. Head, Esq.  
One Capital Plaza  
Concord, NH 03301  
(603) 226-2600

#### VERIFICATION

I, Larry D. Goodhue, as Chief Executive Officer of Pennichuck Corporation, certify that the facts stated in the foregoing Petition are true to the best of my knowledge and belief.

Pennichuck Corporation

Date:

4-6-17

By:

  
\_\_\_\_\_  
Larry D. Goodhue  
Chief Executive Officer

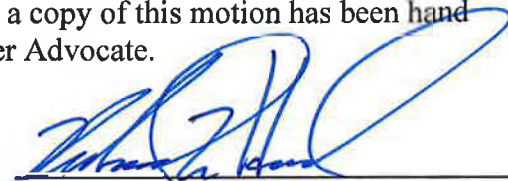
Sworn to and subscribed to before me this 6th day of April, 2017.

  
\_\_\_\_\_  
Notary Public/Justice of the Peace



Certificate of Service

I hereby certify that on this 6<sup>th</sup> day of April, 2017, a copy of this motion has been hand delivered and emailed to the Office of the Consumer Advocate.

  
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Richard W. Head