

DW 05-078

HANOVER WATER WORKS COMPANY, INC.

Petition for Authority to Borrow up to \$854,000

Order *Nisi* Approving Petition

ORDER NO. 24,468

May 27, 2005

I. BACKGROUND

The Petitioner, Hanover Water Works Company, Inc. (Hanover), is a New Hampshire public utility as defined in RSA 362:2 and 362:4 and serves approximately 2,000 customers within the Town of Hanover, New Hampshire. On April 19, 2005, Hanover filed a petition with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA Chapter 369, requesting authority to borrow up to \$854,000. The petition was accompanied by the pre-filed testimony of Peter E. Kulbacki, Director of Public Works for the Town of Hanover and General Manager of Hanover Water Works. On May 9, 2005, Hanover submitted supplemental testimony by Mr. Kulbacki, including supporting financial schedules.

Hanover currently has an existing loan with Citizens Bank with a principal balance of \$854,000. This loan is secured by a first mortgage and security interest in substantially all of Hanover's real and personal property. Hanover is currently obligated to make payments of interest only on this loan at a rate of 7.30 percent, with a final payment of the entire outstanding principal balance due on July 15, 2007. On October 29, 2004, the Commission issued Order No. 24,393 (October 29, 2004) in Docket No. DW 04-117, authorizing Hanover to borrow up to \$6,500,000 from the Drinking Water State Revolving Fund (DWSRF) in order to finance construction of a water filtration and treatment plant and 1,000,000 gallon storage tank.

These construction projects were necessitated by Safe Drinking Water Act requirements. The DWSRF is administered by the State of New Hampshire Department of Environmental Services (NHDES).

NHDES had originally required that its lien on Hanover's assets be in a first priority position. NHDES subsequently agreed to allow its lien to be in a second priority position if Hanover refinanced its existing loan with Citizens Bank to provide for payments of principal over a reasonable period of time so as to be fully amortized by maturity. Citizens Bank agreed to refinance the outstanding principal balance of the existing loan on terms acceptable to NHDES. NHDES and Hanover closed on the DWSRF loan on April 6, 2005. Presently, NHDES will only advance Hanover up to \$500,000 until the existing Citizens Bank loan is refinanced. Petition at 9.

The terms of the new loan are outlined in a commitment letter from Citizens Bank dated March 23, 2005, which Hanover included in its filing. The initial principal balance of the new loan will be \$854,000 and it will be payable over ten years according to a schedule of increasing principal payments plus interest so that the full amount of the loan will be fully amortized by maturity. Although the terms of the new loan will provide for interest to be paid at an adjustable rate equal to 150 basis points above the one month LIBOR (London Interbank Overnight Rate) index, Hanover intends to enter into a swap agreement with the bank that will enable it to effectively fix the rate of interest it pays. The swap agreement is described in detail in Hanover's response to Staff data request 1-1, attached to Staff's recommendation letter. Citizens Bank's commitment letter indicates the fixed rate would be approximately 6.65 percent. Hanover's response to Staff data requests indicates Citizens Bank will honor that rate through

June 15, 2005. As with the existing loan, the new loan will be secured by a first priority mortgage and security interest in all of Hanover's real and personal property.

Hanover avers that Commission approval of this refinancing under the proposed terms is in the public interest because, based on its current cash flow and anticipated capital requirements, it is not in a position to pay off the existing Citizens Bank loan, either at present or at maturity. Petition at 8. Hanover also maintains that if it refinanced the existing loan through a credit facility that gave the lender a second priority lien behind that of NHDES, the terms of such a loan would be more costly than that which is currently proposed. *Id.* Further, Hanover anticipates reducing the interest expense associated with the amount due Citizens Bank by approximately 65 basis points with no significant changes in either the Balance Sheet or present capitalization levels. Petition at 9 and 19.

On May 26, 2005, the Staff of the Commission (Staff) filed a letter recommending the Commission grant Hanover's petition. In support of its recommendation, Staff cited the elimination of the balloon payment under the existing loan, and the anticipated reduction in interest cost for the extended financing as well as the use of the swap agreement that will provide Hanover with protection from expected rising interest rates. Staff also stated that Hanover's earnings and capital structure would marginally improve as a result of this financing. For these reasons, Staff believed the financing was consistent with the public interest.

II. COMMISSION ANALYSIS

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this State may issue evidences of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public

good.” The New Hampshire Supreme Court has further provided that the public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates in insure the public good is protected. See *Appeal of Easton*, 125 N.H. 205, 211 (1984).

In the case at hand, Hanover is requesting authority to refinance an existing note with Citizens Bank in the amount of \$854,000. The purpose of refinancing this loan at this time is to comply with certain requirements of NHDES which administers the \$6,500,000 DWSRF loan Hanover recently closed. Our order approving the NHDES loan contained our finding that the proposed use of the funds was consistent with the public interest. *Hanover Water Works Company*, Order No. 24,393 (October 29, 2004) in Docket No. DW 04-117. We have previously found Hanover’s use of the funds from its existing Citizens Bank loan to be consistent with the public interest. *Hanover Water Works Company*, 88 NH PUC 96 (2003) (refinancing of loans relating to various capital improvements). The proposed terms of the new loan are acceptable to NHDES. NHDES will allow its lien on the Hanover assets to be in a secondary priority position to that of Citizens Bank. The proposed interest rate of 6.65 percent for the new loan is lower than the present interest rate of 7.3 percent on the existing Citizens Bank loan. We see no reason to reverse our earlier public interest finding. Accordingly, we find the instant refinancing is consistent with the public good.

Our review of the petition must also consider the possible effect the proposed financing may have on the overall cost of capital to the ratepayers. As stated above, Hanover anticipates reducing the interest expense associated with the amount borrowed from Citizens Bank by approximately 65 basis points. Further, due to the proposed swap agreement between it

and Citizens Bank, Hanover's proposed interest rate will remain relatively stable during a period in which Staff indicates interest rates are anticipated to continue to rise. Staff also indicated that the refinancing marginally improves earnings and Hanover's capitalization ratios over time. Given the effect on Hanover's capital structure and Hanover's ability to maintain a stable interest rate through the swap arrangement noted above, we are satisfied that this refinancing benefits Hanover's ratepayers.

Having reviewed Hanover's filing, supplemental schedules, and Staff's recommendation letter, we find that the terms and conditions of the proposed financing are reasonable, that the proposed use of the funds is prudent, and that the financing is consistent with the public good pursuant to RSA 369. Accordingly, we will grant the financing authority requested on the condition that the final terms be substantially similar to those proposed in Hanover's filing. If such terms vary significantly, we will require Hanover to seek additional Commission approval.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Hanover Water Works Company, Inc. is granted authority, pursuant to RSA 369, to refinance its \$854,000 loan with Citizens Bank under the terms and conditions as set forth in its filing; and it is

FURTHER ORDERED, that Hanover shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than June 1, 2005 and to be documented by affidavit filed with this office on or before June 8, 2005; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than June 8, 2005 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 10, 2005; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 14, 2005, unless Hanover fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Hanover shall file true copies of the loan documents executed or otherwise finally issued in connection with the closing of the transactions contemplated hereby no later than 30 days after the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary