

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 14-130

PENNICHUCK WATER WORKS, INC.

Petition for Approval of Financing Transactions

Order Approving Settlement Agreement

ORDER NO. 25,734

November 7, 2014

APPEARANCES: Rath, Young and Pignatelli, P.C., by William F.J. Ardinger, Esq., and Frederick J. Coolbroth, Jr., Esq., representing Pennichuck Water Works, Inc.; Rorie E.P. Hollenberg, Esq., of the Office of Consumer Advocate on behalf of residential ratepayers; and Alexander F. Speidel, Esq., for the Staff of the Public Utilities Commission.

This Order approves a settlement agreement allowing Pennichuck Water Works, Inc. (PWW), to issue up to \$54,500,000 in aggregate principal amount of tax-exempt and taxable financing. PWW will use the money to pay off short-term debt incurred to complete capital projects, fund future capital projects, refinance currently outstanding tax-exempt bonds, pay costs of issuance in the approximate amount of \$1,125,000, and, if necessary and appropriate, fund a debt service reserve fund or other credit enhancement measures as may be determined by PWW in response to prevailing market conditions, in the approximate amount of \$5,400,000.

I. PROCEDURAL BACKGROUND

On May 16, 2014, PWW requested authority, pursuant to RSA Chapter 369, to issue debt securities in the aggregate principal amount of up to \$54,500,000. In its petition, PWW stated that the requested issuance of tax-exempt and taxable bonds and financing would be accomplished for the following purposes: (1) providing long-term financing for capital projects completed by PWW in 2013 that were funded initially through short-term borrowings, in the

amount of approximately \$5,100,000; (2) funding capital projects to be completed in 2014, 2015, and 2016 costing approximately \$19,500,000; (3) refinancing approximately \$23,375,000 of PWW's currently outstanding tax-exempt bonds; and (4) funding, if necessary and appropriate, a debt service reserve fund or other credit enhancement measure as may be determined by PWW in response to prevailing market conditions, in the approximate amount of \$5,400,000. In addition, PWW would finance the costs of debt issuance for the entire package in the approximate amount of \$1,125,000. PWW collectively termed these requested measures the "Integrated Capital Finance Plan."

See Hearing Exhibit 1. With its filing, PWW submitted the pre-filed testimony of Larry D. Goodhue. *See* Hearing Exhibit 2.

On May 27, 2014, the Commission issued an Order of Notice scheduling a prehearing conference on June 11, 2014. On May 28, 2014, the Office of Consumer Advocate (OCA) filed a letter stating its participation in this proceeding on behalf of residential ratepayers pursuant to RSA 363:28. No one filed a motion to intervene. On July 18, 2014, PWW filed the supplemental pre-filed testimony of Larry D. Goodhue. *See* Hearing Exhibit 3. Through the summer and early fall of 2014, PWW, Commission Staff (Staff), and the OCA engaged in discovery, met in technical sessions, and held settlement discussions. As a result of those discussions, the parties agreed to the terms of a Settlement Agreement, which they executed and filed on September 19, 2014. *See* Hearing Exhibit 4. On September 26, 2014, a hearing was held regarding the Settlement Agreement, at which Mr. Goodhue, James J. Brennan, Director of Finance of the OCA, and Mark A. Naylor, Director of the Commission's Gas and Water

Division, provided oral testimony in support of the Settlement Agreement. *See* Transcript of September 26, 2014, Hearing (Tr.).

II. OVERVIEW OF SETTLEMENT TERMS

The relevant terms of the Settlement Agreement executed by PWW, Staff, and the OCA (Settling Parties) are as set forth below. Section III.A. of the Settlement Agreement presents a narrative summary of PWW's financing requests, as generally outlined in PWW's May 16, 2014, petition. Table I in Section III.A. presents the aggregate borrowing amount for which PWW requests authority, \$54.5 million in taxable and tax-exempt borrowings, and the tentative allocation of the borrowings among the various financing elements of PWW's Integrated Capital Finance Plan. Hearing Exhibit 4 at 6-7.

Section III.B. of the Settlement Agreement, together with Table I, outlines the flexibility sought by PWW for the execution of its Integrated Capital Finance Plan. Section III.B.1. states that PWW requests authority to accomplish the \$5.1 million Taxable 2013 Financing through either (a) the issuance of taxable bonds, or (b) the borrowing under a credit facility. The terms and conditions of each option are described more fully in Mr. Goodhue's pre-filed testimony. Hearing Exhibit 4 at 7; Hearing Exhibits 2 and 3. This section includes a statement that PWW's decision regarding this financing element will be consistent with the provision of safe and reliable service at the lowest-reasonable cost to PWW customers.

Section III.B.2. states that PWW requests authority to accomplish the up to \$19.5 million in Capital Project Bonds borrowing through either (a) the issuance of the entire amount of such bonds in a single "tranche" at the end of 2014, or (b) the issuance of such bonds in two tranches, one at the end of 2014 and the balance at the end of 2015, as may be determined by PWW based

on market conditions prevailing at the end of 2014, as described more fully in Mr. Goodhue's pre-filed testimony. Hearing Exhibit 4 at 7-8; Hearing Exhibits 2 and 3. This section includes a statement that PWW's decision regarding this financing element will be consistent with the provision of safe and reliable service at the lowest-reasonable cost to PWW customers.

Section III.B.3. states that PWW requests authority to accomplish the entire proposed Integrated Capital Finance Plan with the ability to issue up to \$5.4 million in additional bonds and indebtedness to fund a debt service reserve fund and/or the cost of bond insurance that would serve to enhance the creditworthiness of the proposed financing, as determined by PWW based on market conditions prevailing at the end of 2014, and described more fully in Mr. Goodhue's pre-filed testimony. Hearing Exhibit 4 at 8; Hearing Exhibits 2 and 3. This section includes a statement that PWW's decision regarding this possible financing element will be consistent with the provision of safe and reliable service at the lowest-reasonable cost to PWW customers.

Section III.B.4. reiterates that PWW requests a total amount of borrowing authority in this proceeding of up to \$54.5 million, taking into account all components of the proposed Integrated Capital Finance Plan, including a possible debt service reserve fund, bond insurance costs and issuance costs. In its petition PWW requested authority to borrow up to \$1,125,000 to fund anticipated issuance costs related to the proposed Integrated Capital Finance Plan. *See* Petition, Hearing Exhibit 1, at 1-2. This cap on issuance costs of \$1,125,000 could be adjusted under the terms of the Settlement Agreement to a higher cap of \$1,300,000 under certain conditions. Pursuant to Section III.B.4. of the Settlement Agreement, if PWW does not utilize all of the requested total borrowing authority of \$54.5 million, because it is able to accomplish the proposed financings without a debt service reserve fund and/or bond insurance as

credit enhancements, PWW will have the ability to apply up to \$1.3 million of the financing to fund issuance costs. Hearing Exhibit 4 at 8-9; *see also* Settlement Agreement Table I, Hearing Exhibit 4 at 7. This section includes a proviso that any such issuance costs incurred by PWW will be subject to review and audit by the Settling Parties and the Commission. Hearing Exhibit 4 at 9.

In Section III.C. of the Settlement Agreement, the Settling Parties make a series of representations regarding the purported beneficial effects of the proposed PWW financings on PWW's interest rate risk, refinance/liquidity risk, and covenant compliance risk profiles. Hearing Exhibit 4, at 9-11. Interested parties may review these representations *verbatim* within the Settlement Agreement.

In Section III.D. of the Settlement Agreement, the Settling Parties make a representation that the financings proposed by PWW "are designed to impact all customers and communities served by PWW in the same manner, without discrimination in favor of or against particular customers or communities." Hearing Exhibit 4 at 11.

In Section III.E. of the Settlement Agreement, the Settling Parties recommend that the Commission adopt the following findings and order the following approvals, certain of which are reproduced *verbatim* below:

1. The Commission should find that the issuance of the aggregate indebtedness and securities and other bank borrowings of PWW contemplated by the Petition (the "Indebtedness") is reasonable and that the Indebtedness and resulting capital structure are consistent with the process of restructuring PWW's capitalization as contemplated by the Commission's Order No. 25,292 (approving Nashua's acquisition of Pennichuck), and will enable PWW to continue supplying safe, reliable and affordable water service to PWW's customers.

2. The Commission should find that PWW is authorized to issue the Indebtedness described in this paragraph III.E. upon such terms as may be

established by or on behalf of PWW at the time of issuing or effecting such indebtedness.

(a) The issuance of up to \$5,100,000 in principal amount of taxable indebtedness for the purpose of funding capital expenditures undertaken by PWW during 2013 and January of 2014, through either of the following two formats, the final format to be selected by PWW at the end of 2014 near the time of issuance, based on market conditions at that time and consistent with the provision of safe and reliable service at the lowest-reasonable cost to customers:

(i) the issuance of taxable revenue bonds by the New Hampshire Business Finance Authority (the “NHBFA”) on behalf of PWW, the borrowing by PWW of the proceeds of such issuance, and the issuance by PWW of indebtedness to a trustee pursuant to a Loan and Trust Agreement¹ in substantially the form submitted to the Commission [in PWW’s petition] (the “Loan and Trust Agreement”), are consistent with the public good, and the issuance of such taxable revenue bonds in one or more series, the execution of the Loan and Trust Agreement, the borrowing by PWW of the proceeds therefrom, and the issuance by PWW of indebtedness pursuant to the Loan and Trust Agreement, are hereby authorized; or

(ii) the borrowing by PWW from one or more banks under a credit facility, in accordance with the terms described in testimony submitted to the Commission, is consistent with the public good, and PWW is authorized to effect such borrowing from such bank or banks pursuant to such credit facility.

(b) The issuance of up to \$19,500,000 in principal amount of tax-exempt revenue bonds by the NHBFA on behalf of PWW, for the purpose of funding capital expenditures incurred and to be undertaken by PWW during February to December of 2014, and 2015 and 2016, the borrowing by PWW of the proceeds of such issuance, and the issuance by PWW of indebtedness to a trustee pursuant to the Loan and Trust Agreement, are consistent with the public good, and the issuance of such tax-exempt revenue bonds in one or more series, the execution of the Loan and Trust Agreement, the borrowing by PWW of the proceeds therefrom, and the issuance by PWW of indebtedness pursuant to the Loan and Trust Agreement, are hereby authorized;

¹ Hearing Exhibit 3, Supplemental Testimony of Larry Goodhue, “Exhibit LDG (Sup) 5.”

(c) The issuance of up to \$23,375,000 in principal amount of tax-exempt revenue bonds by the NHBFA on behalf of PWW, for the purpose of refinancing outstanding indebtedness of PWW, on behalf of PWW, the borrowing by PWW of the proceeds of such issuance, and the issuance by PWW of indebtedness to a trustee pursuant to the Loan and Trust Agreement, are consistent with the public good, and the issuance of such tax-exempt revenue bonds in one or more series, the execution of the Loan and Trust Agreement, the borrowing by PWW of the proceeds therefrom, and the issuance by PWW of indebtedness pursuant to the Loan and Trust Agreement, are hereby authorized;

(d) The issuance of up to \$5,400,000 in principal amount of indebtedness by PWW, to be accomplished by PWW through a combination of taxable borrowing by PWW, and the issuance of taxable and tax-exempt revenue bonds by the NHBFA on behalf of PWW, for the purpose of funding the establishment of a debt service reserve fund and the payment of the costs of bond insurance as may be determined by PWW to be necessary to support the financings, consistent with the provision of safe and reliable service at the lowest-reasonable cost to customers, as described above, is consistent with the public good, and the issuance of such indebtedness for such purposes, the allocation of such indebtedness by PWW among the various methods described above, and the execution of such documents required to evidence such borrowings, are hereby authorized;

(e) The issuance of up to \$1,300,000 in principal amount of indebtedness by PWW, to be accomplished by PWW through a combination of taxable borrowing by PWW, and the issuance of taxable and tax-exempt revenue bonds by the NHBFA on behalf of PWW, for the purpose of funding the costs of issuing the Indebtedness, is consistent with the public good, and the issuance of such indebtedness for such purposes, the allocation of such indebtedness by PWW among the various methods described above, and the execution of such documents required to evidence such borrowings, are hereby authorized; provided, however, that PWW's issuance costs shall be subject to review and audit, as described above, and, provided further, that PWW shall only be authorized to borrow to fund issuance costs to the extent that the sum of the principal amount of such borrowing for issuance costs, plus the aggregate principal amount of other borrowings undertaken by PWW pursuant to the approvals issued in this docket does not exceed the total authority granted of \$54.5 million.

3. The Commission should further find that PWW is authorized to do all things, take all steps, and execute and deliver all documents necessary or desirable

to consummate, implement, and carry out the issuance of the proposed Indebtedness consistent with the above findings and approvals and the testimony submitted to the Commission.

4. The Commission should order PWW to file a report explaining the basis for PWW's final determination and resolution of the matters regarding financing flexibility set forth above in Paragraph III, B.1. (taxable bonds or credit facility), Paragraph III, B.2. (one or two tranches for Capital Project Bonds), and Paragraph III, B.3. (whether to implement a debt service reserve fund or bond insurance) within 10 days following the consummation of the proposed financings pursuant to the approvals described in Paragraph III, E. above. The filing of such reports shall not be a condition to the finality or effectiveness of the Commission's approvals of the proposed financings issued consistent with Paragraph III, E. above, and PWW shall be authorized to consummate such authorized financings regardless of the filing or contents of the report contemplated by this Paragraph III, E.5.

Hearing Exhibit 4, at 11-15.

In Section IV.B., the Settling Parties state that “[t]he Commission’s approval of the recommendations in this Agreement shall not constitute a determination or precedent regarding any particular principle or issue in this proceeding, but shall constitute only a determination that the financings described in this Agreement are each reasonable and consistent with the public good based on the best information available at this time.” Hearing Exhibit 4 at 16.

At hearing, the Settling Parties provided additional oral clarifications regarding their respective views relating to the Settlement Agreement. On behalf of PWW, Mr. Goodhue explained the desirability of the Settlement Agreement features providing PWW flexibility in financing options in its execution of the Integrated Capital Finance Plan, as a means of best responding to prevailing, and variable, financial market conditions. Tr. at 9-18. Mr. Goodhue also expressed PWW's support for Commission approval of the Settlement Agreement as being in the public good. Tr. at 18.

On behalf of the OCA, Mr. Brennan expressed his support for the Commission's approval of the Settlement Agreement as being in the public good, with additional elucidation of the OCA's view regarding the implications of a Commission approval of the Settlement Agreement in future proceedings involving PWW. Tr. at 19-22. Mr. Brennan also noted that, "in settling [PWW's] financing petition, the OCA does not foreclose any of its rights to take a different position from [PWW], including the position in a future case that some of PWW's cash needs be met by sources other than customers through rate increases, including equity investment by the owner." Tr. at 22.

On behalf of Staff, Mr. Naylor expressed his support for the Commission's approval of the Settlement Agreement, as being in the public good. Tr. at 27. Also, in response to a Commission bench inquiry, Mr. Naylor clarified that "regardless of the Company's decisions, regardless of the report that they file with us within ten days of closing, the Commission will always have ... the ability to review those decisions as they affect rates or other elements in the future." Tr. at 35.

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." The Commission must conduct a "hearing or investigation as it may deem proper," then authorize the financing "if in its judgment the issue of such securities upon the terms proposed is consistent with the public good." 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 we have 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 Co. of N.H., Order No. 25,050 (December 8, 2009) at 14, *cited in Lakes Region Water Company, Inc.*, Order No. 25,391 (July 13, 2012), at 20-21.

We engage in a more limited review for routine financing requests. *Public Service Co. of N.H.*, Order No. 25,050 at 13-14. A routine request is one “that will have no discernable 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. A routine request calls for a 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.

We find PWW’s request to be routine. A portion of the proceeds will be used to pay off short-term debt it incurred to pay for recent projects arising from PWW’s normal utility operations, mostly capital improvements to its distribution system, and another portion will be used to fund such ongoing improvements in 2014, 2015, and 2016. A further portion of the proceeds of the proposed financing will be used to refinance the outstanding indebtedness of PWW. Finally, an amount of up to \$5.4 million of the proceeds will be used to fund the establishment of a debt service reserve fund and for the payment of the costs of bond insurance as may be determined by PWW to be necessary to support the above-listed financing elements.

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. N.H. Code Admin. Rules Puc 203.20(b) requires that, prior to approving a settlement, the Commission determine that the settlement results are just and reasonable and in the public interest. Because this is a routine financing request, the underlying standard to be applied is whether the use of the financing proceeds is in the public good. RSA 369:4. We need not examine other possible uses of the money. *Public Service Co. of N.H.*, Order No. 25,050 at 16.

Taken collectively, the provisions of the Settlement Agreement are designed to effectuate the implementation of PWW's Integrated Capital Finance Plan, through the issuance of up to \$54,500,000 in aggregate principal amount of tax-exempt and taxable financing. PWW will use these proceeds to directly finance capital investments required as part of normal utility operations; indirectly finance such investments through the paying-off of short term debt; refinance existing indebtedness at more favorable terms, including a migration of PWW's existing financial covenants to those more adequately suited for a utility owned by a municipality; fund a credit enhancement measure; and cover ancillary borrowing costs. In facilitating these tasks, the Settlement Agreement acknowledges the need to maintain consistency with the provision of safe and reliable service at the lowest-reasonable cost to PWW customers, the principle of non-discrimination across the PWW customer base, and the allowance for flexibility to enable PWW to respond adequately to changing financial market conditions. With these features in place and with the information submitted by PWW, approval of the Settlement Agreement and granting PWW the authority to launch the subject features of

the Integrated Capital Finance Plan would confer benefits to PWW and its customers. The primary benefits would be reasonable interest costs, PWW's ability to continue to invest in its physical infrastructure, and the restructuring of the company's financial covenants as discussed. We thus find PWW's intended use of the financing proceeds to be in the public good.

We view the Settlement Agreement as representing an appropriate balancing of the interests of the Company and its customers, and approve the Settlement Agreement *in toto*, as just and reasonable, and consistent with the public good. We also find that the financing complies with the principles of Order No. 25,292 (Nov. 23, 2011), in Docket No. DW 11-026 (Order approving the City of Nashua's acquisition of PWW). We concur with Staff, however, that approval of this routine financing request does not foreclose or limit any review pursuant to RSA 378:28 in a future rate case. Specifically, we retain the authority to review the appropriateness of PWW's inclusion in rate base of any specific project element financed (directly or indirectly) by this requested routine financing, on the basis of whether or not the project elements are prudent, used, and useful. RSA 378:28.

The Commission and its Staff also retain the authority under RSA 374:4 to keep informed regarding PWW's use of the proceeds of this financing, independently and apart from any RSA 378:28 review made as part of a future rate filing. We view the reporting requirement of Section III.E.4. of the Settlement Agreement to fall within the ambit of RSA 374:4, and to provide useful information regarding PWW's financing activities to the Settling Parties and the Commission going forward. Such information may be used to consider PWW's capital improvements within the framework of RSA 378:28, and to assist in ongoing monitoring of PWW's financial health and physical plant status. Moreover, our finding that this financing is in

the public good does not absolve PWW from its ongoing responsibility to continue to manage its capital structure and physical plant wisely.

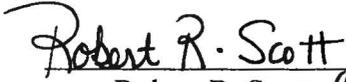
To conclude, we approve the Settlement Agreement and the financing it describes, and incorporate its terms and conditions into this order as just and reasonable and in the public interest. We grant the findings requested by PWW and quoted above in Section II. We commend PWW, Staff, and the OCA for their collaborative efforts in developing the Settlement Agreement.

To facilitate the efficient administration of the Settlement Agreement, we authorize PWW, Staff, and the OCA to modify the Settlement Agreement so long as any modification is mutually agreed upon and non-substantive, such as a clerical or ministerial amendment that involves timing or scheduling. The parties shall file any such modification with the Commission and provide a copy to all parties on the service list.

Based upon the foregoing, it is hereby

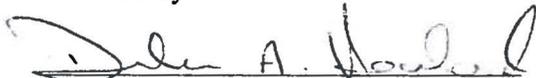
ORDERED, that the Settlement Agreement filed on September 19, 2014, is **APPROVED** and the requested findings are adopted.

By order of the Public Utilities Commission of New Hampshire this seventh day of
November, 2014.


Robert R. Scott (KRS)
Commissioner


Martin P. Honigberg
Commissioner

Attested by:


Debra A. Howland
Executive Director