

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-081

PENNICHUCK EAST UTILITY, INC.

**Petition for Approval of Financings from CoBank, ACB and Refinancing of
Intercompany Loans**

Order Approving Financing

O R D E R N O. 26,418

October 29, 2020

This order authorizes Pennichuck East Utility to: (1) borrow up to \$800,122 from CoBank to replace short-term obligations to a line of credit with long-term debt; (2) renew its line of credit agreement with CoBank for an additional three years, until September 30, 2023; and to (3) bifurcate its financing petition, providing more time for Commission Staff to investigate an intercompany loan. This order also waives certain finance petition filing requirements and approves Pennichuck East Utility's motion for confidentiality.

I. PROCEDURAL HISTORY AND BACKGROUND

Pennichuck East Utility, Inc. (PEU or the Company), is a water utility that serves customers in communities throughout central and southern New Hampshire. On May 22, 2020, PEU filed a petition seeking authority to borrow up to \$803,275 from CoBank, ACB (CoBank). The proposed loan would pay back amounts borrowed from PEU's Fixed Asset Line of Credit (line of credit), which the Company used to fund capital projects completed in 2019.

The Company requested authorization to renew its previously approved line of credit agreement with CoBank, set to expire on September 30, 2020, for an additional three years. PEU also requested authorization to convert approximately \$5 million of its intercompany debt with the Company's parent, Pennichuck Corp. (Penn. Corp.), into long-term financing. Along with its

petition, the Company filed a motion for waiver of certain finance petition requirements and a motion for protective order and confidential treatment of business information. PEU filed a corrected version of its motion for waiver on June 22, 2020.

On September 14, the Company filed a motion to bifurcate its petition to receive approval of most of its financing requests while allowing Commission Staff (Staff) additional time to investigate an intercompany debt financing. Staff submitted its recommendation on September 18.

PEU's petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.state.nh.us/Regulatory/Docketbk/2020/20-081.html>.

II. POSITIONS

A. PEU

1. CoBank Term Loan

PEU requested authorization to secure a long-term loan for \$803,275 from CoBank to repay and refinance amounts owed on its line of credit associated with 2019 capital expenditures, and the interest incurred on the line of credit. The line of credit provides financing for PEU's new capital expenditures, routine maintenance of capital projects, and other non-recurring capital expenditures. *See Pennichuck East Utility, Inc., Order No. 26,117 at 6 (March 30, 2018)* (approving the line of credit). The Company relies on the line of credit when funds for capital projects are not available through state funding or its Debt Service Revenue Requirement (DSRR) 0.1 account.¹

¹ Part of PEU's revenue requirement is comprised of the debt service (principal and interest) it owes plus an additional 10 percent to satisfy debt covenants with its lenders requiring cash coverage. That additional 10 percent is collected and set aside in the DSRR 0.1 account. The DSRR 0.1 account can be used for certain purposes, such as capital expenditures or "as a funding source for preliminary engineering studies or permitting costs associated with "Qualified Capital Project Adjustment Charge" ... projects which have a multi-year timeline for completion but which also will not be used and useful during the current fiscal year. Pennichuck East Utility, Inc., Settlement

PEU stated that the requested amount was consistent with the schedules submitted with PEU's Qualified Capital Project Adjustment Charge (QCPAC) in Docket No. DW 20-019.² During discovery, the Company determined that the correct amount for the requested financing should be \$800,122. That amount correctly reflects the 2019 capital projects paid for by the line of credit, recoverable through the QCPAC mechanism, as well as the interest accrued on the line of credit.

PEU represented that line of credit funds were used on the following 2019 capital improvement projects:

PEU-PWW Interconnection (clean-up work)	\$ 59,691
Rolling Hills Water Main (pipe replacement)	188,089
Weinstein / Dame Station Upgrades	108,286
Locke Lake Water Main (internal engineering work)	<u>83,754</u>
Total Capital Improvements	\$439,820

The Company further represented that the maintenance capital expenditures consist of multiple investments: the replacement of equipment assets (pumps, controls, meters); the replacement or upgrade of other existing assets (distribution valves, hydrants, and services); and the purchase of tools and equipment to properly operate and maintain PEU's water systems. The line of credit was used for the following maintenance capital expenditures:

Booster Pump, Well Pump, Chemical Feed Pump, and Chlorine Transfer Pump Replacements	\$ 84,137
New Hydrants	9,911
New Services	14,560
New Meters	69,612
Valve Installation	33,630
Renewed Services	35,824

Agreement, July 18, 2018 (Docket No. DW 17-128) at 19; *see also Pennichuck East Utility, Inc.*, Order No 26,179 (October 4, 2018) (order approving settlement agreement).

² The QCPAC is a mechanism to compensate PEU for necessary capital investments between rate cases, promoting the Company's ability to maintain adequate cash flows. *Pennichuck East Utility, Inc.*, Order No. 26,228 at 1 (March 21, 2019). "Each year, the Commission reviews and approves the proposed surcharge so that PEU may recover the debt service and property taxes associated with projects completed during the prior year." *Pennichuck East Utility, Inc.*, Order No. 26,313 at 7 (December 6, 2019). To be eligible for the QCPAC surcharge, the prior year's capital projects must be financed by debt approved by the Commission. Order No. 26,228 at 2.

New and Replaced Radio Reads	22,291
Miscellaneous, SCADA, and Electrical upgrades to Booster Stations	12,212
Investment in Developer Installed Services	<u>37,724</u>
Total Maintenance Capital Expenditures	\$319,901

When combined with the interest due on the line of credit, \$40,401, the total financing is \$800,122.

Total Capital Improvements	\$439,820
Total Maintenance Capital Expenditure	319,901
Line of Credit Interest	<u>40,401</u>
Total Financing Amount	\$800,122

PEU represented that the terms of the CoBank loan include amortization over 25 years with level monthly principal and interest payments. The anticipated annual percentage interest rate of the loan is approximately 4.30 percent. The actual interest rate at the time of closing may vary, however, as it is based on market conditions.

The Company detailed its search for other sources of financing and PEU's historic relationship with CoBank and noted that its unique all-debt financial structure limits the number of lending candidates. PEU contended that CoBank was the only viable option.

PEU represented that the proposed financing would be secured two ways: (1) by PEU's equity interest in CoBank; and (2) by an unconditional guarantee by Penn. Corp. PEU anticipated approximately \$10,000 in debt issuance costs, consisting primarily of legal expenses for document preparation and Commission approval. The Company also indicated that it had received the appropriate approvals from PEU's and Penn. Corp.'s Board of Directors, and the City of Nashua.

The Company provided an estimate of the rate impact of the originally requested \$803,275 financing on an average single-family residential user. The proposed CoBank financing and associated property tax expense would result in an increase of approximately \$0.69 per month or \$8.28 per year in the billings of an average residential customer, or 0.92 percent.

PEU also represented that approval of the financing is in the public good and that the financing would allow PEU to continue providing safe, adequate, and reliable water service to its customers. The Company further represented that the CoBank loan would provide permanent financing for the long-lived assets, which PEU considered necessary investments. PEU, lastly, represented that the terms of the loan will result in service at rates lower than those charged by a traditional public utility that is not solely reliant on debt financing.

2. Line of Credit Renewal

PEU requested authorization to renew its \$3 million line of credit for an additional term of up to three years, to begin on October 1, 2020, and terminate on September 30, 2023. The Company said that the line of credit will continue to be used as the initial financing for the Company's capital expenditures that are not covered by other financing mechanisms.

PEU represented that the interest rate of the new line of credit will be set on a weekly basis based on current market conditions with interest payments due monthly. PEU estimated the annual interest rate at 4.30 percent. The Company further represented that even though the line of credit does not contain a "clean-out" provision, it is the Company's intent to repay the entire balance once a year, as it has in the past, with term loans tied to the previous year's capital projects.

PEU represented that the line of credit will also be secured two ways: (1) by PEU's equity interest in CoBank; and (2) an unconditional guarantee by Penn. Corp. The Company stated that the costs associated with the line of credit were included in the costs for the CoBank loan, consisting primarily of legal expenses for document preparation and Commission approval.

PEU contended that the renewal of the line of credit is critical as it is an essential component of the QCPAC mechanism. The Company represented that the line of credit allows the Company to fund necessary capital improvements, which are later eligible for recovery, through the QCPAC, once the line of credit debt is converted into long-term financing.

The Company stated that approval of the financing is in the public good and will allow PEU to provide continued safe, adequate, and reliable water service to its customers.

3. Motion to Bifurcate

PEU requested bifurcated review of its intercompany loan financing request and its CoBank Loan and line of credit renewal requests. The Company asserted that, if approved, bifurcation would allow more time for Staff to investigate the intercompany request while allowing PEU's other requests to proceed before the Commission.

The Company represented that the CoBank loan and line of credit renewal were time critical. PEU further stated that, pursuant to conversations with Staff, more time is required to complete the investigation into the intercompany financing, and that a review and audit of the intercompany loan in conjunction with PEU's impending rate case would be more efficient.

4. Motion for Protective Order and Confidential Treatment

PEU sought confidential treatment of loan documentation provided by CoBank pursuant to New Hampshire Administrative Rules, Puc 203.08, arguing that the documents are exempt under RSA 91-A:5, IV as commercial or financial records that reveal terms subject to review, negotiation, and approval. PEU represented that CoBank has requested that the documents remain confidential. The Company asserted that it is in the public interest to allow such negotiations to occur consistent with the lender's practice. PEU further argued that an inability to maintain confidentiality of such documents may affect its ability to negotiate with lenders.

5. Motion for Waiver of Certain Finance Petition Requirements

PEU requested waiver of documentation required in support of the financing petition, pursuant to Puc 201.05. The Company sought waiver of Puc 609.03(b)(6) (statement of capitalization ratios) and Puc 609.03(b)(7) (weighted average cost of debt).³ PEU said that the required documentation was inapplicable due to the Company's all-debt capital structure. PEU further argued that the waiver of those requirements would be in the public interest and not disrupt the orderly and efficient resolution of the proceeding as the information requested does not apply, or is not relevant, to the financing requests.

B. Staff

1. CoBank Term Loan

Staff supported approval of the CoBank term loan as a routine financing consistent with the public good. In doing so, Staff initially noted the minimal potential impact the financing would have on customer rates. Staff recognized the Company's immediate need to repay and refinance its line of credit with long-term debt as it does not have the adequate funds to repay the entirety of that line of credit which expired on September 30, 2020.

Staff further recognized the routine nature of the financing. Staff noted that converting the line of credit balance into long-term debt, approved by the Commission, is an integral part of PEU's QCPAC process which allows the Company to recover its capital expenditures. Staff also noted that approval is consistent with Commission past practice.

Staff supported approval of the financing as the projects funded by the line of credit, to be repaid by the CoBank term loan, allow the Company to continue providing safe, adequate,

³ In its recommendation, Staff noted that PEU requested waiver of the "Puc 609.03(b)(5) [request for] a statement of capitalization ratios." The requirement for a statement of capitalization ratios, however, is required by Puc 609.03(b)(6). Staff further noted that PEU submitted the required documentation of Puc 609.03(b)(5) in its schedules. Thus, PEU's request is interpreted as a request for waiver of Puc 609.03(b)(6).

and reliable water service to its customers as required by RSA 374:1. Staff contended that refinancing the line of credit with the 25-year CoBank term loan better aligns the useful life of the underlying capital assets with the life of the associated debt. Staff also stated that the improved debt alignment is more equitable for current and future customers as current customers are not shouldering all of the debt for an asset to be used for years to come by future customers.

2. Line of Credit Renewal

Staff supported approval of the Company's line of credit renewal. Staff represented that the line of credit, while treated as short-term debt by the Company, is long-term debt. Staff, however, maintained that the line of credit is a routine financing, calculating that the line of credit, even in the extremely improbable circumstance that it is fully withdrawn and not repaid for three years, would have minimal impact on customer rates (an estimated \$2.54 increase, or 3.40 percent, in the average customer's monthly bill). Staff argued that the line of credit renewal will likely never impact customer rates as PEU annually replaces the funds drawn on the line of credit with long-term debt. That debt replacement is crucial for the Company's ability to request yearly recovery through the QCPAC mechanism, and the long-term debt is beneficial to PEU's financial health as an all-debt utility.

Staff stated that the proposed terms of the line of credit renewal are, in all material respects, substantially similar, or the same, as the previously authorized line of credit. Staff further noted that the line of credit is an essential part of the Company's currently authorized rate structure and QCPAC mechanism. Staff said that the line of credit allows PEU to fulfill its RSA 374:1 duty to provide safe and adequate water service as the proceeds are used for necessary capital investments when other funds are not available, and at the same time avoids regulatory lag associated with individual financing approvals.

3. Motion to Bifurcate

Staff supported the Company's request to bifurcate its intercompany financing request from the CoBank Loan and line of credit renewal requests. Staff noted that additional time is necessary to investigate the intercompany financing request. Staff further noted that it would be more appropriate to examine the intercompany financing request in conjunction with PEU's impending rate case. Staff also argued that the time sensitivity of PEU's other financing requests support bifurcation of the issues as it will promote the orderly and efficient conduct of the proceeding.

4. Motion for Protective Order and Confidential Treatment

Staff supported PEU's request for protective order. Staff maintained that public disclosure of the terms and conditions would competitively disadvantage the Company and its customers by impairing PEU's ability to effectively negotiate debt financing with lenders. Staff argued that this would be especially problematic given PEU's dependence on debt financing to fund most of its capital improvement and working capital needs. Staff stated that it did not know of any public interest in disclosing the possible terms.

5. Motion for Waiver of Certain Finance Petition Requirements

Staff supported PEU's request to waive the filing requirements of Puc 609.03(b)(6) and Puc 609.03(b)(7). Staff argued that Puc 609.03(b)(6) is no longer applicable to PEU given the Company's all debt capital structure. Staff argued that Puc 609.03(b)(7) is not required as a rate of return no longer applies to the Company because it strictly relies on debt-financing. Staff said that waiving those rules would serve the public interest by saving additional costs to PEU and would not disrupt the orderly and efficient resolution of matters before the Commission.

III. COMMISSION ANALYSIS

A. CoBank Term Loan and Line of Credit Renewal

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 on the circumstances of the request. As the Commission has 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 Company of New Hampshire*, Order No. 25,050 at 14 (December 8, 2009). We engage in a more limited review for routine financing requests. *Id.* at 13-14. 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.” *Id.* at 13.

The Commission finds PEU’s requests to be routine. The CoBank term loan and line of credit renewal will not have an effect on the Company’s capitalization, and neither will have a significant impact on rates. In addition, the financings appear to be made in the ordinary course of PEU’s business and in conjunction with the approved QCPAC mechanism. Because the

request is routine, the Commission will conduct the 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.

The CoBank term loan will be used to reimburse PEU’s line of credit for funds borrowed to construct the Company’s 2019 capital projects. Those capital projects enable PEU to provide safe, adequate, and reliable water service to its customers. We recognize that this process is also consistent with PEU’s intended use of the fixed asset line of credit (FALOC) and its prior QCPAC filing in 2019. *See Order 26,117 at 4 (March 30, 2018)* (“PEU intends to pay all of the CoBank FALOC debt incurred once a year by converting the outstanding balance to term loans pursuant to the QCPAC process”); and *Pennichuck East Utility, Inc.*, Order No. 26,253 at 2 (May 22, 2019) (order approving long-term debt to pay FALOC in which PEU argued “that conversion to long-term debt coincides with the requirements” of the QCPAC mechanism). We further recognize that the long-term debt better aligns the useful life of the underlying capital assets with the life of the associated debt. We therefore find that the CoBank term loan is consistent with the public good, and we approve PEU’s proposed borrowing.

The line of credit will be used to finance capital projects when other funds are unavailable. Staff argued that the line of credit also allows PEU to fulfill its RSA 374:1 duty to provide safe and adequate water service as the proceeds are used for necessary capital investments. Staff noted that the line of credit is an integral part of the Company’s QCPAC process. Staff also noted that the line of credit does not have a potential to impact customer rates as the Company routinely refinances the line of credit debt with long-term borrowings. We agree, and find that the financing is consistent with the public good, pursuant to RSA 369:1 and RSA 369:4. We therefore approve the renewal of PEU’s line of credit for another 3-year term.

Our approval of PEU's financings do not limit or preclude the Commission from reviewing in a future rate case, directly or indirectly, the prudence, use, and usefulness of any specific project financed by the loan. RSA 378:28. The Commission and Staff also retain the authority under RSA 374:4 to be kept informed of PEU's use of the financing independently and apart from any review under RSA 378:28.

B. Motion for Protective Order and Confidential Treatment

PEU sought confidential treatment of loan documentation provided by CoBank in support of both the CoBank term loan and the line of credit renewal, pursuant to Puc 203.08. The Company argued that the proposed term sheets and guarantee agreements fall within the RSA 91-A:5, IV exemption (exempting from the RSA 91-A public disclosure requirements and records pertaining to ...confidential, commercial, or financial information) because the documents contain commercial or financial information that reveal terms subject to review, negotiation, and approval. PEU represented that the lender sought confidential treatment of the documents as part of the financing process.

The Company said that protecting the confidentiality of the documents consistent with the lender's practice is in the public interest, claiming that to do otherwise could impact the Company's ability to negotiate with lenders and obtain financing. Staff agreed, noting that failure to keep these documents confidential would be particularly problematic given PEU's dependence on debt financing to fund most of its capital improvement and working capital needs.

The Commission applies a three-step balancing test to determine whether documents should be kept from disclosure as "confidential, commercial, or financial information" under RSA 91-A:5, IV. *Pennichuck Water Works, Inc.*, Order No. 26,121 at 6 (April 20, 2018) (citing *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) and *Lambert v. Belknap County*

Convention, 157 N.H. 375, 382-83 (2008)). Applying that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Id. at 7. Finally, the Commission must balance “those competing interests and decide whether disclosure is appropriate.” Id. (citing *Lambert*, 157 N.H. at 383).

We find that PEU has established a significant privacy interest in maintaining the confidentiality of the records at issue. Disclosure of the financial documents related to the negotiations and resulting terms could result in a competitive disadvantage for PEU in future financings. In addition, disclosure would interfere with the Company’s ability to obtain financing necessary to conduct its business. As Staff represented, the public’s interest in disclosure of this type of information is minimal. On balance, the Company’s interest in maintaining the confidentiality of the records at issue is significant, and outweighs whatever minimal interest the public may have. Therefore, we grant the motion for protective order and confidential treatment. Consistent with past practice, the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

C. Motion for Waiver of Certain Finance Petition Requirements

In consideration of the Company’s waiver request of Puc 609.03(b)(6) and Puc 609.03(b)(7), pursuant to Puc 201.05, the Commission shall waive provisions of its rules when the waiver would serve the public interest and would not disrupt the orderly and efficient resolution of the matters before it. Puc 201.05. A waiver serves the public interest if compliance with the rule would be onerous or inapplicable under the circumstances, or the rule’s purpose would be satisfied by a proposed alternative method. *Pennichuck Water Works, Inc.*, Order No. 26,354 at 9 (May 6, 2020).

The purpose of Puc 609.03(b)(6) and Puc 609.03(b)(7), is to require a petitioner for financing to submit necessary information to determine whether a proposed financing should be approved. The Company asserted that the information required is not relevant or no longer applies to PEU's current all-debt structure. Staff agreed with the Company's request.

We agree with the Company's assertion that Puc 609.03(b)(6) and Puc 609.03(b)(7) are not applicable given the Company's all debt capital structure. As such, we find that waiving the filing requirements of Puc 609.03(b)(6), and Puc 609.03(b)(7), as requested by PEU would serve the public interest in this instance. We also find that waiver of Puc 609.03(b)(6) and Puc 609.03(b)(7) will not disrupt the orderly and efficient resolution of matters before the Commission. Accordingly, we grant the Company's request for waiver of those rules.

D. Motion to Bifurcate

We approve PEU's motion to bifurcate the financing requests. The Company represented, and Staff agreed, that separation of the financing requests will allow more time for investigation into the intercompany financing. Bifurcation of the financing requests would promote the orderly and efficient conduct of the proceeding. Accordingly, we grant the motion.

Based upon the foregoing, it is hereby

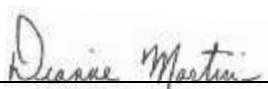
ORDERED, that authority for Pennichuck East Utility, Inc. to undertake a loan of \$800,122 under the terms and conditions described in this order, and for the purposes as outlined herein, is hereby GRANTED; and it is

FURTHER ORDERED, that authority for Pennichuck East Utility, Inc. to renew its line of credit, under the terms and conditions described in this order, and for the purposes as outlined herein, is GRANTED; and it is

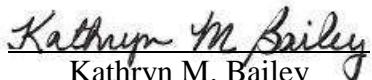
FURTHER ORDERED, that Pennichuck East Utility, Inc.'s request for waiver of N.H. Admin. R., Puc 609.03(b)(6), and Puc 609.03(b)(7), is GRANTED; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc.'s motion for protective order and confidential treatment of loan documentation is GRANTED; and it is
FURTHER ORDERED, that Pennichuck East Utility, Inc.'s motion to bifurcate its financing requests is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 2020.

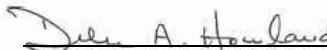


Dianne Martin
Chairwoman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

Service List - Docket Related

Docket#: 20-081

Printed: 10/29/2020

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