

STATE OF NEW HAMPSHIRE

INTERIM COMMISSIONER
Jared Chicoine

DEPUTY COMMISSIONER
Vacant



DEPARTMENT OF ENERGY
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

TDD Access: RelayNH
1-800-735-2964

Tel. (603) 271-3670

FAX No. 271-1526

Website:
www.energy.nh.gov

July 27, 2021

Dianne Martin
Chairwoman
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

Re: DW 21-102, Pennichuck East Utility, Inc.
Petition for Approval of Financing from CoBank, ACB
Department of Energy Recommendation of Approval

Dear Chairwoman Martin:

On May 17, 2021, Pennichuck East Utility, Inc. (PEU, or the Company) filed a Petition for Approval of Financing from CoBank with supporting testimony and attachments (Petition, or Petition Filing (5-17-21)). PEU's Petition seeks authority to enter into a loan of \$1,135,409 from CoBank, ACB (CoBank) to fund certain 2020 capital projects not otherwise funded. The loan will serve to repay and refinance amounts borrowed under the Company's Fixed Asset Line of Credit (FALOC) for those projects during 2020. 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. On July 20, 2021, PEU filed an amendment to the Petition to include a copy of the City of Nashua's 'Resolution Authorizing Pennichuck Corporation and Pennichuck East Utility, Inc. to Enter into a Term Loan with CoBank, ACB' (Petition Amendment (7-20-21)).

Based on its review of PEU's Petition, the Department of Energy (DOE, or the Department) recommends approval of PEU's financing request. The DOE further recommends the Commission approve the respective motions filed by PEU for waiver of certain finance petition requirements and for a protective order and confidential treatment of business information. Finally, the DOE respectfully requests that a Commission order in this docket be issued as soon as reasonably possible. The petition requested approval effective by July 31 to allow for a timely closing on this loan and to enable PEU to include the loan's actual impact in the Qualified Capital Project Adjustment Charge (QCPAC) currently under consideration in Docket DW 21-022.

Financing Request

As noted above, PEU requests authorization to secure a long-term loan in the amount of \$1,135,409 from CoBank. The Company intends to use the loan to repay and refinance amounts owed on its FALOC associated with 2020 capital expenditures.

The FALOC is the Company's line of credit that provides financing for its new capital expenditures, routine maintenance of capital projects, and other non-recurring capital expenditures. *See, e.g., Pennichuck East Utility, Inc.*, Order No. 26,418 at 11 (October 29, 2020) (approving the FALOC and finding that the FALOC "will be used to finance capital projects when other funds are unavailable" and that it "allows PEU to fulfill its RSA 347:1 duty to provide safe and adequate water service as the proceeds are used for necessary capital investments."). PEU relies upon the FALOC when funds for capital projects are not available through the State Revolving Fund (SRF), the Drinking Water and Groundwater Trust Fund (DWGTF), or its Debt Service Revenue Requirement (DSRR) 0.1 account.¹

The Company stated that the requested amount is consistent with the schedules submitted with PEU's QCPAC filing in Docket DW 21-022. The QCPAC is an approved mechanism to compensate PEU for necessary capital investments between rate cases, thus 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 inclusion in the QCPAC, the prior year's capital projects must be financed by debt previously approved by the Commission. Order No. 26,228 at 2. The instant financing request to repay and refinance amounts through long-term debt borrowed against its FALOC, with the associated interest, will enable the Company to request recovery of that long-term debt through the QCPAC mechanism in Docket DW 21-022. This process is consistent with PEU's intended use of the FALOC and its prior QCPAC filings in 2019 and 2020. *See* Order No. 26,117 at 4 ("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 based on PEU's argument "that conversion to long-term debt coincides with the requirements" of the QCPAC mechanism).

Mr. John Boisvert, Chief Engineer of Pennichuck Water Works, Inc., an affiliate of PEU that provides support for the Company on a work order basis, provided testimony as to the use of FALOC funds for: (1) capital improvement projects (\$797,780), and (2) maintenance capital expenditures (\$337,629), as further detailed below. Petition Filing (5-17-21) at 40.

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. The additional 10 percent is collected and set aside in the DSRR 0.1 account. The DSRR 0.1 account can be used for certain defined 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 Agreement, July 18, 2018 (Docket DW 17-128) at 19; *see also Pennichuck East Utility, Inc.*, Order No. 26,179 (October 4, 2018) (order approving settlement agreement).

Relative to the proposed capital improvement projects, Mr. Boisvert provided a total financing amount of \$797,780, as follows:

Rolling Hills Water Main Replacement: Site Restoration	\$ 27,400
Pelham Main Replacement/Addition	595,046
Locke Lake Projects (8 total)	<u>175,334</u>
Total	\$797,780

The total amount expended by PEU on the Locke Lake capital projects completed during 2020 actually totaled \$4,182,481. However, while SRF loan proceeds of \$4,007,147 financed the majority of these project costs² (Petition Filing (5-17-21) at 40), the remainder amount of \$175,334 exceeds the total SRF funds available and, thus, requires financing through the requested CoBank loan.³

Mr. Boisvert further explained that the remaining \$337,629 of the CoBank loan request includes what he termed “maintenance capital projects or items/equipment”. Petition Filing (5-17-21) at 40. Mr. Boisvert elaborated that these expenditures consist of multiple investments, including the replacement of equipment assets (pumps, controls, meters); the replacement or upgrade of other existing assets (distribution valves, hydrants, and services); the purchase of tools and equipment to properly operate and maintain PEU’s water systems; and investments in new customer growth, including meters and services. The identified investments total \$194,464. Petition Filing (5-17-21) at 40-42. In addition, the maintenance capital projects portion of the CoBank loan include \$127,007 in Merrimack Source Development Charge (MSDC) fees for water used by PEU’s existing customers. *Id.* at 42. Finally, this category of costs also includes \$16,158 of interest incurred by PEU relative to its FALOC borrowings for 2020.⁴ *Id.*

Mr. Larry Goodhue, Chief Executive Officer and Chief Financial Officer of PEU, described the anticipated terms of the CoBank loan, including amortization over 25 years with level monthly principal and interest payments. The interest rate of the loan is currently anticipated to be approximately 4.25% per annum. The actual interest rate may vary, however, as it will be based on the market conditions prevailing at the time of closing. Petition Filing (5-17-21) at 18.

Mr. Goodhue further detailed PEU’s search for other sources of financing, as well as PEU’s historic relationship with CoBank, and noted that PEU’s unique all-debt financial structure limits the number of “truly eligible lending candidates.” *Id.* at 16. As such, PEU concluded that “CoBank has become the only viable option currently to finance these current needs.” *Id.*

The proposed financing will be secured in two ways. First, by PEU’s equity interest in CoBank (consisting of the Company’s \$212,825 current equity investment and its right to receive future patronage dividends from CoBank); and, second, by an unconditional guarantee by Pennichuck

² SRF financing was approved for multiple capital projects for the Locke Lake system in Commission Order No. 26,189 (November 6, 2018) in Docket DW 18-132.

³ See PEU’s filing in DW 21-022, Exhibit DLW-1, Page 2.

⁴ The Commission previously approved inclusion of the FALOC interest in PEU’s annual debt issuances. See Commission Order No. 26,313 (December 6, 2019) at 9 in Docket DW 19-035 and Commission Order No. 26,418 (October 29, 2020) at 4 in Docket DW 20-081.

Corporation, PEU's parent company, pursuant to the Guarantee of Payment by Pennichuck Corporation in favor of CoBank dated February 9, 2010. *Id.* at 13.

PEU anticipates approximately \$10,000 in debt issuance costs. This will consist primarily of legal expenses related to document preparation and obtaining Commission approval. *Id.* at 16.

Mr. Goodhue stated in testimony that the respective Boards of Directors of PEU and Pennichuck Corporation have approved the proposed financing. In addition, Pennichuck Corporation's sole shareholder, the City of Nashua, approved the proposed loan transaction on June 8, 2021. *See* Amended Petition Filing (7-20-21) at 11. Also, in conformity with debt covenant requirements of TD Bank, N.A. (TD Bank) contained in Pennichuck Corporation's loan agreement with that institution, PEU provided notification to TD Bank of its pending loan transaction with CoBank with documentation in support of the above noted approvals and notification. Petition Filing (5-17-21) at 18 and Attachment LDG-5.

In his testimony, Mr. Goodhue provided an estimate of the rate impact on an average single-family residential home as a result of PEU's requested financing. The proposed CoBank financing and associated property tax expense would result in an increase of approximately \$0.96 per month or \$11.52 per year in the billings of an average single-family residential home. This translates into an average monthly bill impact of 1.29%. Petition Filing (5-17-21) at 25.

In urging Commission approval of PEU's petition, Mr. Goodhue stated that the proposed financing is in the public good and will allow PEU to continue to provide safe, adequate, and reliable water service to its customers. Furthermore, in support of the overall benefit to PEU's customers, Mr. Goodhue stated that the planned projects, which will be financed by the proposed loan, will provide the most cost-effective solutions. Finally, Mr. Goodhue contends that the terms of the loan are favorable when compared to other available financing alternatives. Petition Filing (5-17-21) at 19.

PEU requested that the Commission issue an order approving the proposed financing by June 30, 2021, such that the order would be effective by the end of July 2021. The Company stated that this would allow for a timely closing on the proposed loan, which would enable PEU to incorporate the actual impact of the loan in the QCPAC currently under consideration in DW 21-022.

Motions

A. Motion for Protective Order and Confidential Treatment of Business Loan Information

PEU requested confidential treatment of certain loan documentation provided by CoBank in support of the proposed loan, pursuant to N.H. Admin. R. Puc 203.08 ("the commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law"). Specifically, the Company requested confidential treatment for CoBank's Non-Binding Summary of Terms and Conditions submitted as Exhibit LDG-4. Petition Filing (5-17-21) at 26-29.

The Company asserted that the “Non-Binding Summary of Terms and Conditions fall within the RSA 91-A:5, IV exemption” (exempting from RSA 91-A public disclosure requirements records pertaining to...confidential, commercial, or financial information) because the documents contain commercial or financial information that reveal “terms that remain subject to satisfactory review and completion of documentation, due diligence and approval by PEU and CoBank.” Petition Filing (5-17-21) at 46. PEU further argued that the documents are confidential because the terms and conditions remain subject to negotiation and have not been finalized, and CoBank has requested that they remain confidential. The Company contended that “it is in the public interest to allow such negotiations to occur in a manner consistent with the lender’s procedure and practice” and “PEU’s inability to maintain confidentiality of such documents may affect its ability to negotiate with lenders.” *Id.* at 47.

B. Motion for Waiver of Certain Finance Petition Requirements

The Company also requested, pursuant to Puc 201.05, waiver of documentation required in support of the financing petition, specifically Puc 609.03(b)(6) (statement of capitalization ratios) and Puc 609.03(b)(7) (weighted average cost of debt).⁵ The Company contended that those requests are inapplicable due to PEU’s all-debt capital structure. PEU further argued that the requested waiver of the identified requirements would be in the public interest and would not disrupt the orderly and efficient resolution of the proceeding as the information requested “does not apply or is not relevant” to the instant financing request.

DOE Analysis

A. Financing Request

Pursuant to RSA 369:1, public utilities engaged in business in New Hampshire may issue evidence 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.” Analysis of the public good involves looking beyond the actual terms of the proposed financing to the use of the funds and the effect on rates to ensure the public good is protected. *Appeal of Easton*, 125 N.H. 205, 211 (1984). “[C]ertain 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.” *Lakes Region Water Company, Inc.*, Order No. 25,753 (January 13, 2015) at 4-5, citing *Public Service Company of NH*, Order No. 25,050, 94 NH PUC 691, 699 (2009).

The Commission engages in a more limited review for routine financing requests. *Pennichuck Water Works, Inc.*, Order No. 26,247 at 4 (May 3, 2019). 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 ... investments appropriate in the ordinary course of utility operations.” *Id.*

⁵ The DOE notes that PEU requests waiver of the “Puc 609.03(b)(5) [request for] a statement of capitalization ratios.” However, the provision of a statement of capitalization ratios is required by Puc 609.03(b)(6). The DOE further notes that PEU submitted the documentation required by Puc 609.03(b)(5) in its schedules marked LDG-2. Petition Filing (5-17-21) at 23-24. Thus, PEU’s motion should be construed as a request for a waiver of Puc 609.03(b)(6).

Per Mr. Goodhue's testimony, the CoBank loan will have minimal impact on customer rates (an estimated \$0.96 increase in the average customer's monthly bill, or 1.29%). Further, the proposed financing will have no effect on PEU's capitalization as it has an all-debt capital structure. *See Pennichuck East Utility, Inc.*, Order No. 26,179 at 14 (October 4, 2018) ("... [PEU], with no access to equity markets, finances its operational and infrastructure needs solely through debt.") As such, and consistent with other Commission-approved financings from CoBank, the DOE reviews PEU's filing as a routine financing.

In reviewing the Company's petition, the DOE first acknowledges the Company's immediate need to repay, refinance, and convert amounts on its FALOC into long-term debt to maintain adequate liquidity. The DOE further recognizes the routine nature of this financing, as the conversion of amounts on the FALOC into long-term debt is an integral part of PEU's QCPAC. *See* Order No. 26,179 at 16 (approving QCPAC mechanism to compensate PEU for necessary capital investments between rate cases and to promote the Company's ability to maintain adequate cash flows). A requirement of the QCPAC mechanism is that the underlying capital projects must be funded by Commission-approved financings in order to be eligible for recovery. Order No. 26,228 at 2. Commission approval of the conversion of the FALOC debt to long-term financing for the proposed capital projects will enable PEU to petition for recovery of those expenditures in its 2021 QCPAC filing. *See Pennichuck East Utility, Inc.*, Petition for Approval of 2021 Qualified Capital Project Annual Adjustment Charge, Docket DW 21-022.

The DOE further notes that approval is consistent with Commission practice. In 2019 and 2020, the Commission authorized reimbursement of funds borrowed against the FALOC to construct the Company's 2018 and 2019 capital projects, respectively, with long-term debt in order for the Company to recover the principal and interest payments on the long-term debt through its QCPAC mechanism. *See Pennichuck East Utility, Inc.*, Order No. 26,253 (May 22, 2019) (order approving financing to pay FALOC); Order No. 26,313 (December 6, 2019) (order approving QCPAC surcharge based in part upon the financing approved in Order No. 26,253); and Order No. 26,418 (October 29, 2020) (order approving financing to pay FALOC). The Commission has previously authorized PEU to include the interest associated with the FALOC in prior financings through CoBank. Order No. 26,313 at 9, and Order No. 26,418 at 4. Lastly, the DOE notes that the projects financed by the FALOC were incorporated into PEU's 2020 capital project budget currently under consideration in Docket DW 20-019.

The DOE examined the current filing and supports Commission approval of the request as a routine financing consistent with the public good. The procurement of this CoBank loan ensures that the Company will meet its obligation to repay and refinance amounts borrowed against the FALOC and associated interest at reasonable terms that are projected to minimally impact customer rates. In doing so, that long-term debt also becomes eligible for the necessary recovery through the Commission-approved QCPAC mechanism in the Company's 2021 QCPAC filing in Docket DW 21-022. That recovery is essential for the Company to meet its debt service obligations and maintain financial health.

Furthermore, the projects funded through the FALOC allow the Company to continue providing safe, adequate, and reliable water service to its customers. RSA 374:1 (duty of a public

utility to provide “reasonably safe and adequate and in all other respects just and reasonable” service to its customers). The replacement of the FALOC financing for those improvements with a 25-year loan better aligns the useful lives of the underlying capital assets with the life of the associated debt. That improved alignment is more equitable for current and future customers, as current customers will not be bearing all of the debt for assets that will also be used in subsequent years by future customers.

For these reasons, the DOE concludes that PEU has demonstrated that the proposed use of funds is appropriate, and that the requested financing is consistent with the public good and should be authorized pursuant to RSA 369:1 and RSA 369:4. Furthermore, the DOE concludes that the financing is consistent with PEU’s duty to provide safe and adequate water service under RSA 374:1, and that approval of the requested financing will allow the Company to continue making investments in the ordinary course of providing utility service, while repaying and refinancing certain amounts on the FALOC associated with the Company’s 2020 capital projects. The DOE therefore recommends Commission approval of the proposed financing.

B. Motions

1. Motion for Protective Order and Confidential Treatment of Business Loan Information

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 91A: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 this 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).

The DOE recommends the Commission approve PEU’s request for a protective order. The DOE contends that public disclosure of the terms and conditions would harm PEU and its customers by impairing PEU’s ability to effectively negotiate debt financings with lenders, thus, resulting in a competitive disadvantage. This would be especially problematic given PEU’s dependence on debt financing to fund capital improvements and working capital needs. Lastly, the DOE is not aware of any public interest that would be impaired by non-disclosure of the information in question.

2. Motion for Waiver of Certain Finance Requirements

In consideration of the Company’s request pursuant to Puc 201.05 for a waiver of Puc 609.03(b)(6) (statement of capitalization)⁶ and Puc 609.03(b)(7) (weighted average cost of debt), 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. 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).

⁶ See footnote. 5, above.

The DOE recommends the Commission approve PEU's request for waiver of the filing requirements in question. The purpose of the cited rules is to require the Company to submit the financial information necessary to determine whether a proposed financing should be approved. Puc 609.03(b)(6) is not applicable to PEU, given the Company's all-debt capital structure. With respect to Puc 609.03(b)(7), the weighted average cost of debt is necessary to determine the impact of financing on a utility's rate of return. However, given the Company's current all-debt capital structure, a weighted average rate of return no longer exists for PEU. *See* Order No. 26,179 at 7 (“[b]ecause of its inability to access the equity markets PEU cannot seek traditional equity-based rates of return”). Thus, schedules to that effect are no longer necessary.

As such, the DOE contends that waiver of the rules, relative to this financing request, would serve the public interest by eliminating certain costs to PEU that otherwise would be borne ultimately by ratepayers, and would not disrupt the orderly and efficient resolution of matters before the Commission, because the schedules are unnecessary. Accordingly, the DOE recommends that the requested waiver be granted.

Summary

The DOE recommends the Commission approve PEU's proposed financing request. The DOE believes the proposed financing is consistent with the public good, as required by RSA 369:1 and RSA 369:4, and will allow PEU to fulfill its duty to provide reasonably safe and adequate water service. RSA 374:1. The DOE further recommends approval of PEU's motion for confidential treatment and its motion for waiver of certain financing filing requirements. Finally, the Department respectfully requests that the Commission issue its order in this proceeding as soon as reasonably possible.

Thank you for your attention and assistance with this matter. If you have any further questions, please do not hesitate to contact me.

Sincerely,

/s/ Jayson P. Laflamme

Jayson P. Laflamme
Assistant Director – Water Group
Regulatory Division
New Hampshire Department of Energy

cc: Service List (electronically)

Service List - Docket Related

Docket# : 21-102

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Email Addresses

ClerksOffice@puc.nh.gov
wfa@rathlaw.com
john.boisvert@pennichuck.com
robyn.j.descoteau@energy.nh.gov
lynn.h.fabrizio@energy.nh.gov
larry.goodhue@pennichuck.com
carolann.howe@pennichuck.com
jay.kerrigan@pennichuck.com
jayson.p.laflamme@energy.nh.gov
anthony.j.leone@energy.nh.gov
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
jjs@rathlaw.com
George.Torres@Pennichuck.com
christopher.r.tuomala@energy.nh.gov
smw@rathlaw.com
donald.ware@pennichuck.com
cbw@rathlaw.com

Without Email Addresses

All

ClerksOffice@puc.nh.gov

William F Ardinger
Rath, Young & Pignatelli, P.C.
One Capitol Plaza
Concord NH 03301
wfa@rathlaw.com

John Boisvert
Pennichuck Water Works, Inc.

john.boisvert@pennichuck.com

Robyn Descoteau
Department of Energy