

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 21-102

PENNICHUCK EAST UTILITY, INC.

Request for Approval of Financing from CoBank, ACB¹

Order *Nisi* Approving Financing

O R D E R N O. 26,507

August 10, 2021

In this order the Commission approves Pennichuck East Utility's request to borrow the principal amount of \$1,135,409 from CoBank for a 25 year term. The estimated rate impact of this loan on the average residential water customer would be an addition of approximately \$0.96 per month or a 1.29 percent monthly bill increase.

I. BACKGROUND

The petitioner, Pennichuck East Utility (PEU), filed a petition on May 17, 2021, seeking Commission approval of a loan from CoBank (Petition). The Petition was supported by the pre-filed written testimony of Larry D. Goodhue and John J. Boisvert, both PEU employees. PEU amended the Petition on July 21, 2021, and on July 27, 2021, the Department of Energy (DOE) filed a recommendation supporting approval of the financing request. The Petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at:

[New Hampshire Public Utilities Commission \(nh.gov\)](https://www.nh.gov/public-utilities-commission)

¹ Agricultural Credit Bank.

II. PETITION

A. Financing Request

PEU represented in the Petition that the proposed financing will be used to repay funds advanced from PEU's fixed asset line of credit (FALOC). According to PEU, those FALOC funds were used to pay for capital improvements made during 2020 that could not be financed through the State Revolving Loan Fund (SRF) or the Drinking Water and Groundwater Trust Fund, both administered by the Department of Environmental Services (DES).

PEU stated the total amount expended by PEU on the Locke Lake capital projects completed during 2020 was \$4,182,481. SRF loan proceeds of \$4,007,147 financed the majority of these project costs, leaving \$175,334 in costs to be financed initially through the FALOC and now to be repaid by the CoBank loan. PEU represented that the additional capital projects to be repaid through the CoBank Loan are site restoration for the Rolling Hills water main replacement, and the Pelham main replacement, as well as, for pumps, controls, meters, tools and equipment.

According to PEU, CoBank is a Government Sponsored Enterprise ("GSE") owned by its customers, which consist of agricultural cooperatives, rural energy, communications and water companies, and other businesses that serve rural America. As a GSE, CoBank issues its debt securities with the implicit full faith and credit of the US Government and uses these low cost funds to make loans to businesses like PEU that meet its charter requirements.

PEU represented that the projects financed by this loan will provide the most cost effective solutions for safe, adequate, and reliable water service at the most favorable terms available. PEU also represented that the proposed financing is secured

by PEU's equity investment in CoBank as well as a guaranty by Pennichuck Corporation, PEU's parent company and that the loan will amortize over 25 years at an estimated interest rate of 4.25 percent per year. The interest rate may vary depending on market prices at the time of loan closing. PEU estimates debt issuance costs of \$10,000.

B. Request for Confidential Treatment

PEU requests confidential treatment of certain loan documentation comprised of a non-binding summary of terms and conditions. According to PEU these terms and conditions are not final, are the subject of further negotiation, and are considered confidential by CoBank. Further, PEU asserts that disclosure of these terms would create a disadvantage to PEU in future negotiations with lenders.

C. Request for Waiver of Administrative Rules

PEU argues that N.H. Admin. R., Puc 609.03(b)(6) requiring a statement of capital ratio, and Puc 609.03(b)(7), requiring the average cost of debt, should not apply to its financing application because it has no equity and uses debt for all of its capital needs. PEU requests that the Commission waive these two sub-sections.

III. COMMISSION 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." RSA 369:4 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. 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

Based on the record, we find the proposed CoBank financing will have a minimal impact on customer rates (an estimated \$0.96 increase in the average customer’s monthly bill, or 1.29%). 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). The borrowed funds will support investments made in the ordinary course of PEU’s business. The Commission acknowledges the Company’s immediate need to repay, refinance, and convert amounts on its FALOC into long-term debt to maintain adequate liquidity. 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). 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 (approval for 2018 capital budget for PEU QCPAC).

For these reasons, we find that this to be a routine financing request and conclude this financing is for the public good. Accordingly, we approve it pursuant to

RSA 369:1 and 369:4. This order approving the CoBank financing is issued on a *nisi* basis so that interested parties may have an opportunity to respond to the financing proposal and request a hearing.

B. Request for Confidential Treatment

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 *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.*

We find that PEU and CoBank have a privacy interest in the documentation of the summary of terms and conditions of the loan documents, particularly in light of the fact that the specific terms are still under negotiation. PEU contends that public disclosure of these 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. We find the public also has an interest in knowing the terms of the loan and its financial impact on PEU and its customers. On balance, the interest of PEU in maintaining confidentiality outweighs the public’s interests. The public’s interest, while important, is addressed by disclosure of the terms of the loan and its potential financial impact in the PEU petition and in this order. As a result, we find confidential treatment of the summary documents identified

by PEU should remain confidential. Therefore we grant PEU's motion for confidential treatment of those loan documents.

C. Request for Waiver of Administrative Rules

In considering PEU's request for a waiver of Puc 609.03(b)(6) (statement of capitalization) and Puc 609.03(b)(7) (weighted average cost of debt), the Commission is guided by Puc 201.05 which allows a waiver of our rules when the waiver would serve the public interest and would not disrupt the orderly and efficient resolution of the matters before the Commission. 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.

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. Given PEU's all debt capital structure, additional debt will have no effect on the capital structure. Nonetheless, we find that complying with Puc 609.03(b)(6) is not onerous, and thus we will require PEU to continue to report its capital structure. With respect to Puc 609.03(b)(7), new borrowings may change PEU's average of debt, and therefore we will continue require PEU to report its average cost of debt resulting from a proposed financing. Accordingly, we deny PEU's waiver request.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, PEU's proposed financing for a \$1,135,409 loan from CoBank, under the terms and conditions, and for the purposes described in this order, is **APPROVED**; and it is

FURTHER ORDERED, that PEU's motion for confidential treatment of certain loan documents is **GRANTED**; and it is

FURTHER ORDERED, that PEU's motion for waiver of Commission Rules Puc 609.03(b)(6) and 609.03(b)(7) is **DENIED**; and it is

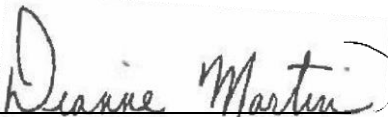
FURTHER ORDERED, that the Petitioner shall cause a copy of this order to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, and to be posted on the Company's website, such publication and posting to be no later than August 20, 2021 and to be documented by affidavit filed with this office on or before September 7, 2021; and it is

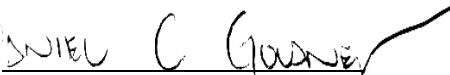
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 27, 2021 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 3, 2021; and it is

FURTHER ORDERED, that this order shall be effective September 10, 2021, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of August, 2021.


Dianne Martin
Chairwoman


Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 21-102

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