

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 21-129

PENNICHUCK EAST UTILITY, INC.

Petition for Approval of Financing from CoBank

Order *Nisi* Approving Financing

O R D E R N O. 26,538

October 29, 2021

In this order the Commission approves Pennichuck East Utility's request to borrow the principal amount of \$2,546,632 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 \$1.70 per month under current rates, or approximately \$1.39 per month if the Company's proposed rates in its ongoing rate case in Docket DW 20-156 are approved.

I. BACKGROUND

The petitioner, Pennichuck East Utility (PEU), filed a petition on September 2, 2021, seeking Commission approval of a loan from CoBank (Petition). The Petition was supported by the pre-filed written testimony of Larry D. Goodhue, PEU's Chief Executive Officer and Chief Financial Officer. PEU requested Commission action on its request by October 31, 2021.

On September 30, 2021, the Office of the Consumer Advocate (OCA) filed a letter of Participation, and on October 20, Suzanne Amidon, Esq. filed an appearance on behalf of the Department of Energy (Energy).

On October 21, 2021, the Commission issued a procedural order establishing a deadline of October 27, 2021 for PEU to supplement its petition and for the OCA and Energy to submit any filings they wish the Commission to consider before it issued an

order. PEU amended its Petition on October 27, 2021, and no other filings were received from other parties.

On October 28, 2021, the Commission issued a procedural order denying PEU's request to waive filing requirements contained in New Hampshire Administrative Rules Puc 609.03(b)(6) (requiring filing of capitalization ratios) and Puc 609.03(b)(7) (requiring filing of weighted average cost of debt).

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:

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-129.html>.

II. PETITION

A. Financing Request

PEU requested authorization to borrow the principal amount of \$2,546,632¹ from CoBank for a 25 year term. PEU represented in the Petition that the proposed financing will be used to fund a "one time" refill and replenishment of the Company's Rate Stabilization Fund (RSF) funds to their imprest levels, specifically the Material Operating Expense Revenue Requirement (MOERR). According to PEU, those the MOERR RSF has not only been fully depleted, but actually overdrawn with amounts being funded and supported by borrowings from the Pennichuck Corporation Working Capital Line of Credit, thru its senior commercial lender. PEU stated that this financing was preferable to other alternatives such as a "deferred asset approach" because it would result in savings due to the impact of a 25-year amortization verses a

¹ The original filing contains apparent instances where the requested financing amount differs, the Commission interprets the requested principal amount to be \$2,546,632. *See, e.g.*, Petition at bates page 2 ¶ 2 (\$2,2546,632); and Petition at bates page 23 line 20 (\$2,246,632).

10-year amortization. PEU also detailed its efforts to pursue alternative funding options from other potential funding sources.

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 proposed financing will be secured by a security interest in the Company's equity interest in CoBank (consisting of the Company's \$212,825.39 equity investment in CoBank and the Company's right to receive patronage dividends) and the unconditional guarantee of the Company's obligations to CoBank by Penn Corp pursuant to the Guarantee of Payment by Penn Corp in favor of CoBank dated as of February 9, 2010. According to PEU the loan will amortize over 25 years at an estimated interest rate of 4.50 percent per year. The interest rate may vary depending on market prices at the time of loan closing. PEU estimated debt issuance costs of less than \$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.

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 increase in the average residential customer’s monthly bill between \$1.39 and \$1.70, depending on the outcome of PEU’s pending rate case). 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 replenish its RSF funds to their imprest levels, specifically the MOERR.

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.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, PEU's proposed financing for a \$2,546,632 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 shall make filings responsive to Puc 609.03(b)(6) (requiring filing of capitalization ratios) and Puc 609.03(b)(7) (requiring filing of weighted average cost of debt), consistent with the procedural order dated October 28, 2021, no later than November 10, 2021; 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 November 9, 2021, and to be documented by affidavit filed with this office on or before November 26, 2021; and it is

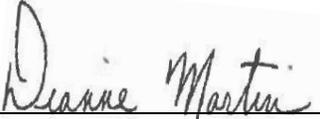
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments and that parties may file a written

request for a hearing which states the reason and basis for a hearing no later than November 16, 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 November 23, 2021; and it is

FURTHER ORDERED, that this order shall be effective November 30, 2021, unless the Petitioner fails to satisfy the publication or filing obligations 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 twenty-ninth day of October, 2021.



Dianne Martin
Chairwoman



Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 21-129

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