

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DW 23-____

Pennichuck East Utility, Inc.

**Petition of Pennichuck East Utility, Inc. for Approval of
Refinancing of a CoBank, ACB Balloon Maturity (T4) Note**

Pennichuck East Utility, Inc. (“PEU” or “Company”), a corporation duly organized and existing under the laws of the State of New Hampshire and operating therein as a public utility subject to the jurisdiction of the New Hampshire Public Utilities Commission (the “Commission”), petitions the Commission for approval and authority under RSA 369:1-4 to enter into a loan of \$1,025,000 from CoBank, ACB (“CoBank”) as repayment and refinance of a balloon maturity note with CoBank for amounts borrowed under a ten (10) year loan, with a 25 year amortization, with CoBank in place since 2013, utilized to refinance an intercompany loan related to financing of capital improvements in the North Country water systems of Locke Lake (Barnstead) and Birch Hill (North Conway) completed in 2007.

In support of its Petition, PEU respectfully represents as follows:

1. PEU is a New Hampshire public utility corporation providing retail water service to customers in the towns of Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare, and Windham. PEU is wholly owned by Pennichuck Corporation (“Penn Corp”), which, in turn, is wholly owned by the City of Nashua.
2. PEU is seeking authority to enter into a loan of \$1,025,000 from CoBank for repayment and refinance of a maturing 2013 ten (10) year note with balloon maturity payment of

\$1,025,000 due as of June 23, 2023 for the loan to refinance an intercompany loan from Pennichuck approved in Order No. 24,480 (March 27, 2013) in Docket No. DW 13-017, used to fund capital improvements in the in the North Country water systems of Locke Lake (Barnstead) and Birch Hill (North Conway) completed in 2007.

3. PEU's request is discussed in more detail below.

CoBank Loan

4. As is discussed in Mr. Torres', during 2013, the Company put in place a loan with CoBank with a term of ten (10) years, with a 25-year amortization, and a balloon maturity payment due as of June 20, 2023, as approved by Order No. 24,480 (March 27, 2013) in Docket No. DW 13-017. The approval of the prior loan was for the refinance of an intercompany loan from Pennichuck to the Company related to funding capital improvements in the North Country water systems of Locke Lake and Birch Hill.

5. The financing with CoBank is needed to repay and refinance the balloon maturity payment due on June 23, 2023. Since the expiring loan has a balloon maturity obligation of approximately \$1.025 million dollars, absent a term loan to refinance and re-term this obligation, the Company does not have funds available from its current approved revenues to pay this obligation at the due date. This would therefore result in a default on this obligation, as well as all of the other outstanding debt obligations the Company maintains with CoBank.

6. While the final terms and interest rates are subject to change prior to the date of closing, the Company expects to obtain a \$1,025,000 term loan with a new fully amortizing 10-year obligation to replace the balloon maturity payment for the remainder of the term of repayment of the existing loan approved in 2013. In the aggregate, the financing will be 20 years, and have a term less than the overall aggregate useful lives of those capital projects

initially funded, and less than the originally approved term of the loan approved in Docket No. DW 13-017, which was a 25-year amortization. The proceeds from this new CoBank loan will refinance and re-term this obligation and allow the Company to avoid default on this loan and other debt obligations with CoBank. The Company requests approval to obtain the \$1,025,000 term loan with a 10-year amortization, with level monthly principal and interest payments at an interest rate to be determined and “locked” as of closing (currently estimated at 7.20% interest per annum).

7. The new CoBank loan will be secured by (i) a security interest in the Company’s equity interest in CoBank (consisting of the Company’s \$312,618 equity investment in CoBank and the Company’s right to receive patronage dividends) and (ii) 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, a copy of which was also filed with the Commission in Docket No. DW 09-134. More details on the terms and conditions of the CoBank loan are described in Mr. Torres’ testimony and in the confidential Non-Binding Summary of Terms and Conditions attached as Exhibit GT-8. See Direct Testimony of George Torres at 5-6.

8. The Company has considered options other than the proposed CoBank financing, including additional potential funding sources such as the Business Finance Authority of New Hampshire (“BFA”), State Revolving Fund (“SRF”), and Drinking Water and Groundwater Trust Fund (“DWGTF”); however, not all of the projects or this balloon maturity payment qualify for BFA, SRF or DWGTF financing. In addition, the Company has also sought financing from other financial institutions; however, it is limited to CoBank due to the minimum debt-equity ratios, overall borrowing needs, unfavorable loan covenants and requirements and credit

ratings required by those other lenders. The Company asserts that CoBank is the only viable option available to financing its capital funding needs. See Direct Testimony of George Torres at 6-7.

9. The anticipated issuance costs for the CoBank loan total less than \$10,000 and relates primarily to legal costs which will be incurred to (i) review and revise the necessary loan documentation prepared by CoBank, and (ii) obtain Commission approval of the loans. The issuance costs will be amortized over the life of the CoBank loans. The annual amortization expense, associated with the issuance costs, has not been reflected in schedules attached in Exhibits GT-1 through 4 to Mr. Torres' testimony due to its immateriality with respect to the overall analysis and impact of this proposed financing.

10. In accordance with PUC Rule 609.03 and Form F-4, Mr. Torres' testimony describes the estimated costs of the proposed financing, and includes the following attachments:

- Schedule GT-1, pages 1 and 2, presents the actual financial position of the Company as of December 31, 2022, and the pro forma financial position reflecting certain adjustments pertaining to the proposed CoBank \$1,025,000 balloon maturity refinancing. Schedule GT-1, page 1, reflects the pro forma adjustments to record the additional interest expenses (net of the income tax impact) associated with replacing the June 2023 maturing CoBank Balloon Maturity ("T4") loan, with a new fully amortizing 10-year note with CoBank at an estimated annual interest rate of 7.20%. This schedule also reflects the net income impact on retained earnings related to costs associated with the financings, as reflected in Schedule GT-1, page 2 and Schedule GT-2.
- Schedule GT-2, pages 1 and 2, presents the Company's Operating Income Statement for the Twelve Months Ended December 31, 2022. As indicated

previously, the issuance costs associated with the financing are not expected to be significant and are not reflected in Schedule GT-2, page 1. Schedule GT-2, page 1, contains two pro forma adjustments. The first adjustment records the estimated increase in interest expense related to additional debt raised at interest rates of 7.20% per annum replacing the expiring note at 3.62% per annum. The second adjustment records the income tax effect of the additional pro forma interest expense, depreciation and property tax expenses, using an effective combined federal and state income tax rate of 27.08%.

- Schedule GT-3, the Company's Pro Forma Capital Structure for Ratemaking Purposes for the Twelve Months Ended December 31, 2022, demonstrating the impact on the Company's pro forma total capitalization as of December 31, 2022. Schedule GT-3 is consistent with the Statement of Capitalization Ratios filed as Exhibit 5 to the Form F-4 pursuant to PUC Rule 609.03(b)(6).
- Schedule GT-4A, the Company's Projected Rate Impact on Single Family Residential Homes illustrates the Company's pro forma impact from this financing on the average single-family residential home's water bill, as it pertains to the rates that were approved under Order No. 26,586 (February 18, 2022) in Docket No. DW 20-156.
- Schedule GT-4B, the Company's Weighted Average Cost of Long-Term Debt, demonstrates the Company's pro forma impact from this financing on its overall annual weighted average cost of Long-Term debt, inclusive of loans already in existing on the Company's books as of December 31, 2022. This schedule is consistent with Exhibit 6 of Form F-4 pursuant to PUC Rule 609.03(b)(7).

11. The CoBank financing has been approved by the Company's and Penn Corp's Boards of Directors. Copies of the Corporate Certificates evidencing the Board approvals are attached as Exhibits GT-5. Approval for the CoBank financing approval was also submitted contemporaneously with this filing, to the City of Nashua, Penn Corp's sole shareholder. A copy of the letter submitted to the City of Nashua requesting approval is attached as Exhibit GT-6. The Company will supplement its Petition with documentation showing the City's approvals once available.

12. Section 6(c) of the Loan Agreement between Pennichuck and TD Bank, NA (the "Bank") prohibits Pennichuck or its subsidiaries from incurring additional indebtedness without the express prior written consent of the Bank, except for certain allowed exceptions. Section 6(c)(v) allows the Company to borrow up to \$1.5 million per annum from CoBank or equivalent lender, provided that TD Bank, NA is provided at least 30 days prior written notice related to said indebtedness, in lieu of prior written consent from TD Bank. As such, prior written notice was given to the Bank prior to the Company's filing of this petition, the financing is not anticipated to close until prior to June 20, 2023. A copy of the letter sent to TD Bank to satisfy this notice requirement is attached as Exhibit GT-7. The affirmation response from TD Bank about this notification, as received via email on March 6, 2023, is also attached as a part of Exhibit GT-7.

13. Given the vital importance that this refinancing occur prior to the balloon maturity date, the Company respectfully requests that the Commission issue an Order *Nisi* in this docket by May 20, 2023 or a final Order without a public comment period, such that the Company can execute the closing of the new loan before June 20, 2023. This will allow the Company to close upon the new refinancing and avoid any default of the balloon maturity

payment.

14. Mr. Torres further explains that the proposed financings are consistent with the public good because the terms of the financing through the CoBank loans are favorable compared to other alternatives, especially as this refinance is essential and there are no other sources of debt funding to replace the expiring balloon maturity term loan. As such, this will result in lower financing costs than would be available through any other current debt financing options, and/or an event of default if this balloon maturity debt cannot be repaid upon maturity. The Company's inability to refinance this debt upon maturity, regardless of the initial intercompany loan financing and refinancing done in 2013, would put the Company in a state of "default" on its debt obligations with CoBank. This would be harmful to the utility and its customers, and as such, avoidance of that fact is truly in the public good. The projected impact of the proposed financing on upon a Single-Family Residential Home, as demonstrated in Schedule GT-4A is de minimus, as it relates to the overall rate impact, and far less costly than the unintended consequences that would occur if this refinance was not approved and any resulting default. Finally, the refinancing of this loan and avoidance of default will allow for future lending with CoBank loan that enables PEU to continue to provide safe, adequate, and reliable water service to PEU's customers.

15. The Company avers that it is entitled to the financing described above, for the purposes set forth herein, and that the issuance of such notes will be consistent with the public good as contemplated by the New Hampshire Supreme Court's ruling in *Appeal of Easton*, 125 N.H. 205, 211 (1984). The use of long-term debt to refinance the balloon maturity payment over a 20-year term better aligns with the useful life of the underlying capital assets that were initial financed with the loan in 2013.

16. Furthermore, the Company asserts that this petition qualifies as a routine financing consistent with the Commission's decision *In re PSNH*, Order No. 25,050, 94 NH PUC 691,699 (December 8, 2009) and, most recently, in Docket DW 18-133, regarding Pennichuck Water Works, Inc. *See* Order No. 26,197 (December 3, 2018). 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." *See In re PSNH*, Order No. 25,050 at 13 (December 8, 2009). Here the Company avers that the proposed financing will not have a significant impact on rates and the proposed loan for the repayment and refinancing of the balloon maturity payment was originally funds that financed ordinary and customary capital improvements to the North Country system. Finally, this financing will facilitate future customary improvements made in the ordinary course of PEU's business.

WHEREFORE, by this petition, the attached testimony and exhibits, and pursuant to RSA 369, including RSA 369:1-4, PEU respectfully requests that the Commission:

- (a) Find that the CoBank loan of up to \$1,025,000 to repay and refinance the balloon maturity payment of the 2013 CoBank loan in accordance with the terms and purposes described in this petition and in the pre-filed testimony is consistent with the public good;
- (b) Authorize PEU to do all things, take all steps, and execute and deliver all documents necessary or desirable to consummate, implement and carry out the proposed financings;
- (c) Approve and authorize the financing request by Order *Nisi* or, in the alternative, issue an Order of Notice as soon as practicable that establishes a procedural schedule, including if

required, a date for hearing in this matter, which would result in an Order that is effective by or prior to June 20, 2023;

(d) Find that this proposed financing is a routine financing; and,

(e) Take such further action and make such other findings and orders as in its judgment may be just, reasonable, and in the public good.


Respectfully submitted,

PENNICHUCK EAST UTILITY, INC.

By Its Attorneys

RATH, YOUNG AND PIGNATELLI, P.C.

Dated: March 7, 2023

By: 
James J. Stemkrauss
NH Bar # 273631
One Capital Plaza
Concord, NH 03302-1500
603-410-4314
jjs@rathlaw.com

Certificate of Service

I hereby certify that a copy of this petition for approval of financing, including the pre-filed testimony and exhibits referred to in the Petition, have this day been forwarded to the Office of Consumer Advocate via electronic mail at ocalitigation@oca.nh.gov.

Dated: March 7, 2023


James J. Stemkrauss