

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-024

PENNICHUCK EAST UTILITY, INC.

Petition for Approval of Refinancing a CoBank ACB Balloon Maturity Note

Order *Nisi* Approving Refinancing

O R D E R N O. 26,824

May 18, 2023

Pennichuck East Utility, Inc. (PEU, or the Company) requests approval to refinance an expiring balloon maturity obligation through CoBank, ACB (CoBank). The Commission authorizes PEU to borrow up to \$1,025,000 through a new 10-year loan.

I. BACKGROUND AND PROCEDURAL HISTORY

PEU provides water service to customers in communities throughout central and southern New Hampshire. On March 8, 2023, PEU filed a petition for approval to refinance an expiring balloon maturity obligation from CoBank. The proposed new loan would be used to refinance an intercompany loan from Pennichuck Corporation (Penn Corp.) approved by Order No. 24,480 on March 27, 2013 in Docket No. DW 13-017. The existing loan funds have been used to pay for capital improvements in PEU's Locke Lake water system in Barnstead and its Birch Hill system in North Conway.

DOE filed a technical statement recommending approval of the petition on April 20, 2023, and a supplement to that statement on April 21, 2023. The Office of the Consumer Advocate did not submit an appearance in this docket, and no petitions to intervene were filed.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2023/23-024.html.

II. POSITIONS OF THE PARTIES

A. PEU

1. Refinancing

PEU seeks to enter into a new 10-year loan with CoBank up to \$1,025,000 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 year). Petition at BP 3, ¶¶ 5-6, and BP 5, ¶10. The new loan will be secured by: (1) a security interest in PEU’s equity investment in CoBank, currently calculated at \$312,618, plus the right to receive patronage dividends; and (2) the unconditional guarantee of PEU’s obligations to CoBank by PEU’s parent company, Pennichuck Corporation (Penn Corp), a holding company with five wholly-owned operating subsidiaries, including PEU, and a sole shareholder, the City of Nashua. PEU anticipates the impact of the new loan on the Company’s annual revenue requirement to be \$27,915, or 0.28 percent, with a net impact on single-family residential rates estimated to be \$0.24 per month. Petition at BP 29 (Schedule GT-4A).

According to PEU, the proposed refinancing has been approved by the Board of Directors of both PEU and Penn Corp. On April 19, 2023, PEU submitted documentation of the City of Nashua’s Board of Aldermen approval of the proposed refinancing. PEU stated that the new financing will have a term of 10 years, which is less than the overall aggregate useful lives of the capital projects funded by the original loan approved in Docket No. DW 13-017 with a 25-year term of amortization. Testimony of George Torres at BP 14, lines 8-13. That original loan was incurred to finance capital improvements in PEU’s Locke Lake and Birch Hill systems; those improvements were completed in 2007. Testimony of George Torres at BP 14, lines 3-6.

PEU emphasized that the proposed refinancing must be in place prior to June 23, 2023, since the expiring loan has a balloon maturity obligation of approximately \$1.025 million dollars due on that date. Absent a term loan to refinance and re-term its current obligation, the Company will not have funds available to pay that obligation. Testimony of George Torres at BP 14, lines 16-23. The Company noted that it had explored options with several potential funding agencies over the past ten-plus years, including the NH Department of Environmental Services, but determined that CoBank has become the only viable option currently available to the Company to finance its current capital funding needs. Testimony of George Torres at BP 19, and at BP 20, lines 3-4.

2. Motion for Protective Order and Confidential Treatment

PEU asserted that the terms and conditions of its proposed financing through CoBank, as provided in Exhibit GT-8 to its petition, are confidential, commercial, or financial information under RSA 91-A:5, IV, because they remain subject to satisfactory review and completion of documentation, due diligence, and approval by PEU and CoBank. Motion at BP 48, ¶5. PEU further stated that the terms and conditions remain subject to negotiation, the terms have not been finalized, and CoBank provided the documentation to PEU with a request that they remain confidential. Motion at BP 48, ¶7.

B. DOE

1. Refinancing

Based on its review of PEU's filings, including responses to discovery requests, DOE concluded that the proposed refinancing of the existing obligation on June 23, 2023, is an appropriate use of funds. DOE further determined that the proposed refinancing will have no discernible impact on PEU's current debt-to-equity ratio or

overall capital structure, and that the projected net impact of \$0.24 for an average single-family residential bill will be negligible. Accordingly, DOE recommended approval of PEU's petition as consistent with the public good pursuant to RSA 369:1.

2. Motion for Protective Order and Confidential Treatment

DOE submitted no comment or position statement on PEU's motion for protective order and confidential treatment.

III. COMMISSION ANALYSIS

A. Refinancing

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 shall 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 proceeds, and the effect on rates. *Appeal of Easton*, 125 NH 205, 211 (1984) (*Easton*).

The rigor of an *Easton* inquiry varies depending on the circumstances of the request. As the Commission has noted in prior decisions, "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.

PEU stated that the proposed refinancing of up to \$1,025,000 will be used to pay the balloon maturity obligation due on June 23, 2023, and to replace that obligation with a new loan. The new loan will have a fully amortizing term of repayment. PEU anticipates the impact of the new loan on its annual revenue requirement will be an increase of \$27,915, or 0.28 percent, with a projected net impact on an average single-family residential bill anticipated to be \$0.24 per month.

Based on the Company’s petition and DOE’s analysis and recommendation, we find that the intended use of the proposed financing falls within the course of the Company’s ordinary utility operations. We further concur with DOE’s assessment that the proposed financing will have little to no impact on PEU’s current debt-to-equity ratio or overall capital structure, and that the projected net impact on the average single-family residential bill will be negligible. Accordingly, based on the record, the Commission finds the proposed refinancing to be reasonable.

We therefore conclude that approval of the proposed refinancing will permit PEU to provide safe and adequate service to its customers, as required by RSA 374:1, and that the financing is consistent with the public good, pursuant to RSA 369:1 and RSA 369:4. Accordingly, based on the Company’s petition and on DOE’s technical statement and recommendation, we find the financing request to be consistent with the public good. We further find that additional investigation is not required and approve the proposed financing on a *nisi* basis.

Our approval of PEU’s financing does not limit or preclude the Commission from reviewing in a future case, directly or indirectly, the prudence, use, and usefulness of any specific project financed by the borrowed funds pursuant to RSA

378:28. The Commission retains its authority under RSA 374:4 to be kept informed of PEU's use of the financing and any efforts to refinance under more favorable interest rates, separate and apart from any future review under RSA 378:28.

B. Motion for Protective Order and Confidential Treatment

In its Motion, PEU argued that the proposed term sheets included in the Non-Binding Summary of Terms and Conditions submitted as Exhibit GT-8 to PEU's petition fall within the RSA 91-A:5, IV exemption. According to PEU, the term sheets are confidential 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. Motion at BP 48, para. 5. PEU noted that the terms and conditions remain subject to negotiation and have not been finalized, and that CoBank had provided the loan documentation to PEU with a request that they remain confidential and "may not be released to or discussed with any third party without the prior written consent of CoBank." Motion at BP 49, para 7. PEU posits that it is in the public interest to allow such negotiations to occur in a manner consistent with the lender's procedure and practice. *Id.*

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental agencies or "public bodies" such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5. Specifically, RSA 91-A:5, IV exempts several categories of information, including records pertaining confidential, commercial, or financial information. The party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public's interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699,

707 (2010)).

The New Hampshire Supreme Court and the Commission each apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 NH 375, 382–83 (2008); *Abenaki Water Company, Inc.*, Order No. 25,840 (November 13, 2015) at 2. Under the balancing test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *See, e.g.*, Order No. 25,840 at 2 (citing *Pennichuck East Utility, Inc.*, Order No. 25,758 at 4 (January 21, 2015)). The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.*

We agree with PEU that the proposed term sheets included in the Non-Binding Summary of Terms and Conditions fall within the RSA 91-A:5, IV exemption, because they constitute confidential and sensitive commercial or financial information. We therefore conclude that the interest in nondisclosure of the information identified in PEU's Motion outweighs the public's interest in disclosure of that information. Although the public may have an interest in the information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest is outweighed by PEU's privacy interest in information that, if disclosed, could pose legitimate financial harm or privacy risk to PEU, including the obtention of favorable financing terms in the future.

Accordingly, pursuant to Puc 203.08(a), we grant PEU's motion for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), 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 any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED NISI, that the request of Pennichuck East Utility, Inc. for approval to refinance up to \$1,025,000 through a 10-year loan with a 10-year amortization, at a fixed interest rate to be determined by CoBank at the time of closing, is hereby GRANTED; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. file with DOE and the Commission evidence of the financing and the applicable interest rate within 15 days of the close of the financing; and it is

FURTHER ORDERED, that the Motion for Protective Order and Confidential Treatment of refinancing term sheets and associated documents is GRANTED; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall cause a copy of this order to be published on its website by no later than the close of business on May 19, 2023; and noticed through bill inserts in the next billing cycle after the issuance of this order, and published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than May 24, 2023, and to be documented by affidavit filed with this office on or before June 13, 2023; 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 June 1, 2023, for the Commission's consideration; and it is

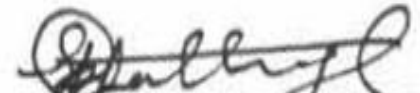
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 8, 2023; and it is

FURTHER ORDERED, that this order shall be effective June 16, 2023, 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.

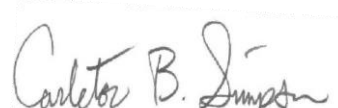
By order of the Public Utilities Commission of New Hampshire this eighteenth day of May, 2023.



Daniel C. Goldner
Chair



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-024

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Email Addresses

ClerksOffice@puc.nh.gov
Suzanne.G.Amidon1@energy.nh.gov
wfa@rathlaw.com
Energy-Litigation@energy.nh.gov
lori.douglas@pennichuck.com
thomas.c.frantz@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
smw@rathlaw.com
donald.ware@pennichuck.com