

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-046

PENNICHUCK EAST UTILITY, INC.

Petition for Approval of Financing from CoBank, ACB

Order *Nisi* Approving Financing

ORDER NO. 26,864

July 28, 2023

Pennichuck East Utility, Inc. (PEU, or the Company) requests approval of a long-term loan through CoBank, ACB (CoBank) in the amount of \$744,775 to fund certain 2022 capital projects not otherwise funded. The loan proceeds will permit repayment and refinancing of amounts borrowed under the Company's Fixed Asset Line of Credit (FALOC) through CoBank for those projects. The Commission authorizes PEU to borrow this amount through a new loan to be amortized over 25 years at an annual estimated interest rate of 7.25 percent, subject to market conditions.

I. BACKGROUND AND PROCEDURAL HISTORY

PEU provides water service to customers in a number of communities throughout central and southern New Hampshire. See PEU 2020 annual report at www.puc.nh.gov/Water-Sewer/Annual%20Reports/2020/2020-gw-annualreport-peu-20210916.pdf. On April 11, 2023, PEU filed a petition for approval to enter into a loan through CoBank to repay and refinance amounts borrowed during 2022 under the Company's existing fixed asset line of credit (FALOC) from CoBank approved by Order No. 26,117 on March 30, 2018 in Docket No. DW 17-157.¹ On April 19, 2023, PEU

¹ PEU has filed a petition for approval of a 3-year renewal and extension of its FALOC in Docket DW 23-049. See www.puc.nh.gov/Regulatory/Docketbk/2023/23-049.html.

filed as Exhibit GT-10 to its petition a copy of the City of Nashua's Resolution R-23-110 approving the proposed financing. Existing loan funds in the amount of \$744,775 have been used to pay for certain capital projects including routine maintenance capital projects, and other non-recurring capital expenditures that were not financed by the Company's 0.1 Debt Service Revenue Requirement (0.1 DSRR) account and did not qualify for financing through the State Revolving Fund (SRF) or Drinking Water and Groundwater Trust Fund (DWGTF) in 2022. See Petition at BP 2, 3 and Testimony of George Torres at BP 13; see also, Testimony of John J. Boisvert in Docket No. DW 23-013 (PEU's 2023 QCPAC filing detailing capital projects financed in 2022).

On June 30, 2023, the NH Department of Energy (DOE) filed a technical statement of Jayson P. Laflamme, recommending approval of the petition. See Technical Statement of Jayson P. Laflamme at BP 1. 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/2023/23-046.html.

II. POSITIONS OF THE PARTIES

A. PEU

1. Request for Approval of Financing

In its petition, PEU stated that the proposed CoBank financing is needed to repay amounts drawn on the Company's FALOC for capital projects completed in 2022. Specifically, PEU made capital improvements totaling \$744,775 during 2022, including a number of specific capital projects, routine maintenance capital projects, and other non-recurring capital expenditures that were either not funded by the

Company's 0.1 DSRR account or did not qualify for SRF or DWGTF funding. *See, e.g.*, Testimony of George Torres at BP 13, lines 14-17. PEU therefore seeks term loan financing through CoBank to repay the amounts drawn on the Company's FALOC for projects completed during 2022. *Id.*

2. Motion for Protective Order and Confidential Treatment

PEU filed a motion for protective order and confidential treatment of the terms and conditions of its proposed financing, as provided at Bates Pages 32-35 in Exhibit GT-5 to its petition. PEU asserted that the terms and conditions 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 that CoBank provided the documentation to PEU with a request that the terms and conditions remain confidential. *Motion* at BP 48, ¶7.

B. DOE

1. Request for Approval of Financing

Based on its review of PEU's filing, the DOE recommended approval of PEU's proposed financing request as "routine" and consistent with the public good. *DOE Technical Statement* at BP 1, 3-4. According to the DOE, PEU's procurement of the requested CoBank loan will ensure that the Company will meet its obligation to repay and refinance amounts borrowed against the fixed asset line of credit (FALOC) and associated interest at reasonable terms that are expected to have a minimal impact on customer rates. *Id.* at BP 4. Accordingly, the DOE noted, the long-term debt will become eligible for the necessary recovery through the Commission-approved QCPAC mechanism in the Company's 2023 QCPAC filing in Docket DW 23-013, as is essential

for the Company to meet its debt service obligations and maintain financial health. *Id.* at 2, 4. The DOE further noted that “PEU relies upon the FALOC when funds for capital projects are not available through the [SRF], the [DWGTF], or its [DSRR] 0.1 account,” and determined that the proposed financing will have no effect on PEU’s capitalization, as the Company has an all-debt capital structure. *Id.* The DOE also supported PEU’s request for approval of the proposed financing by July 31, 2023, to enable PEU to seek recovery of the applicable capital expenditures in its 2023 QCPAC filing. *Id.* at 3.

2. Motion for Protective Order and Confidential Treatment

The DOE did not comment or submit a position statement on PEU’s motion for protective order and confidential treatment.

III. COMMISSION ANALYSIS

A. Request for Approval of Financing

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 financing in the amount of \$744,775 will cover financing costs drawn under PEU’s FALOC in 2022 to fund capital projects that were not eligible for other sources of funding. Testimony of George Torres at BP 13, lines 1-6; *see also* DOE Technical Statement at BP 2 (noting that PEU relies upon the FALOC when funds for capital projects are not available through the SRF, the DWGTF, or the Company’s DSRR 0.1 account).

B. Motion for Protective Order and Confidential Treatment

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*, 713 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 9 1-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 sheet included in the Non-Binding Summary of Terms and Conditions provided to PEU by CoBank 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 determination under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the request of Pennichuck East Utility, Inc. for approval to refinance \$744,775 through a long-term loan with a 25-year amortization period, 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 terms and the applicable interest rate within 15 days of the close of the term loan; and it is

FURTHER ORDERED, that the Motion for Protective Order and Confidential Treatment of the Non-Binding Summary of Terms and Conditions provided by CoBank to PEU is GRANTED; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this order to be published on its website within two business days of the issuance of this order and noticed through bill inserts in the next billing cycle, to be documented by affidavit filed with this office on or before August 22, 2023 for the website publication, and within 5 days of the mailing of notice through bill inserts; and it is

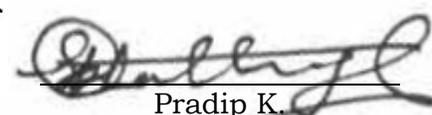
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 11, 2023, for the Commission's consideration; and it is

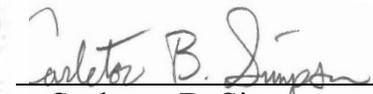
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 18, 2023; and it is

FURTHER ORDERED, that this order shall be effective August 25, 2023, unless the Petitioner fails to satisfy the website 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 twenty-eighth day of July, 2023.


Daniel C. Goldner
Chairman


Pradip K.
Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-046

Printed: 7/28/2023

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