

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-049

PENNICHUCK EAST UTILITY, INC.

**Petition for Approval to Renew and Extend
Fixed Asset Line of Credit with CoBank, ACB**

Order *Nisi* Approving Financing

ORDER NO. 26,869

August 3, 2023

Pennichuck East Utility, Inc. (PEU, or the Company) requests approval to renew, extend, and increase its current fixed asset line of credit (FALOC) with CoBank, ACB (CoBank). The Commission authorizes PEU to renew, extend, and increase its FALOC from \$3,000,000 to \$4,000,000 for three years.

I. BACKGROUND AND PROCEDURAL HISTORY

PEU's current FALOC of \$3,000,000 with CoBank is set to expire on September 30, 2023. PEU seeks to renew and extend the FALOC to \$4,000,000 for three years, with an expiration date of September 30, 2026. The proposed line of credit will be used to fund cash flow needs associated with anticipated capital project investments. Petition at Bates Page (BP) 3, ¶3. In support of its Petition, PEU filed direct testimony of George Torres with attached exhibits GT-1 through GT-9, including financial statements and a Non-Binding Summary of Terms and Conditions from CoBank. PEU filed supplemental exhibits on April 19, 2023 (Exhibit GT-10 – City of Nashua Resolution) and on June 7, 2023 (Exhibit GT-11 – TD Bank e-mail).

DOE filed a technical statement recommending approval of PEU's petition on July 20, 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/2023/23-049.html.

II. POSITIONS OF THE PARTIES

A. PEU

1. Renewal and Extension of FALOC

PEU seeks renewal and an increase in the capacity of its FALOC from \$3,000,000 to \$4,000,000 until September 30, 2026 to account for higher project costs as a result of COVID, including supply chain disruptions and other factors that have impacted overall project procurement costs. Petition at BP 3, ¶3. According to PEU, these factors have caused a backlog of essential project needs for the next 12 to 24 months, and the renewed line of credit is needed to address those factors, as well as inflation and the inclusion of capitalized interest on the FALOC itself. *Id. See also*, Direct Testimony of George Torres (Torres) at BP 17, lines 8-11.

The line of credit will be used to fund cash flow needs associated with capital project investments. Petition at BP 3, ¶4. The proposed FALOC renewal will be secured by: (i) a security interest in the Company's equity interest in CoBank; and (ii) the unconditional guarantee of the Company's obligations to CoBank by Pennichuck Corporation (Pennichuck) pursuant to the Guarantee of Payment, by Pennichuck in favor of CoBank, dated February 9, 2010. Petition at BP 3, ¶5.¹ The interest rate on the FALOC will be set on a weekly basis throughout the term of the facility, with monthly interest payments at a rate to be determined based on market conditions (currently estimated at 6.80 percent per annum). Torres at BP 17, lines 16-18.

¹ See Master Loan Agreement between CoBank and PEU, dated February 9, 2010, filed in Docket No. DW 09-134 on March 31, 2010.

PEU intends to repay its financings under the FALOC each year by timely converting the balance of the short-term loans associated with used and useful projects completed in the preceding calendar year to long-term borrowings in line with the annual Qualified Capital Project Adjustment Charge (QCPAC) process, and to maintain full availability of the FALOC for the successive capital project year. Petition at BP 3, ¶4; Torres at BP 17, lines 18-23.

PEU asserts that the proposed renewal of its FALOC is consistent with the public good because it will allow for the short-term financing of necessary capital construction projects, which will be replaced with long-term debt financing at favorable interest rates and maturities aligned with the useful lives of the funded capital assets, to the long-term benefit of PEU's ratepayers. Petition at BP 7, ¶11. According to PEU, its request qualifies as a 'routine financing' that will not have a significant impact on rates and will be paid off annually as part of the Company's annual bond financing. Petition at BP 8, ¶12. Further, PEU argues that the financing will be an integral part of the Company's ability to request annual recovery through the QCPAC mechanism. *Id.*

As set forth in Schedule GT-4A, attached to the Testimony of George Torres in the Petition filing, there will be no pro forma impact on the average single-family residential home's water bill until the next annual QCPAC surcharge is implemented. *See, e.g.,* Testimony of George Torres at BP 20, and Schedule GT-4A (Projected Rate Impact on Single Family Residential Home) at BP 27, lines 6-12. Finally, the proposed FALOC renewal has been authorized by the Board of Directors of both PEU and Pennichuck Corporation; approved by the City of Nashua through Resolution R-23-110, filed by PEU in this proceeding on April 19, 2023; and noticed to TD Bank, as

evidenced by an email filed by PEU on June 7, 2023. *See* Petition at BP 6, ¶9; Exh. GT-10; and Exh. GT-11.

2. Motion for Protective Order and Confidential Treatment

PEU filed a Motion for Protective Order and Confidential Treatment pursuant to Puc 203.08, requesting confidential treatment of the Non-Binding Terms and Conditions governing its proposed financing with CoBank. PEU argued that the terms and conditions included in Exhibit GT-5 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 42, ¶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 42, ¶7.

B. DOE

1. Renewal and Extension of FALOC

Based on its review of PEU's filings, including responses to discovery requests, DOE concluded that the extension of the FALOC to provide cash flow needs associated with financing capital projects until the conversion of the short-term financing to long-term debt through the Company's annual Qualified Capital Project Adjustment Charge (QCPAC) is an appropriate use of funds. DOE Technical Statement at BP 3. DOE determined that, to the extent PEU was able to provide an estimate, the anticipated net impact on rates of \$0.07 per month will be negligible. *Id.* DOE further found that the proposed financing will not dilute PEU's current capital structure, which consists primarily of debt. *Id.* Accordingly, DOE recommended approval of PEU's petition as consistent with the public good pursuant to RSA 369:1. *Id.*

2. Motion for Protective Order and Confidential Treatment

DOE did not submit a position on PEU's motion for protective order and confidential treatment.

III. COMMISSION ANALYSIS

A. Renewal and Extension of FALOC

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 renewal and expansion of its existing FALOC with CoBank will be used to provide the necessary cash flow, on a short-term basis, to fund the Company's capital projects during each calendar year and will be repaid on an annual basis through refinancings. The Company anticipates that the renewed FALOC will not have a discernible impact on rates.

Based on the Company's petition and DOE's analysis and recommendation, we find that the intended use of the proposed line of credit falls within the course of PEU's ordinary utility operations. We further concur with DOE's assessment that the proposed financing will not dilute PEU's 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 Company's petition to be reasonable.

We conclude that approval of the proposed line of credit financing 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 PEU's request to be consistent with the public good. We further find that additional investigation is not required and approve the petition 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 terms and conditions of financing included in the Discussion Term Sheet, submitted as Exhibit GT-5, fall within the RSA 91-A:5, IV exemption for confidential, commercial, or financial information. Motion at BP 42, ¶5. According to PEU, the terms and conditions remain subject to satisfactory review and completion of documentation, due diligence, and approval by PEU and TD Bank. Id. PEU noted that CoBank provided the loan documentation with a request that the terms and conditions remain confidential and “may not be released to or discussed with any third party without the prior written consent of CoBank.” Motion at BP 42-43, ¶7. PEU stated that it would be in the public interest to allow document review and 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 terms and conditions of financing fall within the RSA 91-A:5, IV exemption, because they constitute confidential and sensitive commercial or financial information. Although the public may have an interest in that information to aid in understanding the Commission’s analysis of the issues presented in this proceeding, we find that the public interest is outweighed by PEU’s privacy interest in information that, if disclosed, could pose legitimate financial harm or privacy risk to the Company, including the securing 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 *IN SI*, that the request of Pennichuck East Utility, Inc. for approval to renew its line of credit with CoBank in the amount of \$4,000,000 for a term of three

years beginning on October 1, 2023 through September 30, 2026, under the terms and conditions presented in its Petition, is hereby GRANTED; 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. 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 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 August 4, 2023; and noticed through a statement on customer bills, bill inserts within the next billing cycle after the issuance of this order, or publication in a newspaper, newsletter, or other means generally available to the Company's customers and reasonable in cost, such notice to be made no later than August 14, 2023, and to be documented by affidavit filed with this office on or before August 29, 2023; and it is

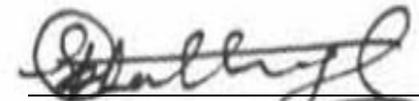
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 21, 2023, for the Commission's consideration; and it is

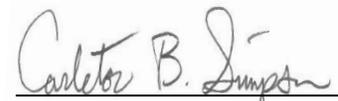
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 28, 2023; and it is

FURTHER ORDERED, that this order shall be effective September 1, 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 third day of August, 2023.


Daniel C. Goldner
Chair


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 23-049

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