

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 15-345

FRYEBURG WATER COMPANY

Notice of Foreign Business Financing Pursuant to RSA 369:8, II

Order Approving Financing Pursuant to RSA 369:1

ORDER NO. 25,821

October 2, 2015

In this order, the Commission grants Fryeburg Water Company (“Fryeburg” or the “Company”), authority to refinance up to \$875,000 of existing debt at an estimated interest rate of 2.65% for the first six months, an interest rate of 3.87% thereafter, and with a principal balloon payment in 5 years. Fryeburg’s petition and other docket filings, except for any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission’s website at <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-345.html>.

I. BACKGROUND

Fryeburg is a regulated public utility pursuant to RSA 362:2 and RSA 362:4. The Company uses one distribution system to serve approximately 740 customers in the Town of Fryeburg, Maine, and approximately 70 customers in East Conway, New Hampshire.

On August 25, 2015, Fryeburg filed a “Notice of Foreign Business Financing Pursuant to RSA 369:8, II” (“Notice”). Fryeburg seeks to refinance its existing loans with TD Bank N.A. with The Bank of Maine. The Company’s current loan with TD Bank N.A. has a balloon

payment due on October 6, 2015. The new loan with The Bank of Maine would be for no more than \$875,000.00. It would have an interest rate of approximately 2.65% for the first 6 months and an interest rate of 3.87% thereafter. The principle remaining after 5 years would be due in one balloon payment. The new loan is to be secured by a mortgage of utility property located in Maine. Fryberg represents that no rate increase is anticipated to service the new loan.

Fryberg argues that RSA 369:8 permits loan refinancing by foreign businesses with limited regulation. Specifically, the Company argues that the 60-day notice provision of RSA 369:8, II(a) applies to this transaction. Fryberg takes the position that RSA 369:8, II(a) applies because the Company's utility plant in Maine and New Hampshire is connected. Fryberg notes that it requested approval of the financing from the Maine Public Utilities Commission. Finally, the Company asserts that the financing "will not adversely affect rates, terms, service or operation[s] in the State of New Hampshire," which is the standard applicable to notifications under RSA 369:8, II(a).

Commission Staff ("Staff") filed a recommendation on October 1, 2015. Staff argues that RSA 369:1 and not RSA 369:8 applies to this transaction. RSA 369:8, I only applies when a financing does not affect service in New Hampshire. Staff believes that this provision does not apply here because the Company uses a unified distribution system to serve Maine and New Hampshire customers. Staff further argues that RSA 369:8, II(a) applies only to transactions of a utility's parent companies, and that this is not a parent company transaction. Consequently, Staff believes that the general long-term financing provisions of RSA 369:1 apply.

Staff reviewed Fryberg's filing and an order issued by the Maine Public Utilities Commission in which that Commission approved the financing. Staff states that Fryberg is

refinancing existing loans at lower interest rates, and opines that the financing meets the standards of RSA 369:1, and would meet the standard of RSA 369:9, II(a), if that section were applicable. Accordingly, Staff recommends that the Commission approve the financing pursuant to RSA 369:1.

The OCA did not participate in the docket.

II. COMMISSION ANALYSIS

Although we ultimately approve the refinancing proposed by Fryeburg, we reject the Company's assertion that RSA 369:8, II(a) applies to this refinancing. We hold, instead, that RSA 369:1 and :2 apply. RSA 369:1-:7 require public utilities to obtain Commission approval of their debt and any associated mortgages.

RSA 369:8, II(a), the section pursuant to which the Company seeks approval, allows for approval by notification of "corporate restructurings, financing, change in long-term or short-term indebtedness, or issuance of stock *involving parent companies of a public utility regulated by the commission.*" RSA 369:8, II(a) (emphasis added). There is no parent company involved in this transaction. Here, the refinancing is directly between the public utility that we regulate, Fryeburg, and The Bank of Maine. Consequently, we hold that RSA 369:8, II does not apply to this transaction.

Because the notification provision of RSA 369:8, II(a) does not apply, we rely on our general authority under RSA 369:1-:7 to review Fryeburg's refinancing of its debt and associated mortgage. 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." RSA 369:2 states that a utility

“may, with the approval of the commission but not otherwise, mortgage its present and future property, tangible and intangible including franchises, to secure the payment of its bonds or notes” RSA 369:2. The Commission must conduct a “hearing or investigation as it may deem proper,” then 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 the proceeds, and the effect on rates. *Appeal of Easton*, 125 N.H. 205, 211 (1984). The rigor of an *Easton* inquiry varies depending on the circumstances of the request. As we have previously noted, “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 Co. of N.H.*, Order No. 25,050 (December 8, 2009) at 14, *cited in Lakes Region Water Company, Inc.*, Order No. 25,391 (July 13, 2012), at 20-21.

We engage in a more limited review for routine financing requests. *Public Service Co. of N.H.*, Order No. 25,050 at 13-14. A routine request is one “that will have no discernable 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. A routine request calls for a more limited examination of whether the “use of financing proceeds [is] in the public good without further review of possible alternative uses of the funds.” *Id.* at 16. We find Fryeburg’s request to be routine. The underlying standard to be applied is whether the

use of the financing proceeds is in the public good. RSA 369:4. We need not examine other possible uses of the money. *Public Service Co. of N.H.*, Order No. 25,050 at 16.

According to the Company, the original loan proceeds were used for utility purposes and the refinancing will not require a rate increase to service. According to Staff, the proceeds of the new loan will be used to refinance existing loans at lower interest rates. In addition, the financing and associated mortgage of property located in the State of Maine have already been reviewed and approved by the Maine Public Utilities Commission in an order issued on September 22, 2015, in Maine PUC Docket No. 2015-00247. Review of the Company's filing, Staff's recommendation, and the findings of the Maine Public Utility Commission constitutes a sufficient inquiry under *Appeal of Easton*. We find that the Company's refinancing of \$875,000 of its long-term debt at lower interest rates and associated mortgage of utility property is consistent with the public good and in the public interest

Our approval of Fryeburg's financing does not foreclose or limit our review of the prudence and used and usefulness of any specific cost financed (directly or indirectly) in a future rate case. RSA 378:28. The Commission and its Staff also retain the authority under RSA 374:4 to keep informed regarding Fryeburg's use of the proceeds of this financing, independently and apart from any RSA 378:28 review. Moreover, our finding that this financing is in the public good does not absolve Fryeburg from its ongoing responsibility to continue to manage its capital structure and physical plant prudently.

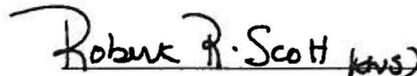
Based upon the foregoing, it is hereby

ORDERED, that the refinancing of debt and mortgage of property as described in Fryeburg Water Company's petition is APPROVED.

By order of the Public Utilities Commission of New Hampshire this second day of
October, 2015.



Martin P. Honigberg
Chairman

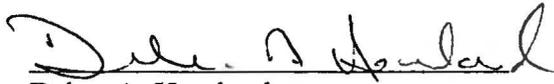


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director