

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 17-183**

**PENNICHUCK WATER WORKS, INC.**

**Petition for Approval of Bond Financing and Fixed Asset Line of Credit**

**Order Approving Bond Financing**

**ORDER NO. 26,101**

**February 2, 2018**

This order approves a petition of Pennichuck Water Works, Inc., to issue tax-exempt and taxable bonds and/or bond anticipation notes in an aggregate principal amount of up to \$32.5 million through the New Hampshire Business Finance Authority. PWW will use the proceeds of this issuance primarily to finance capital expenditures for the years 2017–2020. We find the issuance is consistent with the public good and approve the financing as proposed.

**I. PROCEDURAL BACKGROUND**

Pennichuck Water Works, Inc. (PWW or the Company), provides retail water service to approximately 27,000 customers in the City of Nashua and in the Towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Plaistow, Newmarket, and Salem. PWW is a subsidiary of Pennichuck Corporation (Penn Corp.), which is wholly owned by the City of Nashua.

On November 29, 2017, PWW filed a petition seeking authority, pursuant to RSA Chapter 369, to issue new debt financing instruments: a \$10 million Fixed Asset Line of Credit (Line of Credit) with TD Bank, NA, and up to \$32,500,000 in aggregate tax-exempt and taxable bonds and/or bond anticipation notes (Bond Financing) through the New Hampshire Business Finance Authority (NHBFA).

In support of its petition, PWW filed the testimony of Larry D. Goodhue, its Chief Executive Officer. PWW also submitted a Motion for Protective Order and Confidential Treatment under N.H. Code Admin. Rules Puc 203.08 with regard to the term sheet and guarantee agreements provided by TD Bank relative to both PWW's proposed Line of Credit and a proposed line of credit for Penn Corp. The term sheet and guarantee agreements were attached to the Goodhue Testimony.

The Goodhue Testimony along with PWW's petition, the Motion for Confidential Treatment, and subsequent docket filings, other than 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/2017/17-183.html>.

On December 11, 2017, the Office of the Consumer Advocate (OCA) filed a notice that it would participate in the proceeding on behalf of residential ratepayers. *See* RSA 363:28.

On January 10, 2018, PWW filed a Motion to Bifurcate Bond Financing and Fixed Asset Line of Credit Approvals (Motion to Bifurcate). In that motion, PWW explained that the Bond Financing component of its overall financing request was more time-sensitive than the Line of Credit component. Further, given the anticipated length of the Commission Staff's review relative to PWW's proposed Line of Credit and, by extension, Penn Corp.'s line of credit, PWW requested that the Commission consider the two financing components separately and first review and issue an order concerning its Bond Financing request. On January 18, 2018, the Commission issued a Secretarial Letter granting PWW's Motion to Bifurcate.

Staff reviewed PWW's filing and propounded discovery. On January 24, 2018, Staff filed a recommendation for Commission approval of the Bond Financing component of PWW's request, also indicating that it would be filing its recommendation concerning the proposed Line

of Credit, including PWW's Motion for Confidential Treatment, at a later date. The OCA indicated its support of Staff's recommendation.

## **II. POSITIONS OF THE PARTIES**

### **A. PWW**

PWW contends that the proposed Bond Financing and the other transactions contemplated and described in its petition are consistent with the public good, and that it is entitled to issue the proposed bonds and consummate such transactions under RSA Chapter 369, for the purposes set forth and described in its petition.

The purpose of the proposed Bond Financing is to (1) finance PWW's capital projects for the years 2017–2020 in the approximate amount of \$30,000,000, and (2) finance the aggregate costs for issuance in an amount up to \$2,500,000, including capitalized interest. The issuance of the proposed Bond Financing will be integrated with PWW's new ratemaking structure recently approved by the Commission, including the Qualified Capital Project Adjustment Clause process.<sup>1</sup>

Even though the actual terms and conditions associated with the Bond Financing cannot be determined until the time of issuance, PWW provided some assumptions with regard to what it anticipates relative to the proposed issuance. Specifically, the proposed instruments will be issued as either tax-exempt bonds with a fixed interest rate, taxable bonds with a fixed interest rate, and/or bond anticipation notes (BAN) with a fixed interest rate. If bonds are issued, the terms will be for no greater than 30 years; and if BANs are issued, the terms will be 12-15 months, after which they will be aggregated with an annual bond issuance for a period of 30 years. Repayment of the bonds or BANs will be unsecured. PWW stated that under current market conditions, bond issues containing similar terms and conditions as those anticipated for

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<sup>1</sup> See *Pennichuck Water Works, Inc.*, Commission Order No. 26,070 (November 7, 2017) in DW 16-806.

the proposed Bond Financing are being issued at rates ranging between 4.5 and 5.0 percent per annum. Nonetheless, if PWW receives a credit rating enhancement as part of the bond issuance process,<sup>2</sup> it may be able to borrow at a lower interest rate. Some uncertainty exists, however, relative to the impact that the recently enacted tax reform legislation may have on the final interest rate.<sup>3</sup>

PWW intends to issue the proposed Bond Financing as one or more series under the 2014 Loan and Trust Agreement between the NHBFA, the Company, and a trustee and will be subject to the covenants that were implemented to be best aligned with PWW's current capital and rate structures. PWW intends that the proposed bond issuance will occur during March of the current year. All payments of principal and interest will be limited obligations of the NHBFA and will be payable solely from payments made by PWW. The bonds will not be general obligations of the State of New Hampshire, and neither the general credit nor the taxing power of the State of New Hampshire or any subdivision thereof, including the NHBFA, will secure payment of any obligation under the bonds.

PWW stated that it is not anticipating that a Debt Service Reserve Fund (DSRF) will be required in support of the bond issuance. This assertion is based on PWW's recently improved credit rating<sup>4</sup> as well as the bond market's willingness to purchase the Company's 2014 and

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<sup>2</sup> During January of this year, Standard and Poor's (S&P) began reviewing PWW's credit rating. This review must be conducted contemporaneously with the issuance of the proposed Bond Financing. Further, S&P's review must be completed in conjunction with PWW's seeking approval from the Commission for the Bond Financing. Pursuant to Commission Order No. 26,070, any change in PWW's credit rating resulting from this review will be communicated to the Commission upon receipt.

<sup>3</sup> In its initial filing, PWW expressed uncertainty as to the effect that proposed federal tax reform legislation would have with regard to the proposed Bond Financing. A specific concern was that the proposed legislation might prohibit future issuances of Private Activity Bonds (PABs). In response to Staff discovery, however, PWW stated that the enacted version of the tax legislation, known formerly as the "Tax Cuts and Jobs Act of 2017," contained no such prohibition on the issuances of PABs. Therefore, PWW anticipates issuing tax-exempt PABs through the NHBFA. Nonetheless, PWW expressed some continued uncertainty with regard to how the newly enacted tax legislation may impact the final terms of the Bond Financing.

<sup>4</sup> In his testimony, Mr. Goodhue suggested that "the credit rating agencies reviewed the [2014 and 2015] financing transactions favorably, resulting in an increase in PWW's credit rating to an "A" rating with a stable outlook. Subsequently, the credit rating agencies have further enhanced PWW's credit rating to an "A+" rating with a stable

2015 bonds without a DSRF. PWW also believes that the modified rate structure and bifurcated rate stabilization funds approved in Commission Order No. 26,070 further enhance the Company's cash flow certainty in support of the repayment of its debt obligations.

The proposed Bond Financing also includes a \$2,500,000 component related to the anticipated aggregate costs associated with the bond issuances, including legal and underwriting expenses. While PWW states that the customary level of such costs would normally be between \$1,200,000 and \$1,500,000, an amount of \$2,500,000 has been conservatively reserved with the NHBFA, which allows for anomalies that may occur relative to changes in the bond markets, including the potential for increased interest rates.

On November 21, 2017, PWW's Board of Directors provided preliminary approval of the Bond Financing and authorized management to pursue all steps necessary to complete the transactions. On December 12, 2017, the City also approved the proposed financing in its capacity as sole shareholder. On May 15, 2017, the NHBFA Board of Directors granted preliminary approval for the issuance of tax-exempt bonds on behalf of PWW. PWW provided copies of these respective approvals. Once approval for the proposed Bond Financing is granted by the Commission, PWW anticipates that the NHBFA Board of Directors will take final approval action with respect to the financing. Approval must also be obtained from the New Hampshire Governor and Executive Council for the NHBFA to release the funds necessary for issuance.

In conclusion, PWW averred that the issuance of the Bond Financing is in the public good because it will:

- 1) allow for the issuance of tax-exempt or taxable bonds with repayment terms and financial covenants that are aligned with the capital requirements of PWW as it is

- now ultimately owned by the City, and financially maintained by PWW's recently modified rate structure approved in Commission Order No. 26,070 (November 7, 2017) (as opposed to a traditional equity-based ownership and ratemaking paradigm);
- 2) finance necessary construction projects using long-term debt with favorable interest rates and maturities that are aligned with the useful lives of the funded capital assets, to the long-term benefit of PWW's ratepayers; and
  - 3) generally improve the capitalization of PWW consistent with the assumptions underlying the Commission's Order No. 25,292 (November 23, 2011), approving the City's acquisition of the Company, and without a material adverse impact on customer rates, based on reasonable projections.

#### **B. Staff**

Staff recommended the approval of the Company's financing as proposed, agreeing with the Company's testimony about its overall benefit to the Company and its customers vis-à-vis City ownership. Staff believes the financing will fund capital improvements which will provide service to customers and is consistent with the public good.

### **III. COMMISSION ANALYSIS**

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 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 upon 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 at 14 (December 8, 2009), *cited in Lakes Region Water Company, Inc.*, Order No. 25,391 at 20-21 (July 13, 2012).

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 PWW’s request to be routine. The underlying standard to be applied is whether the use of the financing proceeds is in the public good pursuant to 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.

As noted above, \$30,000,000 of the proposed financing will be used for the Company’s planned capital expenditures for the years 2017–2020. The balance of the proceeds in an amount of up to \$2,500,000 will be used to finance the cost of issuance of the debt. We recognize that there is uncertainty regarding interest rates over the next few years. While we approve the \$2,500,000 amount for issuance costs, we also direct the Company to spend only what is necessary in order to secure the issuance of the bonds.

PWW’s filing includes sufficient information about the proposed uses and benefits of the financing. The primary benefits include debt terms, an interest rate, and financial covenants that are aligned with PWW’s: (1) current ownership by the City of Nashua, (2) financing structure as

an almost completely debt-financed entity, (3) unique rate structure, which is primarily based on the Company's cash-flow needs rather than its earnings, and (4) mandate to provide safe and adequate service at a just and reasonable cost. The proposed financing is consistent with PWW's other recent financings and efforts to align the funding of its capital investments with the limits of its existing private ownership structure. The proposed financing also integrates with the modified rate structure, including the Qualified Capital Project Adjustment Clause process, approved in PWW's last rate proceeding. Order No. 26,070 (November 7, 2017).

Therefore, we find the proposed financing consistent with the public good. It represents an appropriate balancing of Company and customer interests, and we approve it as filed. We note the proposed financing is consistent with the principles of the Commission's orders approving the City's acquisition of PWW's parent and Pennichuck's Integrated Capital Finance Plan. *See* Order No. 25,292 (November 23, 2011) (Order approving the City of Nashua's acquisition of Pennichuck Corporation); Order No. 25,734 (November 7, 2014) (Order approving PWW's 2014 financing petition); Order No. 26,070 (November 7, 2017) (Order approving PWW's modified rate structure).

Our approval of PWW's financing does not foreclose or limit our review in a future rate case of the prudence, use, and usefulness, of any specific cost financed (directly or indirectly), on the basis of whether the project elements are prudent, used, and useful. RSA 378:28. The Commission and its Staff also retain the authority under RSA 374:4 to keep informed regarding PWW's use of the proceeds of this financing, independently and apart from any RSA 378:28 review. Such information may be used to consider PWW's capital improvements within the framework of RSA 378:28, and to assist in ongoing monitoring of PWW's financial health and physical plant status. Moreover, our finding that this financing is in the public good does not

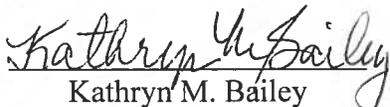
absolve PWW of its ongoing responsibility to continue to manage its capital structure and physical plant prudently.

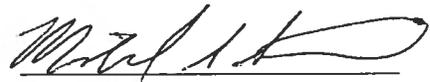
**Based upon the foregoing, it is hereby**

**ORDERED**, that authority to undertake the proposed financing, under the terms and conditions contained in PWW's petition, and for the purposes as outlined herein, is hereby **APPROVED**.

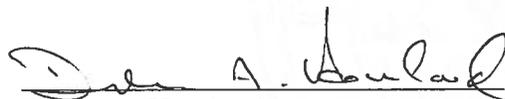
By order of the Public Utilities Commission of New Hampshire this second day of February, 2018.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director