

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 20-044

ABENAKI WATER COMPANY, INC.

Petition for Approval of Financing from the Drinking Water and Groundwater Trust Fund

Order *Nisi* Approving Drinking Water and Groundwater Trust Fund Financing

O R D E R N O. 26,410

September 29, 2020

This order approves a request by Abenaki Water Company to borrow up to \$45,000 from the New Hampshire Drinking Water and Groundwater Trust Fund. This order is issued on a *nisi* basis to ensure that interested persons receive notice and have the opportunity to comment or request a hearing before the order becomes effective.

I. PROCEDURAL HISTORY

Abenaki Water Company, Inc., (Abenaki or the Company), is a New Hampshire public utility comprised of five water systems, including the Tioga Belmont System (Tioga or the System) which is comprised of 22 customers. On April 6, 2020, Abenaki petitioned for authority to accept a grant and a loan from the New Hampshire Drinking Water and Groundwater Trust Fund (DWGTF) to purchase and install a replacement water tank and approximately four new two-inch gate valves.

Commission Staff (Staff) filed its recommendation on August 18, 2020. The Company filed its response on August 24.

The Company's petition and subsequent docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2020/20-044.html>.

II. POSITIONS

A. Abenaki

Abenaki petitioned for approval to borrow up to \$45,000 from the DWGTF to pay for a replacement water tank and gate valves. The Company also sought authority to receive \$5,000 in DWGTF grant money towards the same project.

According to Abenaki, the loan and grant will allow the Company to make necessary improvements to Tioga. With the funds, Abenaki will install a replacement concrete water tank, with a capacity of at least 10,000 gallons, and approximately four two-inch gate valves. The new tank will replace the system's smaller 4,500-gallon tank providing increased storage capacity and reducing water outage time due to potential leakage. The four gate valves will allow the Company to regulate distribution. By isolating main or service line breaks, the Company can continue to provide service to unaffected customers, avoiding total System failure. Abenaki also argued that the improvements will reduce the reliance on and the expense related to bulk water deliveries.

The Company stated that the improvements are necessary due to a December 2019 nylon-fitting break in Tioga's two-inch distribution main. That leak drained the water storage tank overnight, placing the System in a state of emergency. During a prolonged search for the leak, the Company purchased bulk water deliveries to maintain service. The cost of the repairs and water deliveries totaled \$31,848, more than double Tioga's annual revenues.

The leak prompted Abenaki to thoroughly evaluate the Tioga System. The Company determined that the System's current water storage capacity was inadequate and the lack of gate valves caused the tank's total drainage. Abenaki stated that it is currently operating the System "perpetually in a constant state of concern." Abenaki Water Company, Inc., Direct Testimony of

Nicholas A. LaChance, April 6, 2020, at 3. The Company further argued that an undetected small leak, roughly two to three gallons per minute, has the ability to drain the system within a day. *Id.*

The Company stated that the DWGTF Loan will amortize over a 20-year period, through monthly payments, at an interest rate of 2.96 percent. According to Abenaki, as a result of the financing the Company's capitalization will shift from 58 percent debt and 42 percent equity to 73 percent debt and 27 percent equity.

The Company argued that the financing is consistent with the public good because it will provide funds to purchase increased water storage and gate valves that will improve Tioga's reliability. Abenaki also asserted that the improvements funded by the financing will reduce the risk of an emergency outage in the future. Abenaki filed a letter of support from the New Hampshire Department of Environmental Services (DES). DES stated that the "[S]ystem is only one leak away from having no water for several days and placing the community in a public health emergency," and the proposed use of the financing will improve system reliability and help avoid a similar catastrophic leak. Abenaki Water Company, Inc., Attachments to the Direct Testimony of Nicholas A. LaChance, April 6, 2020, at 2.

In response to Staff's recommendation, Abenaki stated that it concurred with Staff's position and requested prompt approval of the financing petition.

B. Staff

Staff recommended that the Commission find the DWGTF Loan consistent with the public good and approve the financing for an amount up to \$45,000 pursuant to RSA 369:1 and RSA 369:4. In its recommendation, Staff relied on the DES letter of support provided by Abenaki that declared Tioga "only one leak away" from a public health emergency declaration from an

inability to provide water. Staff also noted that the funding already received approval from the DWGTF, which is administered by DES.

Staff highlighted the representations made by Abenaki regarding the necessity of the improvements and the resulting benefits, as discussed above. Staff also relied on its engineering consultant, Douglas Brogan, who reviewed the proposed project, and concluded the project was appropriate given the circumstances.

Staff provided the following additional loan terms, as confirmed by DES: (1) interest accrues at 1 percent during construction; (2) interest increases to 2.96 percent after substantial construction is complete; (3) six months after substantial construction completes, interest-only payments are due each month for a six-month term; and (4) at the completion of the six-month term, principal and interest payments are due. Staff calculated that, based on the estimated revenue requirement increase from the financing provided by Abenaki, Tioga's 22 residential customers would face an average monthly increase of \$14.95, or 23.56 percent.

Staff contended that given the financing's possible impact on the Company's capitalization and customers' future rates, the financing could not be examined as a routine financing. Staff, however, argued that the use of the proposed financing is for necessary investments in the ordinary course of utility operation, which is pursuant to the Company's duty to provide safe and adequate water service, under RSA 374:1. Staff thus concluded that the financing should receive Commission approval without further examination into alternate uses of the funding.

III. COMMISSION ANALYSIS

RSA 369:1 states 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 will conduct a "hearing or

investigation as it may deem proper,” then authorize sufficient 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, among other things, the amount of the proposed financing, the reasonableness of the terms and conditions, the proposed use of the proceeds, and the anticipated effect on customer rates. *Appeal of Easton*, 125 N.H. 205, 211-13 (1984).

The rigor of an *Easton* inquiry varies depending on the circumstances of the request. The Commission has 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.” *New England Power Company*, Order No. 26,400 at 4 (August 31, 2020). “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.* “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 5.

The Company requested permission to receive a loan from the DWGTF up to \$45,000. The terms of the agreement include an amortization period of 20 years at an interest rate of 2.96 percent. We note that the DWGTF is administered by DES and that interest rate is lower than other financings. *See Hampstead Area Water Company, Inc.*, Order No. 26,230 at 1, 3 (March 29, 2019) (noting DES’s administration of the fund and interest rate of 3.38 percent for a similar loan); *see also Unutil Energy Systems, Inc.*, Order 26,391 (August 6, 2020) (approving a \$35 million financing at 5.25 percent).

Staff argued that while the financing may result in a significant rate increase for the very small water system, the financing is consistent with the public good and should be approved. While Staff contended that the proposed projects to be completed with the financing are necessary investments in the ordinary course of Tioga's operations, pursuant to its duty under RSA 374:1 to provide safe and adequate water service, the resulting rates from the financing on the System's customers would have a significant impact. Given the magnitude of the possible rate increase, we will review this financing and its consistency with the public good.

The Commission has noted that the "proper application of *Easton* is determined by the context of the facts and issues of the case." Order No. 25,050 at 14. *Easton* requires that the Commission make a factual analysis when examining the public good of a financing. That analysis involves a balancing of consumer interests with Abenaki's right to manage its water business. In considering Abenaki's management decisions in this case, we recognize that the Company is requesting authority to borrow low-interest funds to make improvements to its water system, and allow it to safeguard continuation of service in the event of a possible future water leak. We also acknowledge that the proposed improvements help Abenaki avoid costly water shipments in the event of a leak, a solution that does not appear to be cost effective.

We find that although the financing will have an impact on the rates of Tioga's existing customers, and will further increase Abenaki's debt by approximately 15 percent, the financing is nonetheless consistent with the public good. The loan allows the Company to make the necessary improvements to the System which appear to be the most cost-effective solution given Tioga's needs. We note that DES supports the improvements, highlighting that without the proposed projects, the System is one leak away from a public health emergency. We also find that financing

the proposed projects appears to be in the ordinary course of Abenaki's system's operations, and is consistent with the Company's duty to provide safe and adequate water service, under RSA 374:1.

With respect to the Company's request for authorization to accept the \$5,000 DWGTF grant, we find that approval is not necessary as the funds are not subject to repayment, thus not subject to the financing requirements of RSA 369:1 and RSA 369:4.

Accordingly, we approve Abenaki's request to secure the funds under the DWGTF Loan program. Our approval of the DWGTF Loan does not foreclose or limit our review in a future rate case of the prudence, use, and usefulness of any specific project directly or indirectly financed by this transaction. The Commission and Staff also retain the authority under RSA 374:4 to keep informed of Abenaki's use of the financing independently and apart from any RSA 378:28 review.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, the request of Abenaki Water Company, Inc., for approval of its proposed financing transaction, specifically borrowing up to \$45,000 from the Drinking Water and Groundwater Trust Fund on the terms described herein, is hereby APPROVED; and it is

FURTHER ORDERED, that Abenaki Water Company, Inc., shall cause a copy of this order *nisi* to be published on its website within one business day, such publication to be documented by affidavit filed with the Commission on or before October 12, 2020; and it is

FURTHER ORDERED, that the Executive Director shall cause a copy of this order *nisi* to be published on the Commission's website within one business day; and it is

FURTHER ORDERED, that 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 October 5, 2020, for the Commission's consideration; and it is

FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than October 9, 2020; and it is

FURTHER ORDERED, that this order shall be effective October 14, 2020, unless Abenaki Water Company, Inc. 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 twenty-ninth day of September, 2020.

Dianne Martin
Dianne Martin
Chairwoman

Kathryn M. Bailey
Kathryn M. Bailey
Commissioner

Michael S. Giaimo
Michael S. Giaimo
Commissioner

Attested by:

Debra A. Howland
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Executive Director

Service List - Docket Related

Docket#: 20-044

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