

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 20-157**

**PENNICHUCK WATER WORKS, INC.**

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

**Order Approving Financing**

**ORDER NO. 26,442**

**December 29, 2020**

This order authorizes Pennichuck Water Works to: (1) renew its line of credit agreement with TD Bank for an additional two and a half years, until June 30, 2023; and (2) increase the limit of the credit line from \$10 million to \$12 million. This order also approves Pennichuck Water Works' motion for confidential treatment of certain business loan information.

**I. PROCEDURAL HISTORY AND BACKGROUND**

Pennichuck Water Works, Inc. (PWW or the Company), is a regulated water utility, wholly-owned by the City of Nashua, that serves customers in several communities throughout southern New Hampshire. PWW has a unique ratemaking structure because it is funded entirely through debt issuances, and does not have access to the equity markets. *See Pennichuck Water Works, Inc.*, Order No. 26,383 (July 24, 2020) (approving PWW's current ratemaking structure).

On September 24, 2020, PWW filed a petition seeking: (1) renewal of its line of credit with TD Bank, NA (TD Bank), set to expire on December 31, 2020, until June 30, 2023; and (2) an increase in the credit line limit from \$10 million to \$12 million. The Company also requested authority to issue up to \$57.5 million in tax-exempt and/or taxable bonds. Along with its petition, the Company filed a motion for protective order and confidential treatment of business loan information.

On October 14, PWW filed a motion to bifurcate its financing requests, requesting that the Commission address the line of credit approval first, in view of its December 31, 2020, expiration date. The Commission issued an order of notice on October 20, 2020, scheduling a prehearing conference for November 6, at which the Company's motion to bifurcate was granted.

On November 19, PWW filed a copy of its revolving note with TD Bank, and a corresponding supplemental motion for protective order and confidential treatment of business loan information. On November 20, the Company filed a loan agreement and a pledge agreement with TD Bank, and an amended supplemental motion for protective order and confidential treatment of business loan information pertaining to all three documents. Commission Staff (Staff) filed its recommendation on December 11, 2020.

PWW's petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://www.puc.state.nh.us/Regulatory/Docketbk/2020/20-157.html>.

## **II. POSITIONS**

### **A. PWW**

#### **1. Line of Credit**

PWW requested authorization to renew its line of credit for an additional term of up to two and a half years, to begin on January 1, 2021, and terminate on June 30, 2023. *See Pennichuck Water Works, Inc.*, Order No. 26,121 (April 20, 2018) (approving a \$10 million line of credit with TD Bank which expires on December 31, 2020). The Company also requested a \$2 million increase in the line of credit, up to \$12 million.

Larry Goodhue, PWW's Chief Executive Officer, represented in pre-filed testimony that the line of credit will continue to be used for the short-term financing of capital projects. He

further stated that the line of credit would be paid off annually by a bond issuance, in conformity with the Qualified Capital Project Adjustment Charge (QCPAC).<sup>1</sup> Pre-filed Testimony of Larry D. Goodhue at 3.

According to PWW, the requested \$2 million increase in the line of credit would allow for additional project costs due to inflation and capitalized interest on the credit line. PWW further represented that other economic forces, such as supply and demand of construction materials and labor, possibly related to the COVID-19 pandemic, and potential changes in environmental regulatory policy, might increase the costs of certain anticipated capital projects. Mr. Goodhue represented that possibility prompted the Company to request an increase in the maximum line of credit amount. Mr. Goodhue further asserted that the Company's "capital project needs in 2021 are nearly \$12 million for that year alone," and, as all capital projects are funded solely with debt, the increased limit on the line of credit is "imperative." See Commission Staff Recommendation, December 11, 2020, (Recommendation) at 19-21 (PWW Response to Data Request Staff 1-10).

PWW represented that the line of credit will be secured by the Company's accounts receivable and inventory, and a pledge of PWW's stock by its parent company, Pennichuck Corporation (Penn. Corp.). In addition, PWW will assign its rights in the Money Pool Agreement and Cost Sharing Agreement.<sup>2</sup> The Company also stated that the line of credit will

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<sup>1</sup> The QCPAC mechanism enables PWW to make necessary capital improvements to its systems while maintaining sufficient cash flow to meet debt service and operating requirements. *Pennichuck Water Works, Inc.*, Order No. 26,298 at 7 (October 9, 2019). The Commission "reviews and approves the proposed surcharge so that PWW may begin recovery of the debt service and property taxes associated with completed projects." *Id.* To be eligible for the QCPAC surcharge, the prior year's capital projects must be financed by debt approved by the Commission. *Pennichuck Water Works, Inc.*, Order No. 26,070 at 8-9 (November 7, 2017).

<sup>2</sup> The Money Pool Agreement is an arrangement through which Penn. Corp. and its subsidiaries, including PWW, and PWW's sister-utilities Pennichuck East Utility, Inc., and Pittsfield Aqueduct Corporation, Inc., can borrow or invest funds on a short-term basis. The Cost Sharing Agreement defines how charges for facilities and services provided by PWW to Penn. Corp. and to PWW's sister utilities, are determined and applied to the various companies.

be cross-defaulted with all debt obligations of PWW and Penn. Corp.'s \$4 million working capital line of credit with TD Bank. The Company further indicated that it had received the appropriate preliminary approvals from PWW's and Penn. Corp.'s Board of Directors, and from the City of Nashua.

Mr. Goodhue maintained that the financial covenants for the line of credit will be the same as those for its requested bond financing, with the additional covenant that PWW must maintain an S&P bond rating of at least BBB+ to access the funds. He further stated that the line of credit would be subject to a customary annual review by TD Bank.

According to PWW, the interest rate on the line of credit will be equal to the 30-day LIBOR rate plus 1.75 percent, the same interest rate as applies to PWW's current line of credit with TD Bank. When asked what TD Bank will use as a benchmark once the LIBOR is discontinued as of December 31, 2021, PWW stated that a replacement has not yet been determined, but that TD Bank had indicated that whatever substitute is selected "will be a rate with near equivalent financial impact and near equivalent stability." Recommendation at 10.

PWW stated that the cost of issuance for the line of credit will be a one-time commitment fee and an upfront renewal fee of \$3,500 and \$10,000, respectively, as well as payment of legal costs for both the Company's and TD Bank's counsel. The total issuance cost will range between \$15,000 and \$30,000, which amount would be amortized over the two and a half year term of the line of credit. The Company maintained that approval of the financing is in the public good and should be approved.

## 2. Motion for Protective Order and Confidential Treatment

PWW sought confidential treatment of certain loan and financing documents with TD Bank, pursuant to N. H. Admin. R., Puc 203.08. According to the Company, the documents are exempt under RSA 91-A:5, IV as commercial or financial records that reveal terms subject to

review, negotiation, and approval. PWW represented that TD Bank has requested that the documents remain confidential, and PWW asserted it is in the public interest to allow such negotiations to occur consistent with the lender's practice. The Company further argued that inability to maintain the confidentiality of such documents might affect its ability to negotiate with lenders.

## **B. Staff**

### 1. Line of Credit

Staff supported approval of the Company's proposed line of credit. Staff maintained that the line of credit is a routine financing, calculating that the credit line, even in the extremely improbable circumstance that it were fully withdrawn and not repaid for two and a half years, would have minimal impact on customer rates (an estimated \$1.77 increase, or 1.92 percent, in an average customer's monthly bill). Staff furthermore asserted that the line of credit renewal will likely never impact customer rates as PWW annually replaces the funds drawn on the credit line with a bond issuance. That debt replacement is crucial for the Company's ability to request yearly recovery through the QCPAC mechanism, and the long-term debt is beneficial to PWW's financial health as an all-debt utility.

Staff maintained that, other than a \$2 million increase in the line of credit, the proposed terms are, in all material respects, substantially similar, or the same, as the previously authorized line of credit. *See* Order No. 26,121 (approving a two year term and interest rate at the 30-day LIBOR rate plus 1.75 percent).<sup>3</sup> Staff also supported the line of credit increase to \$12 million, stating it was warranted based on the Company's supporting rationale, in particular because the additional credit affords PWW flexibility to respond to inflationary costs and other potential contingencies.

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<sup>3</sup> Staff noted that the 30-day LIBOR rate as of the date of its Recommendation was 0.15 percent.

Staff further noted that the line of credit is an essential part of the Company's currently authorized rate structure and QCPAC mechanism. According to Staff, the line of credit allows PWW to fulfill its RSA 374:1 duty to provide safe and adequate water service, as the proceeds are used for necessary capital investments when other funds are not available, while avoiding regulatory lag associated with individual financing approvals.

## 2. Motion for Protective Order and Confidential Treatment

Staff supported PWW's request for a protective order. Staff maintained that public disclosure of the terms and conditions of the loan and financing documents would competitively disadvantage the Company and its customers by impairing its ability to effectively negotiate debt financing with lenders. According to Staff, that would be especially problematic given PWW's dependence on debt financing to fund most of its capital improvements and working capital requirements. Staff stated it was unaware of any public interest in disclosure of the proposed financing terms.

### **III. COMMISSION ANALYSIS**

#### A. Line of Credit

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 on the circumstances of the request. As 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.” *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.

The Commission finds PWW’s requests to be routine. The TD Bank line of credit will not have an effect on the Company’s capitalization, and it will not have a significant impact on its rates. In addition, the financing appears to be made in the ordinary course of PWW’s business and in conjunction with the approved QCPAC mechanism. Because the request is routine, the Commission will conduct the 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.

The line of credit will be used as short-term financing for capital projects. As noted by Staff, the line of credit allows PWW to fulfill its RSA 374:1 duty to provide safe and adequate water service as the proceeds are used for necessary capital investments, and the credit line is an integral part of the Company’s QCPAC process. In addition, the line of credit does not have the potential to materially impact customer rates, as the Company routinely refinances the credit line debt with bond issuances. The requested increase in the line of credit limit to \$12 million is

warranted because it would afford PWW greater flexibility to meet its future capital investment needs and to respond to inflationary cost increases and potential unexpected contingencies.

We therefore find that the financing is consistent with the public good, pursuant to RSA 369:1 and RSA 369:4, and we approve renewal of the TD Bank line of credit for a two and a half year term. We note that the line of credit interest rate is based on the 30-day LIBOR rate plus 1.75 percent. As observed by Staff and the Company, the LIBOR rate will no longer be used after December 31, 2021, and, at that time, a year and a half will remain in the approved financing term. We therefore direct PWW to notify the Commission within 10 days following TD Bank's determination of a replacement for the LIBOR rate calculation.

Our approval of PWW's financing does not limit or preclude the Commission from reviewing in a future rate case, directly or indirectly, the prudence, use, and usefulness of any specific project financed by the borrowed funds. RSA 378:28. The Commission retains the authority under RSA 374:4 to be kept informed of PWW's use of the financing, separate and apart from any review under RSA 378:28.

**B. Motion for Protective Order and Confidential Treatment**

PWW sought confidential treatment of loan documentation and other financing documents provided by TD Bank in support of the line of credit renewal, pursuant to Puc 203.08. The Company argued that the proposed term sheets and financing documents fall within RSA 91-A:5, IV, which exempts from public disclosure records pertaining to ... confidential, commercial, or financial information, because the documents at issue contain commercial or financial information that reveal terms subject to review, negotiation, and approval. According to PWW, the lender has sought confidential treatment of the documents in connection with the financing process. The Company claimed that confidential treatment of the documents consistent with the lender's practice would be in the public interest, claiming that to do otherwise

could impact its ability to negotiate with lenders and obtain financing. Staff recommended confidential treatment, noting that failure to protect the documents from disclosure would be particularly problematic in view of PWW's reliance on debt financing to fund all of its capital improvement and working capital requirements.

The Commission applies a three-step balancing test to determine whether documents should be protected from disclosure as "confidential, commercial, or financial information" under RSA 91-A:5, IV. *Pennichuck East Utility, Inc.*, Order No. 26,418 at 12 (October 29, 2020) (citing *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) and *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)). Applying that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *Id.* at 13. Finally, the Commission must balance "those competing interests and decide whether disclosure is appropriate." *Id.* (citing *Lambert*, 157 N.H. at 383).

We find that PWW has established a significant privacy interest in maintaining the confidentiality of the records at issue. Disclosure of financial documents related to the loan negotiations and related terms could result in a competitive disadvantage for PWW in connection with future financings. Indeed, disclosure might interfere with the Company's ability to obtain financing necessary to conduct its business. On the other hand, we find the public's interest in disclosure of this type of information is minimal. On balance, the Company's interest in maintaining the confidentiality of the records at issue is significant, and outweighs the minimal interest the public may have in their disclosure. We therefore grant the motion for protective order and confidential treatment. Consistent with past practice, 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 Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant. *See* Puc 203.08(k).

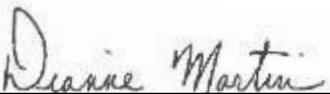
**Based upon the foregoing, it is hereby**

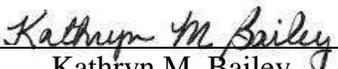
**ORDERED**, that authority for Pennichuck Water Works, Inc., to undertake a line of credit, under the terms and conditions described in this order, and for the purposes as outlined herein, is GRANTED; and it is

**FURTHER ORDERED**, that Pennichuck Water Works, Inc., shall notify the Commission within 10 days following the date TD Bank determines a replacement for the 30-day LIBOR rate; and it is

**FURTHER ORDERED**, that Pennichuck Water Works, Inc.'s motion for protective order and confidential treatment of loan and financing documentation is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 2020.

  
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Dianne Martin  
Chairwoman

  
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Kathryn M. Bailey  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director

## Service List - Docket Related

Docket#: 20-157

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