

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 22-025

PENNICHUCK EAST UTILITY, INC.

2022 Petition for Approval of Financing from CoBank, ACB¹

Order *Nisi* Approving Financing

O R D E R N O. 26,640

June 10, 2022

In this order, the Commission approves a petition of Pennichuck East Utility, Inc. (PEU, or the Company) to borrow a principal amount of \$665,936 from CoBank for a 25-year term to finance certain 2021 capital projects not otherwise funded. The estimated rate impact of this financing on the average residential water customer bill would be an addition of approximately \$0.55 per month.

I. BACKGROUND

PEU filed a petition on April 13, 2022, requesting Commission approval of financing from CoBank (Petition). The Petition was supported by the pre-filed written testimony of Larry D. Goodhue and John J. Boisvert. On April 20, 2022, PEU filed a copy of City of Nashua Resolution R-22-019 approving the proposed financing.

On June 3, 2022, the Department of Energy (DOE) filed a letter from Robyn J. Descoteau, a utility analyst with the DOE Water Group, Regulatory Support Division, stating that DOE “takes no exception” to the Petition and “does not recognize a need to further supplement this docket’s record and considers it complete for consideration;” no substantive analysis or recommendation was provided. DOE Letter of 6/3/22.

¹ Agricultural Credit Bank

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 <https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-025.html>.

II. PETITION

A. Financing Request

PEU represented in its Petition that the proposed financing will be used to repay and refinance funds advanced from the Company's fixed asset line of credit (FALOC). According to PEU, FALOC funds were used to finance approximately \$665,936 in capital improvements in 2021 for several specific projects, routine maintenance capital projects, and other non-recurring capital expenditures that were not eligible for financing through either the State's Revolving Loan Fund or the State's Drinking Water and Groundwater Trust Fund, both administered by the Department of Environmental Services.

PEU represented that the financing of projects through this loan will not significantly impact rates and will facilitate capital improvements made in the ordinary course of PEU's business at the most favorable terms available. PEU further represented that the proposed financing is secured by PEU's equity interest in CoBank and a guaranty by Pennichuck Corporation, PEU's parent company. The loan will amortize over 25 years at an estimated interest rate of 4.50 percent per year. PEU estimates debt issuance costs of less than \$10,000. PEU requested approval of the proposed financing by June 30, 2022, for effect by July 31, 2022, to permit the Company to close on the term loan and incorporate the financing costs in the final surcharge under the Company's QCPAC filing in Docket DW 22-005.

B. Request for Confidential Treatment

PEU requests confidential treatment of certain loan documentation comprised of a non-binding summary of terms and conditions. According to PEU, these terms and conditions are not final, are the subject of further negotiation, and are considered confidential by CoBank. Further, PEU asserts that disclosing these terms would disadvantage PEU in future negotiations with lenders.

III. COMMISSION ANALYSIS

A. Financing Request

Pursuant to RSA 369:1, public utilities engaged in business in New Hampshire may issue evidence of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be “consistent with the public good.” RSA 369:4. Analysis of the public good involves looking beyond the actual terms of the proposed financing to the use of the funds and the effect on rates to ensure the public good is protected. *Appeal of Easton*, 125 N.H. 205, 211 (1984). “[C]ertain 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.” *Lakes Region Water Company, Inc.*, Order No. 25,753 (January 13, 2015) at 4-5. The Commission engages in a more limited review for routine financing requests. *Pennichuck Water Works, Inc.*, Order No. 26,247 at 4 (May 3, 2019). 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... investments appropriate in the ordinary course of utility operations.” *Id.* 5

(citing *Public Service Company of New Hampshire*, Order No. 25,050 at 13 (December 8, 2009)).

Based on the record, we find the proposed CoBank financing will have a minimal impact on customer rates (an estimated \$0.55 increase in the average customer's monthly bill, or 0.65%). The proposed financing will not affect PEU's capitalization as it has an all-debt capital structure. See *Pennichuck East Utility, Inc.*, Order No. 26,179 at 14 (October 4, 2018). The borrowed funds will support investments made in the ordinary course of PEU's business. The Commission acknowledges the Company's immediate need to repay, refinance, and convert amounts on its FALOC into long-term debt to maintain adequate liquidity. The conversion of amounts on the FALOC into long-term debt is an integral part of PEU's QCPAC. See Order No. 26,179 at 16 (approving QCPAC mechanism). The QCPAC mechanism requires that the underlying capital projects must be funded by Commission-approved financings to be eligible for recovery. *Id.* at 11.

For these reasons, we find this to be a routine financing request and conclude that this financing is for the public good. Accordingly, we approve the Company's request pursuant to RSA 369:1 and 369:4. This order approving the CoBank financing is issued on a *nisi* basis so that interested parties may have an opportunity to respond to the financing proposal and request a hearing.

A. Request for Confidential Treatment

The Commission applies a three-step balancing test to determine whether documents should be kept from disclosure as "confidential, commercial, or financial information" under RSA 91A:5, IV. *Pennichuck Water Works, Inc.*, Order No. 26,121 at 6 (April 20, 2018) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83

(2008)). Applying this 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 7. Finally, the Commission must balance “those competing interests and decide whether disclosure is appropriate.” *Id.*

We find that PEU and CoBank have a privacy interest in the documentation of the summary of terms and conditions of the loan documents, particularly in light of the fact that the specific terms are still under negotiation. PEU contends that public disclosure of these terms and conditions would harm PEU and its customers by impairing PEU’s ability to effectively negotiate debt financings with lenders, thus, resulting in a competitive disadvantage. While we find that the public has an interest in knowing the terms of the loan and its financial impact on PEU and its customers, on balance, we determine that the interest of PEU in maintaining confidentiality outweighs the public’s interests. As a result, we find that confidential treatment of the summary documents identified by PEU should remain confidential. Therefore, we grant PEU’s motion for confidential treatment of those loan documents.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, PEU’s proposed financing for a \$665,936 loan from CoBank, under the terms and conditions and for the purposes described in this order, is **APPROVED**; and it is

FURTHER ORDERED, that PEU’s motion for confidential treatment of certain loan documents is **GRANTED**; and it is

FURTHER ORDERED, that the Company shall cause a copy of this order to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, with such publication to

be no later than June 20, 2022 and to be documented by affidavit filed with the Commission on or before July 7, 2022; 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 June 17, 2022 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 June 24, 2022; and it is

FURTHER ORDERED, that this order shall be effective July 10, 2022, 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 tenth day of June, 2022.


Daniel C. Goldner
Chairman


Pradip K.
Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 22-025

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