

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 24-108

PENNICHUCK WATER WORKS, INC.

**Petition for Financing Approval to Renew and Extend its Fixed Asset Line of
Credit with TD Bank, NA**

Order *Nisi* Approving Financing

ORDER NO. 28,104

February 19, 2025

Pennichuck Water Works, Inc. (PWW, or the Company) requests approval to renew and extend its current \$12,000,000 Fixed Asset Line of Credit (FALOC) through TD Bank, N.A. (TD Bank), which is set to expire on June 30, 2025. The Commission authorizes PWW to renew and extend its FALOC until September 30, 2027, and to increase the available credit line under the FALOC to \$16,000,000. We also grant the Company's motion for confidential treatment.

I. BACKGROUND AND PROCEDURAL HISTORY

On October 28, 2024, PWW filed a petition for approval to renew and extend its current FALOC with TD Bank from \$12,000,000 to \$16,000,000 for two years. The proposed renewal and extension of PWW's line of credit will fund cash flow needs associated with capital project investments. The requested increase is needed for projected increased costs due to the recent merger and consolidation¹ of Pennichuck East Utility, Inc (PEU) and Pittsfield Aqueduct Company (PAC) into PWW. Jointly, the companies provide water service to customers in Nashua, Amherst, Merrimack, Milford, Hollis, Bedford, Derry, Plaistow, Epping, Salem, Newmarket, Atkinson, Bow,

¹ See Order No. 27,098, January 28, 2025, Docket DW 23-101

Barnstead, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Raymond, Sandown, Weare, Windham, Winnisquam Village, and Pittsfield, New Hampshire.

The New Hampshire Department of Energy (DOE) filed a technical statement recommending approval of the petition on January 23, 2025. The Office of the Consumer Advocate did not submit an appearance in this docket, and no petitions to intervene were filed.

Other than any information for which confidential treatment is requested of or granted by the Commission, all docket filings are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-108.html>.

II. POSITIONS OF THE PARTIES

A. PWW

i. Renewal and Extension of FALOC

PWW seeks our authorization to renew and extend its current \$12,000,000 FALOC with TD Bank, N.A., by increasing the credit available to \$16,000,000 and extending its end date until September 30, 2027. *See* October 28, 2024 Petition at 3. No other terms of the current FALOC will be modified. *See id.* The FALOC will continue to be used as short-term funding for PWW's capital projects until refinanced through the annual issuance of tax-exempt bonds, taxable bonds, or bond anticipation notes in conformity with PWW's Commission-authorized, annual Qualified Capital Project Adjustment Charge (QCPAC) process for refinancing used and useful projects. *See Id.* TD Bank's security for repayment of PWW's renewed and extended FALOC will continue to include a first security interest in PWW's accounts receivable and inventory, the City of Nashua's pledge of its PWW stock in favor of TD Bank, and PWW's assignment of its rights in the Pennichuck Money Pool Agreement and Cost

Allocation Agreement to TD Bank. Petition at 2-3. An event of default on any PWW obligation will also result in defaults on the FALOC and Pennichuck Corporation's line of credit. *Id.* See also October 28, 2024, Testimony of George Torres (Torres Testimony) at 18. Consistent with the terms of the existing FALOC, PWW will make monthly interest-only payments to TD Bank, computed using the thirty (30) day Secured Overnight Financing Rate (SOFR) plus 175 basis points on the FALOC's outstanding balance for the actual days in the month over a 360-day year. See October 28, 2024 Petition at 4. TD will also charge the Company a one-time \$16,000 renewal fee due at the closing of the renewed and extended FALOC. *Id.* PWW anticipates its legal expenses to renew and extend the FALOC to be approximately \$8,000 to \$15,000. *Id.*

PWW contends that renewing and extending FALOC benefits its customers and is consistent with the public good. See Torres Testimony at 19, 21-22. Due to PWW's merger with PEU and PAC, the PEU system will lose access to PEU's current line of credit from CoBank. See *id.* With greater credit capacity, the renewed and extended FALOC will provide PWW with sufficient short-term financing for improvement projects to the combined system required to comply with the federal and state Safe Drinking Water Acts and the regulations promulgated thereunder. See *id.* Annually, PWW will refinance FALOC-funded system improvement projects with long-term debt at more favorable interest rates and with maturities more closely aligned with the useful lives of those projects, all to the long-term benefit of PWW's customers. See October 28, 2024 Petition at 8.

According to PWW, its request qualifies as a 'routine financing' that will not significantly impact rates and will be paid off annually as part of the Company's annual bond financing. Further, the financing will be an integral part of the Company's ability to request annual recovery through the QCPAC mechanism. See *Id.*

As noted in Schedule GT-4A, attached to the testimony of George Torres, there will be no immediate impact on customer rates until the following annual QCPAC surcharge is implemented. *See Id.*; Testimony of George Torres at 23, and Schedule GT-4A (Projected Rate Impact on Single Family Residential Home) at 29. Finally, the proposed renewal has been approved by the PWW and Penn Corp. Boards of Directors and the City of Nashua through Resolution R-24-092, filed by PWW on October 8, 2024. *See Id.* at 6, 20.

ii. Motion for Protective Order and Confidential Treatment

PWW filed with its petition a separate Motion for Protective Order and Confidential Treatment of Business Loan Information. The Company argues the terms and conditions of its proposed financing through TD Bank, as provided in Exhibit GT-5 to its petition, are confidential, commercial, or financial information under RSA 91-A:5, IV, because they remain subject to satisfactory review and completion of documentation, due diligence, and approval by PWW and TD Bank. *See Motion* at Bates page 50. Additionally, PWW further stated that the terms and conditions remain subject to negotiation. When TD Bank provided the documentation, it was marked confidential with the understanding that they remain confidential. *See Id.* PWW asserts that failing to maintain confidentiality may negatively affect the company's ability to negotiate with its lenders. *See Id.*

B. DOE

i. Renewal and Extension of FALOC

Based on its review of PWW's filings, including responses to discovery requests, the DOE concluded that the extension of the FALOC to provide cash flow needs associated with capital projects, including the potential inclusion of PEU and PAC projects, until the annual conversion to long-term debt is an appropriate use of funds.

See January 23, 2025, DOE Technical Statement (DOE Technical Statement) at 2-3. The DOE determined that to the extent that PWW could provide an estimate, the anticipated net impact on rates if PWW utilized the entire \$16,000,000 FALOC and converted it to long-term debt would be approximately \$1.37 per month for a single-family residential customer. See *Id.* at 3. The DOE notes there would be no direct impact on currently approved rates, as those rates do not include provision for short-term finance costs. See *Id.* The DOE further found that the proposed financing will not change the capitalization ratio of PWW's current capital structure, which consists primarily of debt. *Id.* Accordingly, DOE recommended approval of PWW's petition as consistent with the public good pursuant to RSA 369:1. See *Id.* at 1-3.

ii. Motion for Protective Order and Confidential Treatment

The DOE did not file any position on PWW's motion for protective order and confidential treatment.

III. COMMISSION ANALYSIS

A. Renewal and Extension of FALOC

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 shall 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 proceeds, and the effect on rates. *Appeal of Easton*, 125 NH 205, 211 (1984) (*Easton*).

The rigor of an *Easton* inquiry varies depending on the circumstances of the request. As the Commission has noted in prior decisions, "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 purpose of PWW’s proposed financing petition is to renew and extend the existing \$12,000,000 FALOC with TD Bank to \$16,000,000, allowing PWW the necessary short-term financing for the Company’s capital projects and needed additional credit availability due, in part, to the loss of PEU’s separate line of credit resulting from the merger. Torres Testimony at 19. The FALOC will be repaid annually through the issuance of bonds. *See Id.* at 17. PWW anticipates that the net impact of the renewed line of credit on rates will be negligible and non-dilatative.

Based on the Company’s petition and DOE’s analysis and recommendation, we find that the intended use of the proposed financing falls within the course of PWW’s ordinary utility operations and is routine, therefore, we need not further consider possible alternative uses of the funds. *See Public Service Company of New Hampshire*, Order No. 25,050 at 14 (December 8, 2009) (quotations omitted). We also concur with DOE’s assessments that the proposed financing will have a *de minimis* impact on PWW’s capital structure and that the projected net impact on the average single-family residential bill will be negligible. *See DOE Technical Statement* at 2-3. We further conclude that approval of the proposed financing will permit PWW to provide safe and adequate service to its customers, including the customers who were previously

serviced by PEU and PAC, as required by RSA 374:1, and that the financing is consistent with the public good, pursuant to RSA 369:1 and RSA 369:4. Accordingly, based on the Company's petition and the DOE's technical statement and recommendation, we find PWW's financing request to be consistent with the public good. We further find that additional investigation is not required and approve the proposed financing on a *nisi* basis.

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

B. Motion for Protective Order and Confidential Treatment

In its Motion, PWW argued that the proposed financing terms and conditions included in the Discussion Term Sheet, submitted as Exhibit GT-5, fall within the RSA 91-A:5, IV exemption. According to PWW, the terms and conditions are confidential commercial or financial information that remains subject to satisfactory review and completion of documentation, due diligence, and approval by PWW and TD Bank. Motion at 50. PWW noted that the terms and conditions remain subject to negotiation and have not been finalized and that TD Bank provided the loan documentation to PWW with a request that the terms and conditions remain confidential. Motion at 50-51. PWW stated that it would be in the public interest to allow such negotiations to occur in a manner consistent with the lender's procedure and practice. *Id.*

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both

whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). " Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5, IV expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.12, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. *See* Puc 203.12(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." *See Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that

disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

We agree with PWW that the information sought is confidential pursuant to RSA 91-A:4 and that the proposed terms and conditions of financing fall within the RSA 91-A:5, IV exemption, because they constitute confidential and sensitive commercial or financial information, that if disclosed would cause substantial harm to PWW's competitive position regarding future financing. We therefore conclude that the interest in nondisclosure of the information identified in PWW's motion outweighs the public's interest in disclosure of that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public interest is outweighed by PWW's privacy interest in information that, if disclosed, could pose legitimate financial harm or privacy risk to PWW, including the securing of favorable financing terms in the future.

Accordingly, pursuant to Puc 203.12(a), we grant PWW's motion for protective order and confidential treatment. Consistent with past practice and Puc 203.12(j), 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 any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the request of Pennichuck Water Works, Inc. for approval to renew its FALOC with TD Bank in the amount of \$16,000,000 for a term of two years through September 30, 2027, under the terms and conditions presented in its Petition, is hereby GRANTED; and it is

FURTHER ORDERED, PWW file with DOE and the Commission evidence of the financing and the applicable interest rate within 15 days of the close of the financing; and it is

FURTHER ORDERED, that the Motion for Protective Order and Confidential Treatment of refinancing term sheets and associated documents is GRANTED; and it is

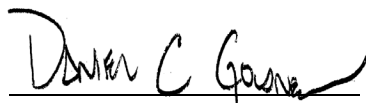
FURTHER ORDERED, that PWW shall post a copy of this order on the Company's website within two business days of the date of this order, with an affidavit of publication to be filed with this office on or before February 26, 2025; and it is

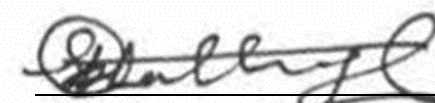
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than March 5, 2025, for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for a hearing shall do so no later than March 12, 2025; and it is

FURTHER ORDERED, that this order shall be effective March 21, 2025, unless PWW fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

By order of the Public Utilities Commission of New Hampshire, this nineteenth day of February 2025.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Mark W. Dell'Orfano
Commissioner

Service List - Docket Related

Docket#: 24-108

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