

DW 05-061

PENNICHUCK EAST UTILITY, INC.

Petition for Authority to Extend Maturity of Existing Long Term Debt

Order *Nisi* Approving Petition

ORDER NO. 24,450

April 7, 2005

I. BACKGROUND

Pennichuck East Utility, Inc. (PEU) is a regulated utility pursuant to RSA 362:2 and RSA 362:4 and provides water service in Atkinson, Bow, Derry, Hooksett, Litchfield, Londonderry, Pelham, Plaistow, Raymond, Sandown, and Windham, New Hampshire. PEU is a wholly-owned subsidiary of Pennichuck Corporation.

On March 25, 2005, PEU filed a petition with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 369, requesting authority to extend the maturity of existing long term debt with Bank of America (f/k/a Fleet Bank). PEU's petition was accompanied by supporting testimony of William D. Patterson, PEU's Vice President, Treasurer and Chief Financial Officer. PEU proposes to extend the maturity of its \$4.5 million debt issue, which matures April 8, 2005. The Commission approved this debt in Docket No. DE 96-227. See, *Pennichuck East Utility, Inc.* 83 NH PUC 222 (1998). In Docket No. DE 96-227, the purpose for which PEU incurred the \$4.5 million debt was litigated and the proceeds were used to finance the purchase of Consumers New Hampshire Water Company. The debt was originally structured as a line of credit for the first two years, and then converted to a term facility for the remaining five years.

According to PEU's petition, it had planned to repay the loan principal upon

maturity with funds made available from its parent, Pennichuck Corporation. Those funds would then have been replaced at a later date by more permanent financing. Petition at 1. On March 21, 2005, Bank of America offered PEU an opportunity to extend the maturity of this debt for several more years at an interest rate lower than the existing debt. Mr. Patterson stated in his testimony that upon reviewing the interest rate available by simply extending the maturity date of the existing loan, it was clear that maintaining the loan would be highly favorable to PEU and would benefit its customers. Petition at 7. Mr. Patterson illustrated in his testimony that the interest rate could range from 5.85 percent to 6.14 percent, depending upon the maturity date. Petition at 9. Mr. Patterson amended this range in data response 1-5 to be between 6.23 percent to 6.33 percent. Under either scenario, the range is lower than the existing loan interest rate of 6.5 percent.

Pursuant to the terms of the commitment letter attached to the petition, PEU has the option of selecting a maturity date of December 31 in either 2007, 2008, or 2009. Although structured as an adjustable rate loan, the proposed loan will include a swap agreement, as did the original Fleet loan. According to the swap agreement mechanism, the ultimate interest rate will comprise a margin over the London Interbank Overnight Rate (LIBOR) plus a swap rate which increases based on the term of the loan selected. The swap agreement allows PEU to “fix” its interest costs by essentially converting the loan to a fixed rate. According to Mr. Patterson’s testimony, PEU is thus protected from rising interest rates and, regardless of the maturity date selected, PEU will pay a lower interest rate on the extended debt than it is paying on the existing, maturing loan. Petition at 8. Lastly, Mr. Patterson states the proposed loan arrangement will not require a lien on PEU’s assets, as is currently the case. PEU avers that the proposed loan is in

the public interest because of the lower interest rate, lack of lien, and avoidance of additional financing costs by virtue of extending the loan rather than repaying the existing debt and then refinancing the repayment.

On April 6, 2005, Staff of the Commission (Staff) filed a letter recommending the Commission grant PEU's petition. In support of its recommendation, Staff cited the overall reduction in interest cost for the extended financing, and the use of the swap agreement that will provide PEU with protection from expected rising interest rates. In addition, Staff noted that, since Bank of America will not require a continuation of the existing lien on PEU's assets, PEU will have enhanced flexibility when it seeks new financing in the near future for new capital investments. Staff stated PEU's capital structure would not change as a result of this financing. Staff believed the financing was consistent with the public interest.

II. COMMISSION ANALYSIS

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this State may issue evidences 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." The New Hampshire Supreme Court has further provided that the public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates to insure the public good is protected. See *Appeal of Easton*, 125 N.H. 205, 211 (1984).

We previously found PEU's use of the funds to purchase Consumers New Hampshire Water Company (Consumers) to be consistent with the public interest. See *Pennichuck East Utility, Inc.* 83 NH PUC 222, 223 (1998). According to PEU's petition, the use

of the debt is to continue financing PEU's purchase of Consumers' water system and we see no reason to reverse our earlier public interest finding.

With respect to whether the terms of the proposed financing are consistent with the public interest, PEU states that it has the opportunity to extend the maturity date of the 1998 financing, reduce its overall interest rate on these funds, and create certainty as to its interest costs by use of a swap agreement with its lender, Bank of America. PEU avers that the proposed financing is consistent with the public interest.

PEU proposes to select the extended maturity date prior to closing and since the ultimate interest rate is dependent upon the maturity date selected, PEU can only identify the expected range of the interest rate in its petition. The interest rate includes a margin over LIBOR plus a swap rate, with the swap rate being higher with the length of the term selected. The use of the swap agreement will enable PEU to fix its interest rate and thus make its interest costs certain. In any event, regardless of the maturity date selected, the interest rate range is lower than the existing interest rate of 6.5 percent and PEU will thus realize savings in interest costs which will translate into greater savings to customers. We find these savings consistent with the public interest.

In addition to these cost savings to customers, PEU stresses that, by refinancing this existing loan rather than retiring it, PEU will save issuance costs over a new debt financing in the future. Petition at 8. PEU also indicates that Bank of America's intent not to require a lien on PEU's assets will afford PEU greater flexibility in future financings. Together, PEU avers that these attributes of the proposed financing are consistent with the public interest. In its recommendation letter, Staff also viewed these attributes as consistent with the public interest

and we agree.

Our review of the petition must also consider the possible effect the proposed financing may have on the overall cost of capital to the ratepayers. When PEU first acquired this debt, its capital structure was 60 percent debt and 40 percent equity. See *Pennichuck East Utility, Inc.* 83 NH PUC 222, 223 (1998). According to Staff's recommendation letter, PEU's capital structure has not changed much since 1998 and Staff did not believe the proposed financing would change PEU's capital structure. PEU confirmed their capital structure remained around 60/40 in data response 1-2. Thus, PEU's decision to refinance existing debt at a lower rate can only benefit PEU's ratepayers. In the current environment where interest rates appear to be increasing, retiring the loan with funds from its parent company and seeking new financing later may have resulted in a higher rate on this debt, which is a significant portion of PEU's capital structure. Given the lower interest rate, we are satisfied that this refinancing benefits PEU's ratepayers.

Having reviewed PEU's filing and Staff's recommendation letter, we find that the terms and conditions of the financing are reasonable, that the proposed use of the funds is prudent, and that the financing is consistent with the public good pursuant to RSA 369. Accordingly, we will grant the financing authority requested.

Lastly, to the extent that this order constitutes a modification of Order No. 22,893, we note that the provisions of RSA 365:28 may require notice and an opportunity for a hearing. In order to afford interested parties an opportunity to exercise the due process rights embodied in that statute, we are issuing this decision on a *nisi* basis.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that effective as of the date of this order, Pennichuck East Utility, Inc. is granted authority, pursuant to RSA 369, to refinance its \$4.5 million debt under the terms and conditions as set forth in its filing; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such actions to be no later than April 14, 2005 and to be documented by affidavit filed with the Commission on or before April 28, 2005; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than April 21, 2005 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 April 25, 2005; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 28, 2005, unless Pennichuck East Utility, 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; and it is

FURTHER ORDERED, that Pennichuck East Utility, Inc. shall file true copies of the loan documents executed or otherwise finally issued in connection with the closing of the transactions contemplated hereby no later than 30 days after the date of this order.

By order of the Public Utilities Commission of New Hampshire this seventh day
of April, 2005.

Thomas B. Getz
Chairman

Michael D. Harrington
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary