

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 14-321**

**PENNICHUCK EAST UTILITY, INC.**

**Petition for Authority to Issue Long Term Debt**

**Order *Nisi* Approving Long Term Debt and Granting Motion for Confidential Treatment**

**ORDER NO. 25,758**

**January 21, 2015**

In this order, we approve a petition of Pennichuck East Utility, Inc. (PEU), to take on long-term debt in the form of a \$510,000 loan from the Drinking Water State Revolving Loan Fund, to fund investments in capital assets used by PEU in service to customers. The Commission finds the terms and uses of the debt to be reasonable, prudent, and consistent with the public good.

**I. BACKGROUND**

PEU is public utility providing retail water service to approximately 6,950 customers in the New Hampshire towns of Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare and Windham. PEU is wholly-owned by Pennichuck Corporation (Pennichuck), which in turn is wholly-owned by the City of Nashua.

On November 17, 2014, PEU filed a petition seeking authority, pursuant to RSA 369:1, to borrow \$510,000 from the Drinking Water State Revolving Fund (SRF),<sup>1</sup> to fund its investment in long-term capital assets needed to serve its customers in the company's W&E

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<sup>1</sup> The SRF was created under the federal 1996 Amendments to the Safe Drinking Water Act and is administered by the New Hampshire Department of Environmental Services (DES).

Community Water System (W&E) in Windham, New Hampshire. To address problems with chronic leakage and frequent pipe failures, PEU will use those funds to complete the W&E water main replacement project. The project will replace approximately 8,800 linear feet of substandard 2-inch polyethylene pipe with 4, 6, and 8-inch PVC water main, main-to-stop sections of services, and other appurtenances.

In support of its petition, PEU filed the testimony of John J. Boisvert, Chief Engineer, and Larry D. Goodhue, Chief Financial Officer. The petition and subsequent docket filings, other than any information for which confidential treatment is requested or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-321.html>.

The proposed SRF loan will supplement a \$550,000 loan from the SRF that the Commission approved last year in DW 14-020. *Pennichuck East Utility, Inc.*, Order No. 25,650 (April 15, 2014). The terms of the proposed debt are identical to the terms approved in DW14-020 except for the amount borrowed. If the proposed debt is approved by the Commission, PEU will borrow a total of \$1,060,000 at an interest rate of 2.72%, for a term of 20 years. The repayment period will begin six months after the W&E project is completed.

PEU learned about the availability of additional 2014 SRF funds after seeking approval for the loan in DW 14-020. PEU expects the proposed SRF funds will enable it to complete the W&E project in one construction season rather than as a multi-phase project, as originally proposed in DW 14-020. PEU expects to realize some savings by combining the two or more project phases into one, including reduced bidding, engineering, and administrative and overhead expenses. Also, by securing the additional SRF funds at the 2014 interest rate of 2.72% rather

than the 2015 interest rate of 3.392%, PEU will realize cost savings of approximately \$41,000 in interest payments over the term of the loan.

The SRF debt proposed by PEU will not be secured by any assets of the Company, but Pennichuck, PEU's parent, will provide an unsecured corporate guarantee of repayment. PEU's and Pennichuck's Boards of Directors approved the proposed debt, as did the City of Nashua as shareholder of Pennichuck.

With its petition, PEU also filed a Motion for Confidential Treatment, which seeks protection of certain confidential bid information included in an attachment to Mr. Boisvert's testimony. PEU asserts that the itemized contractor bids received for the W&E project are "confidential, commercial, or financial information" exempt from public disclosure under RSA 91-A:5, IV, as disclosure would constitute an invasion of privacy. PEU states that disclosing this information would cause competitive harm to the Company, "and potentially have a detrimental effect on the Company's competitive bidding efforts in the future ... in ways that would increase costs to be borne by customers." Motion at 1. PEU states further that the information for which it seeks protection is not publicly available. Motion at 1.

## **II. STAFF RECOMMENDATION**

On January 8, 2015, Commission Staff (Staff) filed a letter recommending approval of PEU's petition. Staff considers the terms and conditions of the proposed financing reasonable. Staff views the proposed use of the funds as consistent with PEU's duty to provide reasonably safe, adequate, just and reasonable service. RSA 374:1.

Staff also supports PEU's motion for confidential treatment. Staff agrees with PEU that the W&E project bidding information falls within the scope of RSA 91-A:5, IV, which protects

“confidential, commercial or financial information.” Staff further agrees with PEU that disclosure of this confidential information could cause competitive harm to the Company and the contractors who bid for the project, which harm could result in increased costs to PEU’s customers. Staff recommends that the Commission approve PEU’s motion.

### **III. COMMISSION ANALYSIS**

#### **A. Motion for Confidential Treatment**

We agree with PEU and Staff that the bidding information included as an attachment to Mr. Boisvert’s testimony constitutes “confidential, commercial, or financial information,” and that the request for protection from public disclosure is consistent with the New Hampshire Right-to-Know law, RSA 91-A:5, IV.

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the category of “confidential, commercial, or financial information” under RSA 91-A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 (August 1, 2014) (citations omitted). Under 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.* Finally, the Commission balances those competing interests and decides whether disclosure is appropriate. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009).

The Commission routinely protects competitive bid information. *See e.g., Aquarion Water Company of New Hampshire, Inc.*, Order No. 25, 586 (October 22, 2013). In this case, we

find that the public's interest in reviewing the W&E project bid information is not sufficient to outweigh the benefit derived from maintaining the confidentiality of that information. In addition, disclosure of this non-publically-disseminated information could result in financial harm to PEU, the contractors it does business with, or its customers, and there is no indication that disclosure of the information would inform the public about the workings of the Commission. *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC at 486. Consequently, we grant PEU's motion for confidential treatment.

Consistent with past practice, the protective treatment provisions of this order are subject to the on-going 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.

#### **B. SRF Debt**

Pursuant to RSA 369:1, public utilities engaged in business in this state may issue evidence of indebtedness payable more than twelve months after issuance only if the Commission finds the proposed issuance to be "consistent with the public good." Analysis of the public good involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates. *See 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." *In re PSNH*, Order No. 25,050, 94 NH PUC 691, 699 (2009). The Commission views PEU's petition as a routine financing request.

PEU seeks to borrow up to a total of \$510,000 in SRF funds to finance a project it views as necessary to provide safe and adequate service to its customers. SRF funds provide low-cost financing for Safe Drinking Water Act water utility projects, and PEU's proposal to borrow additional SRF money for its W&E project will likely result in savings to customers from lower total project costs. Also, the W&E project will be completed in one construction season rather than two or more. We view this as a positive for the customers who are served by PEU's system.

As requested by PEU and recommended by Staff, we approve PEU's petition. The terms of the proposed SRF debt are identical to SRF debt we approved in 2014 as consistent with the public good. *Pennichuck East Utility, Inc.*, Order No. 25,650 (April 15, 2014). PEU's proposed use of the proposed SRF debt funds, to complete the W&E project at an overall savings to customers from what it originally projected, are appropriate and reflect prudent utility management in service to customers. Accordingly, we conclude that the financings are consistent with the public good.

Our approval of the petition is conditioned on the final terms not being substantially different from those proposed in PEU's filing. If any terms vary significantly, we will require PEU to seek additional Commission approval.

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

**ORDERED NISI**, that subject to the effective date below, authority to undertake the financings proposed by PEU, upon the terms and conditions proposed in its petition, is hereby approved; and it is

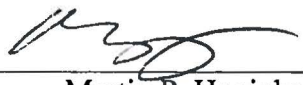
**FURTHER ORDERED**, that the Petitioner shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than January 30, 2015, and to be documented by affidavit filed with this office on or before February 17, 2015; and it is

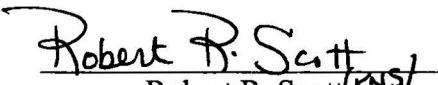
**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than February 6, 2015, for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than February 13, 2015; and it is

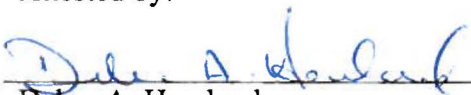
**FURTHER ORDERED**, that this Order *Nisi* shall be effective February 20, 2015, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of January, 2015.

  
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Martin P. Honigberg  
Chairman

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director