

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 16-818

CONCORD STEAM CORPORATION

Petition for Financing Approval and to Waive Requirements of Puc 1106.03

Order *Nisi* Approving Petition

ORDER NO. 25,952

October 7, 2016

In this order *nisi*, the Commission approves a petition of Concord Steam Corporation, to borrow \$2,100,000 from Merrimack County Savings Bank, \$500,000 from the Rachel Bloomfield Trust, and to waive the requirements of N.H. Code Admin. Rules Puc 1106.03 to allow the company to incur short term debt in excess of the 10% threshold. The company will use the proceeds to retire an existing line of credit of \$1,200,000 with TD Bank, and to support its working-capital needs during its expected last year of service in 2016-2017. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission's determination and have the opportunity to request a hearing prior to the effective date of the order.

I. PROCEDURAL BACKGROUND

Concord Steam Corporation (Concord Steam) is a public utility that provides steam service primarily to commercial and institutional customers in Concord. On September 9, 2016, Concord Steam filed a petition requesting approval to borrow an additional \$900,000 in short term debt, pursuant to RSA 369:7, and to waive Concord Steam's short-term debt limit of 10% of Concord Steam's net fixed plant established by N.H. Code Admin. Rules Puc 1106.03.

Concord Steam also requested that the Commission grant retroactive approval for its past long-

term debt borrowings of up to \$500,000, pursuant to RSA 369:1 *et seq.*, from the Rachel Bloomfield Trust. Concord Steam included accounting schedules and the testimony of its President, Peter Bloomfield, P.E., in support of its petition. Staff filed a recommendation regarding this petition on September 20, 2016. *See* Recommendation of Stephen Frink, September 20, 2016. There were no intervenors.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-818.html>

II. POSITIONS OF THE PARTIES

A. Concord Steam

In his testimony, Mr. Bloomfield stated that Concord Steam is seeking an increase in its short-term line of credit amount in order to prepare for the upcoming heating season and to meet the financial obligation necessary to do so. Bloomfield Testimony at 3. The increase in question, \$900,000 (from \$1,200,000 to \$2,100,000) would be secured through a new lender, Merrimack County Savings Bank, which would lend \$2,100,000 to Concord Steam as a revolving line of credit. *Id.* This line of credit would have an interest rate of Prime (currently 3.5%) plus 2%, resulting in a current rate of 5.5%. Merrimack County Savings Bank would charge a commitment fee of 1% on the credit line amount, equaling \$21,000. The line of credit is to be paid in full and closed on or before May 31, 2017, and includes personal guarantees from Concord Steam's owners, Peter Bloomfield and Mark Saltsman. Bloomfield Testimony at 3-4. Mr. Bloomfield stated that Merrimack County Savings Bank offered better terms for this expanded line of credit than Concord Steam's current short-term lender, TD Bank, and that a

portion of the proceeds of the Merrimack County Savings Bank loan would be used to pay off the TD Bank line of credit in full. Bloomfield Testimony at 4-5. Mr. Bloomfield stated that the Commission should approve the short-term financing because it is in the best interest of Concord Steam and its customers. According to Mr. Bloomfield, a \$900,000 increase in the line of credit would allow Concord Steam to meet the cash requirements necessary to get ready for the upcoming heating season. *Id.* Concord Steam, in its petition, acknowledged that approval of the \$2,100,000 short-term debt limit would require that the Commission waive the 10% of net plant value cap of N.H. Code Admin. Rules Puc 1106.03 on such debt, but stated that Commission approval of the waiver would be in the public interest under the current circumstances. Concord Steam Petition at 2-3.

Mr. Bloomfield also referenced, and Concord Steam provided in its petition, adjusted schedules related to its capital structure, journal entries for pro forma financial statements, and other technical accounting matters derived from the expected financing approvals. Bloomfield Testimony at 5-6.

Regarding the Rachel Bloomfield Trust borrowings, Mr. Bloomfield conceded that beginning in 2012, Concord Steam “has had to borrow funds from the Rachel Bloomfield Trust ... to meet short term cash requirements.” Bloomfield Testimony at 5. Mr. Bloomfield stated that Concord Steam owed \$500,000 to the Rachel Bloomfield Trust as of June 30, 2016, without any interest being charged on the balance, and requested that the Commission grant retroactive approval of this long-term debt. *Id.*

B. Staff

In his September 20, 2016 Recommendation, Assistant Director Stephen Frink of the Commission's Gas & Water Division, recommended that the Commission approve the Merrimack County Savings Bank line of credit for \$2,100,000; the \$900,000 increase in Concord Steam's short-term borrowing limit; the waiver of Puc 1106.03; and, retroactively, the long-term borrowings from the Rachel Bloomfield Trust, with conditions. Staff Recommendation of Stephen Frink, September 20, 2016, at 4.

In addition to a technical overview of the terms of the borrowings, Mr. Frink delineated the public-interest reasons for approving Concord Steam's petition. Specifically, Mr. Frink pointed out that Concord Steam had borrowed to its short-term borrowing limit with its TD Bank existing line of credit, and that, in the current transitional period towards likely decommissioning in 2017, Concord Steam's revenues continue to lag expenses. Staff Recommendation at 2-4. In these circumstances, Mr. Frink stated that an increase in the short-term borrowing limit was necessary for Concord Steam's ability to fund its operations during the upcoming 2016-2017 winter. Staff Recommendation at 4.

Mr. Frink further recommended that any retroactive approval of the Rachel Bloomfield Trust long-term borrowings be made on two conditions: (i) that Concord Steam not pay any interest on the loan; and (ii) that all other debt must be retired prior to repayment. Staff Recommendation at 4. Mr. Frink stated that, with these conditions, retroactive approval of this loan would be in the public interest, because it would limit the need for additional financing for Concord Steam, and would limit associated costs that would have a negative impact on Concord Steam's rates. *Id.* Mr. Frink's recommendation provided a narrative description of the discovery

of the Rachel Bloomfield Trust unapproved borrowing through Commission Audit Staff review and Staff discovery efforts, and noted that the written terms of the borrowing instrument specified a 6% interest rate and payment on demand of the Rachel Bloomfield Trust. Staff Recommendation at 2-4. Mr. Frink, in light of the emergency circumstances surrounding Concord Steam, did not recommend imposing a fine or penalty on Concord Steam for its apparent violation of the reporting requirements of RSA 369:1 *et. seq.* Staff Recommendation at 4-5.

III. COMMISSION ANALYSIS

RSA 369:7 states that “[n]o public utility engaged in business within this state shall issue or renew any notes, bonds, or other evidences of indebtedness payable less than 12 months after the date thereof, except as provided in this section, by rules adopted by the commission, or by specific order of the commission in an individual case.” RSA 369:7 further states that “[i]n establishing the amounts of the notes, bonds, and other evidences of indebtedness which the utility is permitted to issue or renew without prior commission approval, the commission shall consider the size, circumstances, and other characteristics of each utility, and other evidences of indebtedness, and the time period and manner for reporting such renewals to the commission.” RSA 369:7.

Puc 1106.03, governing steam utilities such as Concord Steam, states: “[n]o utility shall issue or renew any notes, bonds, or other evidences of indebtedness payable less than 12 months after the date thereof if said short term debt exceeds 10% of the utility’s net fixed plant without prior commission approval pursuant to Puc 201.05.” Under Puc 201.05(a), the Commission may waive a rule if it finds that the waiver is in the public interest and that it will not disrupt the

orderly and efficient resolution of matters before the Commission. Based on the circumstances described by Concord Steam in its petition, and the totality of the circumstances of this case, the Commission finds that granting of the waiver of the short-term debt limit in Puc 1106.03, and the approval of the financings in question, is consistent with those requirements.

As discussed in our recent Order No. 25,947 issued on September 28, 2016, in Concord Steam's emergency rate and termination of service proceeding (Docket No. DG 16-769), Concord Steam has elected to seek termination of its service on or about May 31, 2017, due to its drastic financial and business position. Order No. 25,947 at 3-5. There is a need for increased working capital by Concord Steam as it works toward its proposed decommissioning, on more favorable financing terms. The Merrimack County Savings Bank is offering more favorable terms to Concord Steam with this expanded line of credit. Such circumstances can reasonably cause a utility to exceed the 10% limit on short-term debt of Puc 1106.03.

Having considered Concord Steam's request, we find that the waiver of the short-term debt limit is in the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. We therefore approve the line of credit of up to \$2,100,000 at Merrimack Savings Bank pursuant to the terms outlined in the petition.

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 upon the circumstances of the request. As we have 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 Co. of N.H.*, Order No. 25,050 (December 8, 2009) at 14, cited in *Hampstead Area Water Company, Inc.*, Order No. 25,930 (July 29, 2016), at 3.

The proposed financing provided by the Rachel Bloomfield Trust is routine in nature, and thus we engage in a more limited *Easton* review. *Public Service Co. of N.H.*, Order No. 25,050 at 13-14. Routine requests have no discernible impact on rates or deleterious effect on capitalization, and enable appropriate investments in the ordinary course of utility operations. A routine request calls for an 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; and RSA 369:4 (finding of public good required for approval of long-term public utility debt).

We do not expect Concord Steam’s borrowing from the Rachel Bloomfield Trust to have a discernible impact on rates or a deleterious effect on capitalization. We do, however, concur with Staff that, in light of Concord Steam’s failure to secure prior approval for this borrowing and the emergency financial circumstances of Concord Steam, equity and the public interest demand that Concord Steam (i) not pay any interest on the Rachel Bloomfield Trust Loan, and (ii) all other Concord Steam debt must be retired prior to repayment of the Rachel Bloomfield

Trust loan. Furthermore, as Concord Steam is expecting to terminate its public utility status in the near future, we would expect that the company will make all regulatory filings, for financings or otherwise, on a timely advance basis during this transitional period.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, that Concord Steam may borrow \$2,100,000 from Merrimack County Savings Bank in a revolving line of credit, and \$500,000 from the Rachel Bloomfield Trust, and the subject petition and waiver request (pursuant to N.H. Code Admin. Rules Puc 201.05) are hereby GRANTED, subject to the terms delineated in this Order *Nisi*; and it is

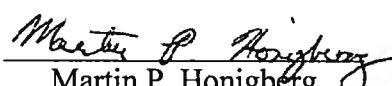
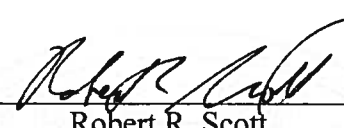
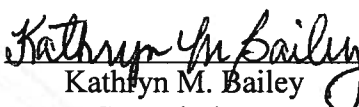
FURTHER ORDERED, that Concord Steam shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than October 13, 2016, and to be documented by affidavit filed with this office on or before October 19, 2016; 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 October 17, 2016, for the Commission's consideration; and it is

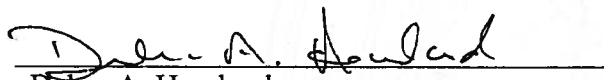
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 18, 2016; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 19, 2016, unless Concord Steam 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 seventh day of October, 2016.

 Martin P. Honigberg Chairman	 Robert R. Scott Commissioner	 Kathryn M. Bailey Commissioner
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Attested by:


Debra A. Howland
Executive Director