

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 19-090

NORTHERN UTILITIES, INC.

Petition for Authority to Issue Securities

Order Approving Financing Petition

ORDER NO. 26,269

July 2, 2019

This order approves Northern's request to borrow up to \$50 million and to issue corresponding unsecured long-term debt securities. Northern intends to use the money to pay off short-term debt the Company incurred to complete capital projects.

I. BACKGROUND

Northern Utilities, Inc. (Northern or the Company), is a public utility that supplies natural gas in Maine and in the seacoast region of New Hampshire. The Company's New Hampshire Division serves approximately 34,000 customers. Northern filed a petition on May 10, 2019, pursuant to RSA 369:1, seeking Commission approval to borrow up to \$50 million from institutional investors. Northern proposed to issue promissory notes with a long-term maturity of up to 30 years and a coupon rate not to exceed 5.50 percent. Northern projected financing costs of \$375,000 if it borrows the full \$50 million.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2019/19-090.html>.

II. POSITIONS OF THE PARTIES

A. Northern

1. Financing

Northern supported its petition with the pre-filed testimony of Todd R. Diggins, Director of Finance for Unutil Service Corp., which like Northern, is a subsidiary of Unutil Corporation. *See* May 10, 2019, Testimony of Todd R. Diggins at Bates Page 7.¹ As stated above, Northern's request is to incur up to \$50 million in long-term debt. If its request is approved, Northern will issue and sell up to \$50 million in institutional investor senior notes evidencing unsecured long-term debt with a maturity of up to 30 years at interest rates no higher than 5.50 percent. *Id.* at 8, 10. Northern intends to sell the notes directly to institutional investors. *Id.* at 10.

Mr. Diggins stated that Northern will use the loan proceeds to repay outstanding short-term debt. *Id.* at 12. The Company's short-term borrowings were \$58.2 million as of December 2018. *Id.* at 9. In New Hampshire and Maine, Northern collectively spent \$64.3 million on distribution system capital expenditures from November 2017 through December 2018. The Company also has \$61.4 million of capital expenditures budgeted for calendar year 2019. *Id.* at 9, 17; *see also* Order No. 26,003 (April 10, 2017). Funding to meet capital expenditures is derived primarily from internally generated funds, which consist of net cash flows including depreciation from operating activities. Northern supplements internally generated funds through short-term borrowings. When the Company's short-term balance builds to sufficient levels, it seeks long-term financing to reduce short-term debt and match long-term utility lives with long-term funding. *Id.* at 9.

¹ All citations to Mr. Diggins' testimony are to Bates numbered pages.

Mr. Diggins stated that with the reduction of short-term debt, the Company will have a stronger balance sheet to finance its ongoing capital construction program. *Id.* at 12. The proposed financing would change Northern's weighted cost of long-term debt, which is now 5.46 percent, to 5.49 percent. *Id.* at 13. Northern expects a favorable reception by the private placement market for its proposed debt issuance. *Id.* at 14. Mr. Diggins estimated that approximately \$375,000 in financing and issuance-related costs will be incurred. *Id.* at 13.

2. Motion for Confidential Treatment

Northern also filed a Motion for Confidential Treatment, seeking a protective order for the letter of agreement (Placement Agreement) between the Company and its placement agent, BofAS Securities, Inc., which was selected to participate in the securities offering. The Placement Agreement memorializes the compensation arrangements between the placement agent and Northern in connection with the issuance of the debt associated with this financing. Northern requested confidential treatment and protection of the Placement Agreement from public disclosure under RSA 91-A:5, IV, which exempts from disclosure records relating to "confidential, commercial or financial information." Northern requested confidential treatment of that agreement as part of its submission pursuant to NH Code Admin. Rules Puc 203.08. Northern noted that the Placement Agreement includes confidential information which, if disclosed, may put Northern's placement agent at a competitive disadvantage by divulging the terms and conditions for the work the agent was awarded. Northern maintained that divulging the contents of the Placement Agreement would adversely affect Northern because placement agents would be discouraged from working with the Company if doing so would result in the release of confidential business information in future financings.

B. Staff

Commission Staff (Staff) filed a memorandum recommending that the Commission approve Northern's request. *See* Memorandum of David Goyette, Utility Analyst, Gas and Water Division, to Executive Director Debra A. Howland and Commissioners, dated June 24, 2019. After a thorough review of Northern's filing and responses to data requests, Staff calculated that the proposed financing would result in no change in Northern's debt-to-equity ratio, which is 53 percent debt and 47 percent equity. *Id.* Staff stated that the Company anticipates all-in coupon rates ranging from 4.30-4.50 percent for notes with a 30-year maturity, with a stated maximum interest rate of 5.50 percent. Staff considered the amount and cost of Northern's proposed financing to be reasonable and the proposed terms to be consistent with entities that have similar credit ratings. Staff concluded that the financing would have only a slight impact on Northern's weighted average cost of capital, from 7.05 percent to 7.32 percent. Staff characterized Northern's request as "routine," verified the proposed use of funds to be appropriate, and recommended approval on the condition that Northern provide updates on the final amount of the issuance, pricing parameters, and the coupon rate once those are established and following closing and funding. *Id.*

III. COMMISSION ANALYSIS

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 on the circumstances of the request. We engage in a more limited review for routine financing requests. *Public Service Co. of N.H.*, Order No. 25,050 at 13-14 (December 8, 2009). A routine request is one “that will have no discernable 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. A routine request calls for a more limited 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.

We find Northern’s request to be routine. Based on Staff’s investigation, we find that the financing will have no discernable impact on rates and will not adversely affect capitalization. As a routine financing request, we limit our review to whether the “use of the financing proceeds [is] in the public good.” RSA 369:4. We need not examine other possible uses of the money. *Public Service Co. of N.H.*, Order No. 25,050 at 16. Replacing short-term debt with the proposed long-term financing will provide benefits to Northern and its customers. Northern’s balance sheet will improve, and customers will see essentially no change in rates. We find Northern’s intended use of the financing proceeds to be in the public good.

We also agree with Northern that the information included in the Placement Agreement between the Company and BofAS Securities, Inc., 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. RSA 91-A provides each citizen

the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here by Northern for “confidential, commercial, or financial information.” RSA 91-A:5, IV. We have had numerous occasions to rule on motions for confidential treatment in the context of confidential, commercial, and financial information. *See, e.g., Northern Utilities, Inc.*, Order No. 26,003 (April 10, 2017); *Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012); *Public Service Co of New Hampshire*, Order No. 25,332 (February 6, 2012); *National Grid USA, et al.*, Order No. 25,370 (May 30, 2012); *National Grid USA et al.*, Order No. 25,400 (August 21, 2012).

Following the approach used in those cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008). First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. 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. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* We will analyze each category of information for which protective treatment is requested in turn.

Northern argues that the information for which it seeks protective treatment constitutes “confidential, commercial, or financial information” under RSA 91-A:5, IV, and that disclosure will not provide the public with information about the conduct or activities of the Commission or other parts of New Hampshire state or local government. We are persuaded that the information

contained in Northern's Letter Agreement with BofAS Securities, Inc., constitutes competitively sensitive information that should not be disclosed. That document contains highly sensitive compensation information between the placement agent and the Company. Public disclosure of that information could pose substantial harm to the competitive position of Northern as well as placement agents who market their services on a competitive basis to Northern and other companies desiring to issue and sell senior debt securities in the capital markets. *See, e.g., Union Leader Corp. v. N.H. Public Finance Auth.*, 142 N.H. 540, 554 (1997). The Commission routinely protects competitive pricing information. *See, e.g., Aquarion Water Company of New Hampshire, Inc.*, Order No. 25, 586 (October 22, 2013) (protecting hourly billing rate from public disclosure). Moreover, the document does nothing to provide the public with information about the conduct or activities of its government for it describes the payment relationships between purely private parties to the transaction.

We find that public disclosure of the information may legitimately affect Northern's ability to work with the most capable and cost-efficient securities placement agents in the financial markets in which Unital's securities are traded. Disclosure of that information will not materially advance the public's understanding of the Commission's analysis in this proceeding and could result in financial or competitive harm. We therefore find the Letter Agreement exempt from disclosure under RSA 91-A:5 IV and grant the motion for confidential treatment.

To the extent that information for which protection is granted is released or made public by Northern at a later time, that information would no longer be subject to protective treatment. *See* N.H. Code Admin. Rules Puc 203.08(1). Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff, or on the

motion of any member of the public, to reconsider our determination in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

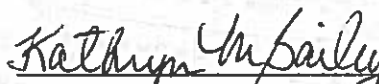
ORDERED, that Northern's petition to borrow up to \$50 million in long-term debt at an interest rate of not more than 5.50 percent, is hereby **APPROVED**; and it is


FURTHER ORDERED, that the Motion for Confidential Treatment and request for confidential treatment of the placement agreement is **GRANTED** as set forth above; and it is

FURTHER ORDERED, that Northern shall submit updated financial statements and pricing information to Commission Staff once the pricing parameters are established.

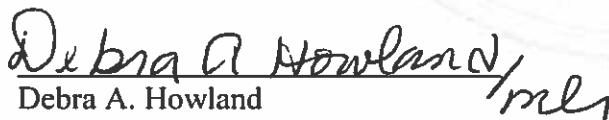
By order of the Public Utilities Commission of New Hampshire this second day of July, 2019.


Martin B. Honigberg
Chairman


Kathryn M. Bailey
Commissioner


Michael S. Giaimo
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Attested by:


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