

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 23-040

PENNICHUCK WATER WORKS, INC.

**Petition for Approval to Renew and Extend
its Fixed Asset Line of Credit with TD Bank, N.A.**

Order *Nisi* Approving Financing

ORDER NO. 26,827

May 25, 2023

Pennichuck Water Works, Inc. (PWW, or the Company) requests approval to renew and extend its current fixed asset line of credit (FALOC) with TD Bank, N.A. (TD Bank), which is set to expire on June 30, 2023. The Commission authorizes PWW to renew and extend its FALOC in the amount of \$12,000,000 for two years.

I. BACKGROUND AND PROCEDURAL HISTORY

PWW provides water service to customers in communities in the Seacoast and Merrimack Valley areas in southern New Hampshire. On March 29, 2023, PWW filed a petition for approval to renew and extend its current FALOC with TD Bank in the amount of \$12,000,000 for two years. The proposed renewal and extension of PWW's line of credit will be used to fund cash flow needs associated with capital project investments. Those investments will be repaid through the issuance of tax-exempt bonds, taxable bonds, or bond anticipation notes through the annual Qualified Capital Project Adjustment Charge (QCPAC) process each calendar year. Petition at BP 3, ¶4.

DOE filed a technical statement recommending approval of the petition on May 16, 2023. The Office of the Consumer Advocate did not submit an appearance in this docket, and no petitions to intervene were filed.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at www.puc.nh.gov/Regulatory/Docketbk/2023/23-040.html.

II. POSITIONS OF THE PARTIES

A. PWW

1. Renewal and Extension of FALOC

PWW seeks to renew and extend its current FALOC with TD Bank, N.A. in the amount of \$12,000,000 for two years, until June 30, 2025. No other terms will be changed as a result of the petition. Petition at BP 3, ¶3. The proposed line of credit will be used to fund cash flow needs associated with capital project investments during the calendar year, to be repaid in its entirety annually with the issuance of tax-exempt bonds, taxable bonds, or bond anticipation notes in conformity with the annual QCPAC process for used and useful projects each calendar year. Petition at BP 3, ¶4. The proposed FALOC extension will include a first security interest in the accounts receivable and inventory of PWW, as well as a pledge of PWW's stock and an assignment of rights under the Pennichuck Money Pool Agreement and Cost Allocation Agreement. Petition at BP 3, ¶5. The FALOC will be cross-defaulted with all debt obligations of PWW, as well as the line of credit with TD Bank through Pennichuck Corporation. *Id.* See also Testimony of George Torres at BP 16, lines 16-22, and Exhibit GT-8 at BP 40. The underlying market interest rate in the FALOC has been converted from a 30-day LIBOR¹ to a SOFR,² as the LIBOR rate ceased to be available as of February 28, 2023. Petition at BP 3, ¶5. The FALOC renewal will have a one-time

¹ London Inter-Bank Offering Rate.

² Secured Overnight Financing Rate.

up-front renewal fee of \$12,000 due upon closing. PWW anticipates the cost of issuance to be approximately \$8,000 to \$15,000 for legal costs. Id.

PWW avers that renewal of its FALOC is consistent with the public good because it will allow for the short-term financing of necessary capital construction projects, which will be replaced with long-term debt financing at favorable interest rates and maturities aligned with the useful lives of the funded capital assets, to the long-term benefit of PWW's ratepayers. Petition at BP 7, ¶11. According to PEU, its request qualifies as a 'routine financing' that will not have a significant impact on 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. Petition at BP 8, ¶12. As noted in Schedule GT-4A, attached to the Testimony of George Torres in the Petition filing, there will be no immediate impact on customer rates until the next annual QCPAC surcharge is implemented. See Petition at BP 8, ¶12; Testimony of George Torres at BP 20, and Schedule GT-4A (Projected Rate Impact on Single Family Residential Home) at BP 26, lines 6-12. Finally, the proposed renewal has been approved by the Board of Directors of both PWW and Penn Corp, as well as by the City of Nashua through Resolution R-23-109, filed by PWW on April 19, 2023. Petition at BP 34-35 and BP 45.

2. Motion for Protective Order and Confidential Treatment

PWW asserted that 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. Motion at BP 42, ¶5. PWW further stated that the terms and conditions remain subject to negotiation, the terms have not been finalized, and TD

Bank provided the documentation to PWW marked confidential with the understanding that they remain confidential. Motion at BP 42, ¶7.

B. DOE

1. Renewal and Extension of FALOC

Based on its review of PWW's filings, including responses to discovery requests, DOE concluded that the extension of the FALOC to provide cash flow needs associated with capital projects until the annual conversion to long-term debt is an appropriate use of funds. DOE determined that, to the extent PWW was able to provide an estimate, the anticipated net impact on rates of \$0.39 per month will be negligible. DOE Technical Statement at BP 3. DOE further found that the proposed financing will not dilute PWW's current capital structure, which consists primarily of debt. Accordingly, DOE recommended approval of PEU's petition as consistent with the public good pursuant to RSA 369:1. DOE Technical Statement at BP 1-3.

2. Motion for Protective Order and Confidential Treatment

DOE did not submit a 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.

PWW stated that the proposed renewal of its existing \$12,000,000 FALOC with TD Bank will be used to provide the necessary cash flow, on a short-term basis, to fund the Company’s capital projects during each calendar year, and will be repaid on an annual basis through refinancings. PWW anticipates the net impact of the renewed line of credit on rates will be negligible and will not dilute the Company’s capital structure.

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. We further concur with DOE’s assessment that the proposed financing will have little to no impact on PWW’s overall capital structure, and that the projected net impact on the average single-family residential bill will be

negligible. Accordingly, based on the record, the Commission finds the proposed refinancing to be reasonable.

We conclude that approval of the proposed financing will permit PWW to provide safe and adequate service to its customers, 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 on 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 *nis*i 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 PEU'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 terms and conditions of financing 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 remain subject to satisfactory review and completion of documentation, due diligence, and approval by PWW and TD Bank. Motion at BP 42, ¶5. 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 and "may not be released to or discussed with any third party without the

prior written consent of CoBank.” Motion at BP 42, ¶7. 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.*

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental agencies or “public bodies” such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5. Specifically, RSA 91-A:5, IV exempts several categories of information, including records pertaining confidential, commercial, or financial information. The party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public’s interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof’l Firefighters of N.H. v. Local Gov’t Ctr.*, 159 N.H. 699, 707 (2010)).

The New Hampshire Supreme Court and the Commission each apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 NH 375, 382–83 (2008); *Abenaki Water Company, Inc.*, Order No. 25,840 (November 13, 2015) at 2. Under the balancing test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *See, e.g.*, Order No. 25,840 at 2 (citing *Pennichuck East Utility, Inc.*, Order No. 25,758 at 4 (January 21, 2015)). The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, 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.*

We agree with PWW 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. 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 203.08(a), we grant PWW's motion for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), 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 line of credit with TD Bank in the amount of \$12,000,000 for a term of two years through June 30, 2025, under the terms and conditions presented in its Petition, is hereby GRANTED; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc. 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 Pennichuck Water Works, Inc. shall cause a copy of this order to be published on its website by no later than the close of business on May 26, 2023; noticed through bill inserts in the next billing cycle after the issuance of this order; and 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 June 2, 2023, and to be documented by affidavit filed with this office on or before June 12, 2023; and it is

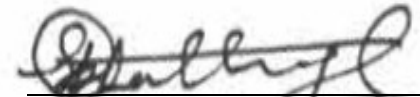
FURTHER ORDERED, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than June 7, 2023, for the Commission's consideration; and it is


FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 13, 2023; and it is

FURTHER ORDERED, that this order shall be effective June 15, 2023, 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-fifth day of May, 2023.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-040

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