

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 17-183

PENNICHUCK WATER WORKS, INC.

Petition for Approval of Bond Financing and Fixed Asset Line of Credit

Order Approving Line of Credit Financing

ORDER NO. 26,121

April 20, 2018

This order approves a petition of Pennichuck Water Works, Inc., to obtain a \$10 million fixed asset line of credit, and accepts the general parameters of a potential \$4 million working capital line of credit to be held by its parent company. This order also grants a motion for confidentiality regarding certain terms and conditions of the financing.

I. PROCEDURAL HISTORY

Pennichuck Water Works, Inc. (PWW or the Company), is a water utility serving customers in the City of Nashua and the Towns of Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Plaistow, and Salem. *See* Order No. 26,101 at 1 (February 2, 2018). PWW is a subsidiary of Pennichuck Corporation (Penn Corp.) and is owned by the City of Nashua. *Id.*

On November 29, 2017, PWW requested approval of two financings: aggregate tax-exempt and taxable bonds and/or bond anticipation notes (Bond Financing) up to \$32.5 million; and a new \$10 million fixed asset line of credit (FALOC) with TD Bank, NA (TD Bank). *Id.* In support of its petition, PWW filed the testimony of its Chief Executive Officer, Larry D. Goodhue (Goodhue Testimony). PWW also filed a “Motion for Protective Order and Confidential Treatment of Business Loan Information” (Confidentiality Motion). The

Confidentiality Motion sought confidential treatment of two items attached to the Goodhue Testimony: the FALOC terms and conditions; and the financing and guarantee agreements with Penn Corp. and TD Bank. *Id.*; Confidentiality Motion at 1, Tab 1.

On December 11, 2017, the Office of the Consumer Advocate (OCA) notified the Commission of its participation on behalf of residential ratepayers pursuant to RSA 363:28. In a Secretarial Letter dated January 18, 2018, the Commission approved PWW's "Motion to Bifurcate Bond Financing and Fixed Asset Line of Credit Approvals" (Motion to Bifurcate) filed eight days prior. The Motion to Bifurcate asked the Commission to rule first on the Company's request for Bond Financing. Staff concurred with the Motion to Bifurcate. That request was approved in Order No. 26,101 (February 2, 2018). On March 23, 2018, Staff recommended approval of the FALOC and PWW's Confidentiality Motion. *See* Staff Recommendation at 1 and 4, Tab 13.

PWW's petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2017/17-183.html>.

II. POSITIONS

A. PWW

PWW requests the Commission's approval of the \$10 million FALOC pursuant to RSA Chapter 369, maintaining it is consistent with the public good. The FALOC will fund capital projects during the calendar year. *See* Petition at 1, 5, and 7, Tab 1. Under the terms of the FALOC, PWW will repay all of the debt incurred annually by issuing tax-exempt bonds, taxable bonds, or bond anticipation notes in accordance with the qualified capital project adjustment charge (QCPAC) process. *Id.* at 3. The FALOC will have an initial two-year term, subject to an annual renewal review by TD Bank in accordance with its customary business

practices. *Id.* at 4; Goodhue Testimony at 11, Tab 1. A 30-day LIBOR interest rate, plus 1.75 percent will apply. PWW must pay a one-time fee of \$25,000 at the time of closing. Petition at 4; Goodhue Testimony at 12, Tab 1. Furthermore, a “commitment fee” equal to 0.25 percent per annum will be charged quarterly on the average unused portion of the FALOC. Petition at 4; Goodhue Testimony at 11-12, Tab 1. The FALOC will be secured by a first security interest in PWW’s accounts receivable and inventory, as well as a pledge of PWW stock. Petition at 4; Goodhue Testimony at 11, Tab 1. In addition, PWW will be required to maintain a Standard & Poor’s bond rating of at least BBB+ to access the FALOC. Goodhue Testimony at 11-12, Tab 1.

After gaining the preliminary endorsement of PWW’s and Penn Corp.’s Boards of Directors, the City of Nashua (the sole shareholder of Penn Corp. and PWW), issued a resolution approving the FALOC on November 13, 2017. Resolution attached to Staff Recommendation, Tab 9.

PWW contends that the proposed FALOC is consistent with the public good for two reasons. First, the financing will allow PWW to complete its current and projected capital projects for the 2017-2019 time period.¹ Petition at 5, Tab 1. Second, the terms of the FALOC are favorable resulting in lower financing costs and annual debt service requirements compared to other currently available debt financing options. *Id.*

B. OCA

OCA filed no response to PWW’s petition or Confidentiality Motion.

C. Staff

Staff recommended approval of PWW’s proposed \$10 million FALOC. *See* Staff Recommendation at 4, Tab 13. In Staff’s view, the proposed FALOC, together with the Bond

¹ These projects are described in PWW’s Petition for Approval of 2017 QCPAC filed in Docket No. DW 17-179.

Financing approved by the Commission, will provide PWW with financing that is favorably aligned with PWW's current capital structure and will allow necessary capital improvements. *Id.* Furthermore, the proposed FALOC integrates well with PWW's current ratemaking structure, including implementation of the QCPAC process. *Id.* Lastly, the planned use of funds from the FALOC for short-term financing of capital projects is appropriate and consistent with PWW's duty under RSA 374:1 to provide reasonably safe and adequate, as well as just and reasonable, service to its customers. *Id.* As set forth further below, Staff supported PWW's Confidentiality Motion.

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. *See 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 at 14 (December 8, 2009), *cited in Lakes Region Water Co., Inc.*, Order No. 25,391 at 20-21 (July 13, 2012), and *Pennichuck East Utility, Inc.*, Order No. 26,117 at 5-6 (March 30,

2018). We engage in a more limited review for routine financing requests. *Public Service Co. of N.H.*, Order No. 25,050 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.

The Commission finds PWW’s request for the proposed FALOC to be routine. The proposal will not have a discernible impact on rates. There is no evidence on the record that suggests the financing will have a deleterious effect on capitalization. In addition, the capital investments to be facilitated by the financing appear to be made in the ordinary course of PWW’s business. Because the request is routine, the Commission will conduct the more limited examination, forgoing the “further review of possible alternative uses of the funds.” *Id.* at 16. As such, the underlying standard is whether the use of the financing proceeds is in the public good pursuant to RSA 369:4.

The FALOC will be used to fund various improvement projects at reasonable financing costs. The capital projects will enable PWW to provide safe, adequate, and reliable water service to its customers. Therefore, we find the proposed financing through the FALOC to be consistent with the public good. The proposal represents an appropriate balancing of PWW and customer interests, and we approve it as filed. We note the financing is consistent with the Commission’s orders approving the City of Nashua’s acquisition of Penn Corp. and PWW’s Integrated Capital Finance Plan.²

Our approval of PWW’s financing does not foreclose or limit our review in a future rate case of the prudence, use, and usefulness of any specific project directly or indirectly financed by these transactions. *See* RSA 378:28. The Commission and Staff also retain the authority,

² *See* Order No. 25,292 (November 23, 2011) (Order approving the City of Nashua’s acquisition of Pennichuck Corporation); Order No. 25,734 (November 7, 2014) (Order approving PWW’s 2014 financing petition); Order No. 26,070 (November 7, 2017) (Order approving PWW’s modified rate structure); Order No. 26,101 (February 1, 2018) (Order approving PWW’s bond financing and fixed line of credit).

under RSA 374:4, to keep informed regarding PWW's use of the proceeds of these financings, independently and apart from any review under RSA 378:28. Such information may be used to consider PWW's capital improvements within the framework of RSA 378:28, and to assist in ongoing monitoring of PWW's financial health and physical plant status. Notwithstanding this financing approval, PWW must continue to manage its capital structure and physical plant prudently.

IV. CONFIDENTIALITY MOTION

The Confidentiality Motion seeks confidential treatment of the TD Bank term sheets and guarantee agreements that PWW filed in support of its request for the FALOC. Confidentiality Motion. Order at 1, Tab 1. PWW asserts that these documents are exempt from public disclosure pursuant to RSA 91-A:5, IV as "confidential, commercial, or financial information." *Id.* at 2. According to PWW, TD Bank has requested that these documents, which contain terms and conditions that are subject to negotiation, remain confidential. *Id.* at 3. PWW argues that disclosure of the documents may affect PWW's ability to negotiate favorable financing terms with lenders. *Id.*

Staff supports PWW's request for protective order. *See* Staff Recommendation at 1 and 5, Tab 13. Staff believes that public disclosure of the terms and conditions would harm PWW and its customers, impairing PWW's ability to effectively negotiate debt financing with lenders. This would be especially problematic given PWW's dependence on debt financing to fund most of its capital improvement and working capital needs. *Id.*

The Commission applies a three-step balancing test to determine whether documents should be kept from disclosure as "confidential, commercial, or financial information" under RSA 91A:5, IV. *Northern Utilities, Inc.*, Order No. 25,700 at 6 (August 1, 2014) (citing *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008)); *Sprint Communications Co. L.P.*,

Order No. 25,607 at 2 (December 19, 2013). Applying this 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 must balance “those competing interests and decide whether disclosure is appropriate.” *Id.* (citing *Lambert*, 157 N.H. at 383).

We find that disclosure of the FALOC’s terms could result in a competitive disadvantage for PWW in future financings, thus signaling a present privacy interest. Furthermore, there is little if any indication of public interest in this information. Therefore, applying the balancing test proscribed, we grant the Confidentiality Motion. Consistent with past practice, 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 Staff, any party, or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

V. PENNICHUCK CORPORATION WORKING CAPITAL LINE OF CREDIT

Penn Corp. is concurrently negotiating with TD Bank to replace and reduce its own \$10 million line of credit with a \$4 million Working Capital Line of Credit. Staff Recommendation at 5-6, Tab 13. PWW and Penn Corp. seek authority to grant TD Bank the subrogation/substitution rights of Penn Corp’s interest in the Pennichuck Money Pool Agreement³ if Penn Corp. defaults. Staff views the Penn Corp. proposal as a constructive step towards balancing the regulated subsidiaries’ access to required working capital with the parent company’s potential financing burden, while satisfying TD Bank’s security requirements. We agree and approve the proposal.

³ The Pennichuck Money Pool Agreement was executed as of January 1, 2006, by the members of the Pennichuck consolidated group consisting of Penn Corp., PWW, Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Pennichuck Water Service Corporation, and The Southwood Corporation. The purpose of the Money Pool Agreement is to provide a mechanism whereby excess cash in any of the respective companies is moved into a consolidated account. Any of the companies experiencing a temporary shortage of cash may access this account and withdraw a short-term loan. A copy of the Pennichuck Money Pool Agreement was attached to Staff’s Recommendation.

Based upon the foregoing, it is hereby

ORDERED, that authority to undertake the proposed financing, under the terms and conditions contained in PWW's petition, and for the purposes as outlined herein, is hereby **APPROVED**; and it is

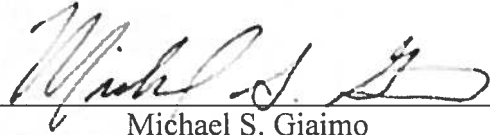
FURTHER ORDERED, that PWW's Motion for Protective Order is hereby **APPROVED**; and it is

FURTHER ORDERED, that Pennichuck Corporation may pursue the \$4 million Working Capital Line of Credit as described in Staff's Recommendation.

By order of the Public Utilities Commission of New Hampshire this twentieth day of April, 2018.



Martin P. Honigberg
Chairman



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES- DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11(a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.