

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-019

NORTHERN UTILITIES, INC.

Petition for Authority to Issue Securities

Order *Nisi* Approving Financing Petition

ORDER NO. 26,003

April 10, 2017

In this order, the Commission approves Northern's request to incur up to \$75 million in long-term debt. Northern will use the money to pay off short-term debt incurred to complete capital projects. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission's order and have the opportunity to request a hearing prior to its effective date.

I. BACKGROUND

Northern Utilities, Inc. (Northern or the Company), is a public utility that supplies natural gas in the State of Maine and in the seacoast region of New Hampshire, serving approximately 31,000 in its New Hampshire Division. Northern filed a petition on February 1, 2017, pursuant to RSA 369, seeking Commission approval to borrow up to \$75 million from institutional investors; and to issue promissory notes with terms of 10 and 30 years at coupon rates not to exceed 5.50 percent, with projected financing costs of \$537,000 if the full \$75 million is borrowed. The Office of Consumer Advocate filed a notice of participation pursuant to RSA 363:28. 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://www.puc.nh.gov/Regulatory/Docketbk/2017/17-019.html>.

II. POSITIONS OF THE PARTIES

A. Northern

Northern supported its petition with the pre-filed testimony of David L. Chong, the Director of Finance and Assistant Treasurer for Unutil Service Corp., a subsidiary of Unutil Corporation that provides support services to Northern. *See* February 1, 2017, Testimony of David L. Chong at Bates page 1. Northern seeks approval to issue and sell up to \$75 million in senior notes evidencing unsecured long-term debt with a mix of maturities between 10 and 30 years at interest rates no higher than 5.5 percent. *Id.* at 2, 5-6. Northern intends to sell the notes directly to institutional investors. *Id.* at 4, 8-9.

Mr. Chong stated that Northern will use the proceeds of the requested long-term loans to pay off its outstanding short-term debt with any excess cash used for general corporate purposes, including refinancing of \$10 million of sinking fund retirements in 2017. *Id.* at 4. The Company's short-term borrowings were \$37 million as of December 2016. *Id.* Northern has spent \$112 million on distribution system capital expenditures from October 2014 through December 2016 since its last financing in October 2014. *See* Order No. 25,670 (May 23, 2014). The resources needed to meet capital expenditures are 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 the short-term debt. Chong testimony at 3.

Mr. Chong described the benefits of the proposed financing as follows: By paying off short-term debt that was incurred to pay for long-term projects, the proposed financing would better match Northern's debt with the long-term nature of the corresponding assets. *Id.* The

proposed financing would also lower Northern's weighted cost of long-term debt, which is now 6.16 percent, to 5.96 percent. *Id.* at 7. The Company's net debt-to-net capitalization ratio would remain at 53.8 percent. *Id.* at 6. Northern expects a favorable reception by the private placement market for its proposed debt issuance. *Id.* at 8-9. Mr. Chong estimated that approximately \$537,500 in financing and issuance-related costs will be incurred. *Id.* at 7-8.

Northern filed a Motion for Confidential Treatment, seeking a protective order for certain unaudited financial statements filed with its petition.¹ As part of its response to Staff's data requests, Northern submitted a copy of a letter agreement with its placement agents who will be handling the offering. That letter agreement memorializes the compensation arrangements between and among the placement agents and Northern in connection with the issuance of the debt associated with this financing. Northern requested confidential treatment of that agreement as part of its submission, and filed a motion for protection of the documents from public disclosure under RSA 91-A:5, IV, on April 10, 2017. *See* NH Code Admin. Rules Puc 203.08(e).

B. Staff

Commission Staff (Staff) filed a letter recommending that the Commission approve Northern's request. *See* Letter of Stephen P. Frink, Assistant Director, Gas and Water Division, to Executive Director Debra A. Howland, dated March 17, 2017. After a thorough review of Northern's filing and responses to data requests, Staff calculated that the proposed financing would result in a change in Northern's debt-to-equity ratio from 54:46 to 59:41. *Id.*

Staff concluded that the financing would have a minimal impact on Northern's weighted average cost of capital (currently 7.22 percent) and the pro forma change in the debt-to-equity

¹ The Company filed a motion withdrawing the request for confidential treatment of this information on April 6, 2017.

ratio is identical to that resulting from the approval of Northern's debt issuance in Order No. 25,068 (January 22, 2010). *Id.* 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 also noted that on March 10, 2017, the Maine Public Utilities Commission filed a Recommended Decision in the form of a draft order approving Northern's request to issue these same notes with no changes to the application filed by the Company in that state. *Id.* Staff characterized Northern's request as "routine," and recommended approval on the condition that Northern provide updates when the pricing parameters are established and following closing and funding. *Id.* Staff also recommended that confidential treatment be afforded to the letter agreement with the Company's placement agents submitted in connection with its response to Staff's data requests.

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 upon 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

perceptible 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. Staff confirmed this through its investigation, and we find that the financing will have no discernible impact on rates and will not adversely affect capitalization. Northern represented that the proceeds will be used to pay off short-term debt it incurred to pay for normal utility operations, mostly capital improvements to its distribution system. 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 this short-term debt with the proposed long-term financing will confer benefits to Northern and its customers. Northern’s balance sheet and capitalization will improve, and customers will see no increase in rates. We thus find Northern’s intended use of the financing proceeds to be consistent with the public good.

We also agree with Northern and Staff that the letter agreement submitted during discovery 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.

The Commission considers a three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008), in determining

whether the information identified by Northern should be deemed confidential and private. 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.*

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 the New Hampshire State or local government. We are persuaded that the information in the letter agreement with the Company’s placement agents, contains highly sensitive compensation information among and between the placement agents and the Company. 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. Accordingly, disclosure is not warranted. We find the letter agreement with the Company’s placement agents exempt from disclosure under RSA 91-A:5 IV.

Consistent with Puc 203.08(k), our grant of this motion is subject to our ongoing 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.

We do not find it necessary to conduct a hearing, as permitted by RSA 369:4. We base our decision on a careful review of Northern’s filing and Staff’s investigation. Nonetheless, we will

issue this order on a *nisi* basis to ensure that all interested parties receive notice of our determination and have the opportunity to request a hearing.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Northern's petition to issue up to \$75 million in long-term debt at an interest rate of not more than 5.5 percent, is hereby

APPROVED; and it is

FURTHER ORDERED, that the Motion for Confidential Treatment and request for confidential treatment of the agreement letter with the Company's placement agents is granted as set forth above; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of the 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 April 20, 2017, and to be documented by affidavit filed with this office on or before May 7, 2017; 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 April 27, 2017, 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 May 4, 2017; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 10, 2017, 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; and it is

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

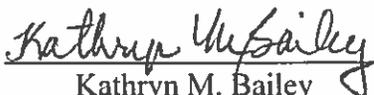
By order of the Public Utilities Commission of New Hampshire this tenth day of April, 2017.



Martin B. Honigberg
Chairman

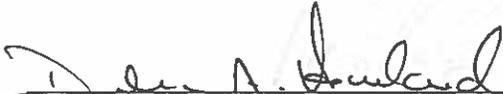


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director