

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-078

NORTHERN UTILITIES, INC.

Petition for Authority to Issue Securities

Order Approving Financing Petition

ORDER NO. 26,385

July 28, 2020

This order approves Northern Utilities' request to borrow up to \$50 million and to issue corresponding unsecured long-term debt securities. Northern Utilities intends to use the money to pay off short-term debt incurred to complete capital projects and to fund 2020 capital expenditures. Excess cash, if any, will be used for other appropriate corporate purposes.

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. Northern's New Hampshire Division serves approximately 34,000 customers.¹ The Company filed a petition on May 21, 2020, pursuant to RSA 369 seeking Commission approval to borrow up to \$50 million from institutional investors. Northern proposed issuance of promissory notes with a long-term maturity of up to 30 years and a coupon rate not to exceed 5.25 percent. Based on credit spreads for comparably rated utilities, Northern anticipates an all-in coupon rate that is considerably lower at 4.07 - 4.27 percent. Northern projected financing costs of \$375,000 if the Company borrows the full \$50 million.

¹See <https://www.puc.nh.gov/Gas-Steam/Annual%20Reports/2019/2019-Gas-Annual-Report-Northern-Utilities-20200402.pdf>.

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/2020/20-078.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 Unitil Service Corp. (USC), and Andre J. Francoeur, Senior Financial Analyst for USC. Like Northern, USC is a subsidiary of Unitil Corporation. *See* Petition (May 21, 2020), Testimony of Diggins and Francoeur at 2-3. If the Company's 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 5.25 percent. *Id.* at 4-12. Northern intends to sell the notes directly to institutional investors. *Id.* at 4, 7, 10.

Northern said that it will use the loan proceeds to repay outstanding short-term debt, secure fixed interest rates to reduce interest rate volatility, and fund 2020 capital expenditures; and that remaining funds, if any, shall be used for general corporate expenses. *Id.* at 5, 7. The Company expects its short-term borrowings to increase to approximately \$77 million by the end of 2020. *Id.* at 6. In New Hampshire and Maine, Northern collectively spent \$69.6 million on distribution system capital expenditures in 2019. *Id.* at 5. The Company also has more than \$57 million of capital expenditures budgeted for calendar year 2020. *Id.; see also* Order 26,269 (July 2, 2019) (Docket DG 19-090).

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. *See* Petition (May 21, 2020), Testimony of Diggins and Francoeur at 6.

Northern 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 11. The proposed financing at the maximum amount and rate would change Northern's weighted cost of long-term debt from 5.16 percent to 5.19 percent. *Id.* Northern expects a favorable reception by the private placement market for its proposed debt issuance. *Id.* at 13. The Company estimated that approximately \$375,000 in financing and issuance-related costs will be incurred. *Id.* at 11-12.

2. Motions for Confidential Treatment

Northern requested confidential treatment for several Company exhibits and responses to Staff data requests pursuant to RSA 91-A and N.H. Admin R., Puc 203.08. The Company contends that the documents at issue constitute confidential, and in some cases, commercial, financial, or proprietary, information.

In its first motion for confidential treatment, Northern requested confidential treatment for Exhibit NU-4, the Company's unaudited balance sheet as of March 31, 2020; Exhibit NU-5, the Company's unaudited income statement for the twelve months ending March 31, 2020; and Exhibit NU-11, the Company's unaudited financial statements for the first quarter of 2020, because the documents have not been audited. *See* Petition (May 21, 2020) [First] Motion for Confidential Treatment.

Northern argued that making the unaudited financial information public could have a negative impact on the markets in which the Company's securities are traded. The Company asserted that keeping the information confidential, until such time as the statements are audited and released to all Company debt-holders, will protect the integrity and proper functioning of markets in which Northern's offerings compete. The Company stated that the public will have full access to the exhibits at issue no later than March 31, 2021.

In its second motion for confidential treatment, the Company requested confidential treatment for the letter of agreement between the Company and the placement agent selected to participate in the securities offering. *See* [Second] Motion for Confidential Treatment (July 1, 2020). The letter of agreement was provided to Staff as Confidential Attachment 1 in response to Staff Data Request 1-5. Northern represented that the placement agent was selected through a competitive process and stated that the letter provides details of the terms under which the placement agent provides various functions. Northern asserted that disclosure of the letter would put the placement agent at a competitive disadvantage by divulging the terms and conditions for the work it was awarded. Northern further argued that the Company itself would be adversely affected because placement agencies would be discouraged from working with the Company if doing so would result in the release of confidential business information in future financings.

In its second motion for confidential treatment the Company also sought confidential treatment for *S&P* and *Moody's* credit reports, including the analyses and credit ratings in both documents. Those reports were provided to Staff as Confidential Attachment 1 (*S&P*) and Confidential Attachment 2 (*Moody's*) to the Company's response to Staff Data Request 1-4. Northern claimed that the credit reports, including the analyses and credit ratings, are

confidential, commercial, financial, and proprietary documents, and exempt from disclosure because the reports constitute copyrighted information. The Company asserted that the reports, in their entirety, are “provided only on a paid subscription basis and are not otherwise made publically available.” *Id.* at 2. The Company noted that “[w]hile the overall credit ratings for the Unitil companies may be public, the underlying analyses supporting the ratings are not ... [w]ere the Company to disclose the reports publicly, parties that would otherwise have to pay a fee to the ratings agencies to receive the reports would instead have free and unrestricted access to them. Such disclosure would render the reports essentially valueless to the [credit] agencies. The agencies have a clear privacy interest in these reports.” *Id.* at 2-3. Northern also argued that it does not have permission or the discretion to disclose the credit reports, including the ratings, and that *S&P* and *Moody’s* provided the reports to Northern with the understanding that the documents would not be made public in any way. *Id.* at 3.

B. Commission Staff

1. Financing

Commission Staff (Staff) filed a memorandum recommending that the Commission approve Northern’s request to finance up to \$50 million. *See* Memorandum of Stephen Frink, Director, Gas and Water Division, and Mary Schwarzer, Staff Attorney, dated July 2, 2020 (Staff Recommendation). After review of Northern’s filing and responses to data requests, and based on the Company’s decision to only issue \$40 million of 20-year senior unsecured notes at a rate of 3.78 percent, Staff calculated that the financing would result in a more balanced capital structure. The debt-to-equity ratio is currently 46 percent debt and 54 percent equity; it would become 51 percent debt to 49 percent equity with an additional \$40 million debt. *Id.*

Staff considered the amount and cost of Northern's proposed financing at either \$40 million or \$50 million to be reasonable and the proposed terms to be consistent with entities that have similar credit ratings. Staff concluded that the \$40 million financing would have only a minimal impact on Northern's weighted average cost of capital. The current weighted average cost of capital would be reduced slightly from 7.50 percent to 7.19 percent if the Company finances \$40 million.

Staff stated that were Northern to issue the maximum request of \$50 million, the debt-to-equity ratio would be 52 percent debt to 48 percent equity, which would also be a more balanced capital structure than is currently the case. Staff characterized Northern's request as "routine," verified the proposed use of funds to be appropriate, and recommended approval on the condition that Northern file an updated Weighted Average Cost of Debt (Revised Exh. NU-7) following the final closing and funding, and no later than March 31, 2021.

2. Motions for Confidential Treatment

Staff supported the Company's request for confidential treatment of the unaudited financial information in Exhibits NU-4, NU-5, and NU-11, until such time as the audited financial statements are distributed and disclosed, and no later than March 31, 2021, for the reasons contained in the Company's first motion for confidential treatment. Staff also supported the Company's request for confidential treatment of the Company's letter of agreement with the placement agent, for the reasons contained in the Company's second motion for confidential treatment.

Staff supported the Company's request for confidential treatment of the *analyses* contained in the *S&P* and *Moody's* credit reports, for the reasons contained in the Company's second motion for confidential treatment, but not the Company's credit ratings, which the

Company itself disclosed in its supporting materials. *See* Petition, Testimony of Diggins and Francoeur, p.7; N.H. Admin R. Puc 203.08(1) (confidential material no longer protected once party seeking its protection makes the information public). Accordingly, Staff recommended that the Commission deny the Company's request that the actual ratings be granted confidential treatment. Staff also recommended that the Company be directed to file a redacted copy of Attachment 1 and 2 to the Company's response to Staff Data Request 1-5.

III. COMMISSION ANALYSIS

1. Financing

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 may conduct a "hearing or investigation as it may deem proper," and 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. *Hampstead Area Water Company, Inc.*, Order No. 26,381 at 9 (July 21, 2020). 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.* (quotations and citations omitted). 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.* (quotations and citations omitted).

We find Northern's request to be routine. Based on Staff's investigation, we find that the financing will have no discernible 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. Replacing short-term debt with the proposed long-term financing will provide benefits to Northern and its customers. Northern's balance sheet will improve, funding will be available for 2020 capital expenditures, 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.

Our approval does not limit or preclude the Commission from reviewing in a future rate case, directly or indirectly, the prudence, use, and usefulness of any specific project financed by the loan. RSA 378:28. The Commission and Staff also retain the authority under RSA 374:4 to be kept informed of the Company's use of the financing independently and apart from any review under RSA 378:28.

2. Motions for Confidential Treatment

In determining whether documents are entitled to an exemption from disclosure under RSA 91-A, the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008); *see also Public Service Company of New Hampshire*, Order No. 25,313 at 11-12 (December 30, 2011).

The first step is to determine whether there is a privacy interest at stake. The second step is to determine whether there is a public interest in disclosure. If both a privacy interest and

public interest are identified, the third step of the Commission's analysis is to balance the asserted privacy interest with the public's interest in disclosure.

Northern broadly argued that the information for which it seeks confidential treatment is exempt from disclosure as confidential, commercial, or financial information pursuant to RSA 91-A:5, IV.

In the Company's first motion for confidential treatment, Northern asserted that protecting unaudited financial statements (Exhibits NU-4, NU-5 and NU-11) will safeguard the integrity and proper functioning of the financial markets in which the securities of the utility companies are traded. Northern represented that disclosure may adversely impact those markets.

We are persuaded that the unaudited financial statements contain confidential, commercial, and financial information and, that in order to maintain the highest value for the securities offered, the privacy interests of the utility are weighty. We further find that there is a public interest in those records to shed light on the Commission's work in this instance. We find, however, that at this time the Company's interest in nondisclosure outweighs the public's interest in reviewing the information. Accordingly, we grant confidential treatment for Exhibit NU-4, Exhibit NU-5, and Exhibit NU-11, for the reasons cited in its first motion for confidential treatment.

As represented, Northern must release the audited financial statements by March 31, 2021. At that time, the Company's confidentiality interests will be eliminated. Consequently, on March 31, 2021, or the date the Company releases the audited financial statements, whichever is sooner, we will no longer treat the documents as confidential. *See NH Housing Fin. Auth.*, 142 N.H. at 555-59 (ordering disclosure of financial documents where impact of the disclosure, in 1997, of documents circa 1985-1989 is "blunted by time"). We require the Company to

provide the audited statements to Staff when they are released, and an updated Weighted Average Cost of Debt (Revised Exh. NU-7) following the final closing and funding and no later than March 31, 2021.

In Northern's second motion for confidential treatment, Northern asserted that the letter of agreement with its placement agent is sufficiently confidential to justify non-disclosure. We agree that the letter of agreement contains highly sensitive compensation information, and information about terms of work between the placement agent and the Company.

We also find that public disclosure of that information could result in substantial harm to the competitive position of Northern as well as the current and future 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. Disclosure is likely to adversely affect Northern's ability to work with the most capable and cost-efficient securities placement agents in the financial markets. Disclosure is also likely to make it difficult for Commission Staff to obtain access to un-redacted copies of letters of agreement in the future, thus reducing the ability of Staff to fully and completely determine whether the costs of issuance are reasonable. The public has an interest in knowing what terms Staff have found reasonable and what costs public utilities are authorized to incur. Nonetheless we find the interests in non-disclosure outweigh the public's interest in disclosure, and grant the letter of agreement confidential treatment.

Northern also argued in its second motion for confidential treatment that all information contained in the *S&P* and *Moody's* credit reports (both the analyses and the ratings) is exempt from disclosure under RSA 91-A:5, IV because the documents contain proprietary and copyrighted information which is confidential. Northern asserted the information in the documents is "provided only on a paid subscription basis and [is] not otherwise made publically

available.” [Second] Motion for Confidential treatment at 2. According to Northern, disclosure will not provide the public with information about the conduct or activities of the Commission.

We are not persuaded that the public has no interest in the content of the credit reports. The public has an interest in understanding how the marketplace sees the utilities, what the ratings are, why the ratings were assigned, and the weight given to the analyses and ratings by the utilities and by the Commission. Accordingly, we reject the Company’s assertion that the public has no interest in the reports. *See, e.g., NH Housing Fin. Auth.*, 142 N.H. at 555-59 (ordering disclosure of commercially generated credit reports).

We are persuaded, however, that the *analyses* contained in the *S&P* and *Moody’s* credit reports constitute sensitive, proprietary, and copyrighted information. The Company’s privacy interest in the information contained in the reports is slight, as *S&P* and *Moody’s* analyses are broadly available by subscription. *See id.* We are, however, cognizant that the analyses and related documents are copyright protected and were provided to the Company without authority to share the information publicly. Consequently, public release of the analyses could harm the Company’s ability to obtain this type of information in the future, because it could violate the terms of its agreement with the publishers and would harm the competitive interests of the publishers of the copyrighted materials if such information were provided to the public for free. Those factors make the interest in nondisclosure more substantial. While we find that the public has an interest in the information, the public’s interest is not as weighty as the Company’s interest in nondisclosure. Thus, we grant the Company’s request for confidential treatment of the *analyses* contained in the *S&P* and *Moody’s* reports.

We are not persuaded, however, that the credit ratings contained in the *S&P* and *Moody’s* reports are entitled to confidential treatment. Northern has already made the *S&P* and *Moody’s*

ratings public in testimony the Company filed in this docket in May 2020. *See* Petition, Testimony of Diggins and Francoeur, at 7. In addition, the Company conceded that the overall credit ratings for the Unitil companies may be public. In this context, there can be no privacy interest at stake in that information. N.H. Admin R., Puc 203.08(1). Moreover, we take administrative notice of the fact that *S&P* and *Moody's* themselves make credit ratings available to every member of the public willing to register on their respective websites. *See Unitil Energy Systems Inc*, Staff Recommendation (July 14, 2020) (Docket DE 20-076) footnote 6 (identifying links to *S&P* and *Moody's* websites at which Northern's credit ratings are made public); N.H. Admin. R., Puc 203.27(a). Therefore, we deny the Company's request that the ratings be granted confidential treatment. Because public verification is available in the form of electronic documents that confirm the ratings at the authoritative *S&P* and *Moody's* websites referenced above, we decline to order the Company to provide a redacted version of Confidential Attachment 1 and Confidential Attachment 2 to the Company's response to Staff Data Request 1-1.

Consistent with Puc 203.08(k), our grant of this motion is subject to the Commission's 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 Utilities, Inc.'s petition to borrow up to \$50 million in long-term debt at an interest rate of not more than 5.25 percent is **APPROVED**; and it is

FURTHER ORDERED, that the [First] Motion for Confidential Treatment seeking confidential treatment of unaudited financial statements (Exhs. NU-4, NU-5 and NU-11) is

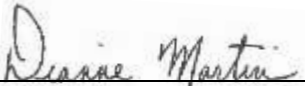
GRANTED Until March 31, 2021, or the date on which the audited financial statements are released, whichever is sooner; and it is

FURTHER ORDERED, that Northern Utilities, Inc., shall file audited information equivalent to NU-4, NU-5, and NU-11, and an updated Weighted Average Cost of Debt (Revised Exh. NU-7) with the Commission upon final closing and funding of the issuance, and no later than March 31, 2021; and it is

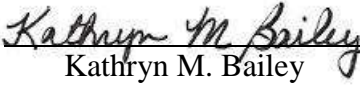
FURTHER ORDERED, that the [Second] Motion for Confidential Treatment is **GRANTED, in part**, in particular with reference to the letter of agreement (Attachment to the Company's Data Response 1-5), the *S&P* credit report analysis (Attachment 1), and the *Moody's* credit report analysis (Attachment 2) to the Company's Data Response 1-4 ; and it is

FURTHER ORDERED, that the [Second] Motion for Confidential Treatment is **DENIED, in part**, in particular with reference to Northern Utilities, Inc.'s credit ratings.


By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of July, 2020.



Dianne Martin
Chairwoman

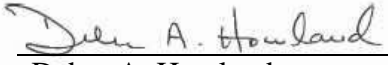


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

Service List - Docket Related

Docket#: 20-078

Printed: 7/27/2020

Email Addresses

ExecutiveDirector@puc.nh.gov

steve.frink@puc.nh.gov

jayson.laflamme@puc.nh.gov

amanda.noonan@puc.nh.gov

ocalitigation@oca.nh.gov

Mary.Schwarzer@puc.nh.gov

taylorp@unitil.com