

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

**November 3, 2021** - 9:00 a.m.  
21 South Fruit Street  
Suite 10  
Concord, NH

*[Hearing also recorded via Webex]*

RE: **DW 20-176**  
**PENNICHUCK WATER WORKS, INC.:**  
Motion to Modify Franchise  
Order NISI No. 25,393.  
*(Prehearing conference)*

**PRESENT:** Chairwoman Dianne H. Martin, Presiding  
Commissioner Daniel C. Goldner

Doreen Borden, Clerk

**APPEARANCES:** **Reptg. Pennichuck Water Works, Inc.:**  
Marcia A. Brown, Esq. *(NH Brown Law)*  
John Boisvert, Chief Engineer

**Reptg. New Hampshire Dept. of Energy:**  
Christopher R. Tuomala, Esq.  
Jayson Laflamme, Asst. Dir./Water Group  
Robyn Descoteau, Water Group  
*(Regulatory Support Division)*

Court Reporter: Steven E. Patnaude, LCR No. 52

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**P R O C E E D I N G**

CHAIRWOMAN MARTIN: We're here this morning in Docket DW 20-176 for a prehearing conference regarding the Pennichuck Water Works' Motion to Modify Order Nisi Number 25,393 and Petition for Approval of Franchise Expansion.

Let's take appearances, starting with Ms. Brown.

MS. BROWN: Good morning, Commissioners. My name is Marcia Brown. And I am with NH Brown Law, and I'm representing Pennichuck Water Works today.

And if I can also introduce, with me, from Pennichuck Water Works as the Chief Engineer, is John Boisvert.

Thank you.

CHAIRWOMAN MARTIN: All right. Thank you. And Mr. Tuomala.

MR. TUOMALA: Good morning, Commissioners. Christopher Tuomala, for the Department of Energy.

With me, I have Jayson Laflamme, Assistant Director of the Water Group at the Department of Energy, and Robyn Descoteau, an

1 Analyst in the Water Group at the Department of  
2 Energy as well.

3 CHAIRWOMAN MARTIN: All right. And  
4 welcome back to all of you.

5 MR. TUOMALA: Thank you.

6 CHAIRWOMAN MARTIN: All right. For  
7 preliminary matters, before we get into  
8 positions, we scheduled this prehearing  
9 conference because this request was filed in  
10 2020, and there was a subsequent filing for  
11 Petition for Approval of Franchise Expansion,  
12 which I have the date of 12/23/2020, which was  
13 almost a year ago, and nothing had happened in  
14 the docket in the interim.

15 And, so, I think what we're looking for  
16 today is to get a sense of the status as between  
17 the parties, whether, from my perspective,  
18 whether the subsequent filing was meant to  
19 replace the original filing? And, if so, if the  
20 original will be withdrawn and next steps from  
21 here, if any, or if the intent is just to have  
22 the Commission review and issue a determination?

23 So, with that, we will start with Mr.  
24 Tuomala.

1 MR. TUOMALA: Thank you, Madam  
2 Chairwoman.

3 At this point, the Department of Energy  
4 conferred with Ms. Brown and her client regarding  
5 a procedural schedule. And we worked out a few  
6 dates in the near future, for one round of  
7 discovery, with a response period two weeks  
8 later, and a technical session on the 14th.

9 We've done a preliminary review, "we",  
10 being the Department of Energy, have done a  
11 preliminary review of the filing. And, at this  
12 point, we wanted to reserve a round of discovery,  
13 in case there were any areas to explore. But,  
14 from the Department's point of view, it appears  
15 to be a fairly straightforward addition of one  
16 home in a franchise area.

17 We're familiar with PWW's operation as  
18 a utility in this state. So, barring any  
19 surprises between now and then, the Department is  
20 fairly certain that we would support the Petition  
21 at this point.

22 CHAIRWOMAN MARTIN: Okay. And I think  
23 I'll hear from Ms. Brown before -- I'd like to  
24 have a discussion about timing, and see if

1           there's a way we can move this forward.

2                       Go ahead, Ms. Brown.

3                       MS. BROWN: Did you want me to -- did  
4           you want me to respond to just the preliminary  
5           matter or --

6                       CHAIRWOMAN MARTIN: You are welcome to  
7           provide your position, and address -- and  
8           raise -- and answer any of the things that I  
9           asked. And, then, we'll give Commissioner  
10          Goldner a chance to ask anything he has as well.

11                      MS. BROWN: Sure. Let me start with  
12          clarifying, if there's any confusion, regarding  
13          the Motion to Amend versus the Petition for  
14          request.

15                      In the cover letter, I had requested  
16          that the Petition replace the motion, but that  
17          the documents that were attached to the motion be  
18          retained in the docket, because they were  
19          sworn -- contained sworn testimony, and that is  
20          useful for, you know, evidentiary support for the  
21          Petition. There is some duplication, however, in  
22          that sense.

23                      CHAIRWOMAN MARTIN: Okay. So, you're  
24          effectively withdrawing your Motion to Modify,

1 but relying on the attachments in support of your  
2 Petition for Approval?

3 MS. BROWN: That is correct.

4 CHAIRWOMAN MARTIN: Okay. Thank you.  
5 Go ahead.

6 MS. BROWN: Next address the procedural  
7 schedule. Yes, Pennichuck Water Works has an  
8 agreement with the Department of Energy. Agreed  
9 to data requests to be issued on November 24th;  
10 data responses due December 8th; and a technical  
11 session on December 14th. And we are happy to  
12 put this in writing, if need be.

13 After that, you know, pre-split of the  
14 PUC and Department of Energy, a normal course of  
15 a, you know, straightforward expansion like this  
16 would be for a Staff recommendation letter and an  
17 order *nisi*. And I can get into the order *nisi*  
18 elements of RSA 374:26 later.

19 But I guess it is -- we're still  
20 feeling our way through on whether that becomes a  
21 settlement and a hearing, so that is yet to be  
22 decided. And, if there's any feedback from the  
23 Commissioners on how the PUC would like that  
24 resolution, we'll take that suggestion, too.

1 But, as far as what we've agreed to thus far, is  
2 just discovery and a technical session.

3 CHAIRWOMAN MARTIN: Okay. Anything  
4 else for your --

5 MS. BROWN: If I can also just  
6 elaborate, RSA 374 has certain requirements. And  
7 one of them is that a water utility seeking to  
8 expand a franchise demonstrate that it has -- it  
9 meets the suitability and availability  
10 requirements of RSA 374:22, III.

11 And, even though we are relying, in  
12 part, on the underlying 2012 docket, we did  
13 update that Department of Environmental Services'  
14 suitability and availability letter, and that is  
15 Attachment F. In both the Motion and the  
16 Petition, we have delineated in color, on  
17 Attachment A, the exact location of 28 Walton  
18 Road, so that the Commission can see that it is  
19 directly adjacent.

20 And, just to summarize the need, it is  
21 the Beede Group who manages this superfund site,  
22 and is responsible for the pump-and-treat system  
23 that's dealing with the contaminant plume. They  
24 will be paying for any expansion relating to this



1 lot. And they are also the entity that requested  
2 this expansion.

3 If I can segue to the letters of  
4 support, because, in RSA 374:26, permission may  
5 be granted without a hearing, and that's where I  
6 wanted to address the order *nisi* that had been  
7 used in the past, can be "granted when all  
8 interested parties are in agreement."

9 Now, we have agreement from the Town,  
10 and that is in Attachment B. We have agreement  
11 from the Beede Group, and that is Attachment C.  
12 However, we do not have agreement from the  
13 landowner, because the husband and wife cannot  
14 reach agreement on who wants -- on connecting.  
15 And, until that is resolved, we don't have 100  
16 percent agreement.

17 But, as -- excuse me -- as facts  
18 develop, this is a precautionary franchise  
19 expansion request from Beede Group, in the event  
20 the contaminant plume reaches 28 Walton Road's  
21 private well, such that they no longer can use  
22 the well. At that point, there will be a  
23 expansion of a main by 200 feet, as explained in  
24 the Beede Group's letter of support, and an offer

1 to pay for the expansion and connection of 28  
2 Walton Way [sic].

3 At that point, because we don't have  
4 the agreement between the husband and the wife,  
5 the wife wants the connection, the husband does  
6 not, an order *nisi* would take care of that  
7 hearing requirement element of 374:26, and help  
8 reduce the cost of this proceeding by avoiding a  
9 in-person hearing. That's having Pennichuck  
10 Water Works request an expectation of the outcome  
11 of this docket.

12 That is the summary of points that I  
13 want -- oh, I'm sorry, there was one other point,  
14 excuse me.

15 Attachment D is the 2012 documentation  
16 for the original franchise expansion. And I just  
17 want to add that, even though this is testimony  
18 from Donald Ware, we have John Boisvert as the  
19 Company representative adopting the testimony,  
20 and certifying to the facts that were represented  
21 in both now the withdrawn Motion and the  
22 Petition. And, so, it is offered in here to  
23 economize the expense of this proceeding by just  
24 taking that underlying documentation, the

1 reasoning that the Commission relied on on  
2 finding that this was a -- the expansion was in  
3 the public good.

4 And thank you very much. John Boisvert  
5 is here for questions, should the Commission have  
6 any.

7 CHAIRWOMAN MARTIN: Okay. Thank you.  
8 So, Mr. Boisvert has essentially, in prefiled  
9 testimony, adopted the prior testimony of Mr.  
10 Ware?

11 MS. BROWN: In -- that was done in the  
12 Motion, --

13 CHAIRWOMAN MARTIN: Okay.

14 MS. BROWN: -- the testimony. Or,  
15 well, the verified Motion to Modify the  
16 franchise, all of the facts that were contained  
17 in here were pulled out of the 2012, updated, and  
18 then that was sworn to, the facts were sworn to.

19 So, thank you very much.

20 CHAIRWOMAN MARTIN: Okay. Thank you  
21 for that clarification.

22 Commissioner Goldner, do you have  
23 questions, before I ask some more?

24 COMMISSIONER GOLDNER: Nope. I have no

1 questions.

2 CHAIRWOMAN MARTIN: Okay. All right.

3 So, just sort of to get a fundamental  
4 understanding here, if this were to be granted,  
5 when would it be implemented?

6 You're talking about "a plume moving".  
7 Is this sort of a future hypothetical? Or, is  
8 this something that we actually expect to happen?

9 MS. BROWN: The Beede Group does not  
10 know. They are trying to manage, and the -- the  
11 plume. And if I could just have Mr. Boisvert  
12 explain where the plume is going.

13 But the official position from the  
14 Beede Group is they want to have this franchise  
15 taken care of, as it did with the other  
16 customers, so that they, in the event that this  
17 plume does go in this direction, and there's a  
18 possibility it might, it's not certain that it  
19 will. And they don't know when or if it will  
20 move into this direction. They want to be ready.

21 CHAIRWOMAN MARTIN: So, is this a  
22 contingent approval? Will this only -- expansion  
23 only need to occur if that does, in fact, happen?  
24 This is a legal question for you.

1 MS. BROWN: That is correct. This  
2 would -- franchises have been given to entire  
3 towns, regardless of whether the utility has  
4 expanded physically in there or not. And, so, I  
5 don't think there's a problem with the two-year,  
6 because they are -- the two-year limitation of,  
7 if you are granted a franchise, you have to act  
8 on it. They're going to be acting directly  
9 within the vicinity of abutting lots to 28. They  
10 will have service at the ready if this customer  
11 needs to be added on.

12 CHAIRWOMAN MARTIN: Okay. Thank you.  
13 If he has something to add, he's free  
14 to speak. This is not sworn testimony.

15 MR. BOISVERT: Okay.

16 CHAIRWOMAN MARTIN: So, it's just for  
17 our information.

18 MR. BOISVERT: Thank you very much.

19 In looking at this, when Beede Group  
20 first approached us on the overall system  
21 expansion, there was very clear evidence that  
22 they had -- the wells that were connected or the  
23 homes that were connected were contaminated.

24 They hence had come back to us, and

1       there were three lots within the existing -- the  
2       first expansion that they later found  
3       contamination. And they asked to connect those.  
4       Those were already in the franchise, they were  
5       included, so they pursued those. This was  
6       another lot at that time that was, and I can't  
7       speak directly for Beede on this particular lot,  
8       but it was either imminent, or they might have  
9       seen numbers creeping up in a private well, or  
10      the wells around. Think about it. These wells  
11      were all drawing water, now they're not drawing  
12      water, so plumes and things start to move in  
13      different directions than they were before.

14               So, they were -- originally filed an  
15      application to provide service to this lot. We  
16      identified that it was not in the original one,  
17      so we could not offer them the ability to expand  
18      the pipeline and connect.

19               So, it is -- I can't say that it's  
20      in -- in this respect, either looking down the  
21      road where they may need this, but it appears,  
22      from discussions with Beede Group, that it is  
23      imminent that it's going to happen at some point  
24      in time. And they want to be prepared for it.

1           And, at this point, Attorney Brown is  
2           correct, in the fact that the landowner -- there  
3           is a disagreement within the landowner on whether  
4           they would want to take public water service or  
5           not at this point in time. But, if the homes  
6           were to exchange the owners, who knows what down  
7           the road, we want to be prepared, because there  
8           is no other alternative. There is no room to  
9           drill a well on these lots, they're very tiny.  
10          So, I think Beede is just doing their due  
11          diligence in preparing for the future.

12                 CHAIRWOMAN MARTIN: Okay. Thank you.  
13          That helps clarify.

14                 So, back to the schedule. "December  
15          14th" was the last date I think that I heard.  
16          What was that proposed to be?

17                 MR. TUOMALA: A technical session.

18                 CHAIRWOMAN MARTIN: A tech session. If  
19          you could file in writing the proposed schedule,  
20          that would be helpful.

21                 MS. BROWN: The Company will do that.  
22          Thank you.

23                 CHAIRWOMAN MARTIN: And then, after  
24          that tech session, I assume that the plan would

1 be for Energy to file a recommendation based upon  
2 its review?

3 MR. TUOMALA: That I'm not 100 percent  
4 certain, Madam Chairwoman. At this stage, we're  
5 still in development as far as what our responses  
6 would be at the Department of Energy, now that we  
7 are no longer affiliated with the Commission.  
8 And, if a recommendation is the proper avenue or  
9 it would be a settlement, we're depending on if  
10 we agree 100 percent with the Company's Petition,  
11 that we could somehow submit that on the record  
12 that we take no exception to it.

13 I don't know if a recommendation is  
14 the -- at our disposal anymore. I'm unclear, and  
15 I'm not the decision-maker, unfortunately. But  
16 we're still in discussion with that. And I think  
17 that's why we left the procedural schedule  
18 somewhat open on until the 14th, to kind of see  
19 where we're at and what the next steps would be.

20 The Department certainly doesn't object  
21 to an order *nisi* in this case. We do recognize  
22 374:26, if, you know, that's -- the caveat that  
23 nothing is discovered through the discovery that  
24 surprising to the Department. But, if all



1 parties agreed in a franchise expansion like  
2 this, and, as Attorney Brown had mentioned, that  
3 not all parties, with the husband and wife team  
4 not being in agreement with this, *nisi* would  
5 probably be the most -- it would be an abundance  
6 of --

7 CHAIRWOMAN MARTIN: Efficient.

8 MR. TUOMALA: Yes, efficient, abundance  
9 of caution, I was trying to grasp at, that we  
10 certainly, if we agree with the Petition, we  
11 could go forward with an order *nisi* on that.

12 CHAIRWOMAN MARTIN: Okay. Well, I  
13 mean, I will share our perspective and experience  
14 since the restructuring.

15 The Department, we appreciate the  
16 Department filing their position, recommendation,  
17 call it whatever you want. We certainly  
18 appreciate the input that the Department has to  
19 offer, and it's helpful to the Commission to have  
20 that.

21 If the Department and the other parties  
22 agree, and can file a settlement agreement,  
23 that's great as well. But, and in the event that  
24 the Department decides not to take a position,

1 filing something to let us know that is very  
2 helpful as well.

3 MR. TUOMALA: May I ask a clarifying  
4 question, Madam Chairwoman?

5 CHAIRWOMAN MARTIN: Sure.

6 MR. TUOMALA: In recent orders in other  
7 dockets, the Commission has noted that all  
8 requests to the Commission need to be made by a  
9 motion. And part of the confusion on my part  
10 would be, if a recommendation differs from the  
11 Company's initial petition, which it sometimes  
12 does, and almost acts like a quasi-settlement,  
13 how is that handled, if the Commission is  
14 requiring a request to be answered by the parties  
15 in the form of a motion?

16 CHAIRWOMAN MARTIN: So, I think there  
17 is a distinction there between taking a position  
18 on something that another party has already  
19 filed, versus asking the Commission to do  
20 something. So, if you're just filing your  
21 position, and we can take that into account, you  
22 know, I would see that as any party filing their  
23 position, because now you are a party.

24 If you have a specific request of the

1 Commission, and that mainly has come up when  
2 there have been things that previous, and not  
3 even with the Department, previously would have  
4 been done by a phone call, but now need to be  
5 done on the record so everybody can see that  
6 communication. So, that's more what that's  
7 designed to address.

8 MR. TUOMALA: Okay. I had one  
9 additional follow-up question, if you don't mind?

10 CHAIRWOMAN MARTIN: Go ahead.

11 MR. TUOMALA: So, if, at the end of the  
12 recommendation, we are suggesting a different  
13 course in the docket than what the petitioners  
14 originally had on the record in their petition,  
15 is it more of a soft request, I guess you could  
16 say, that "hey, this is where we would think it  
17 would go", and it's up to the Commission to  
18 decide either way. Not mandating that this is  
19 exactly what we request. Say, if we decided, as  
20 the Department, that, instead of an order *nisi*,  
21 we want to go hearing, because we want to get  
22 something on the record, and the company doesn't  
23 agree with that, but that's our position. Is it  
24 still satisfactory to file that in a letter or is

1           that something in a motion?

2                   CHAIRWOMAN MARTIN:   So, I wouldn't call  
3           it a "letter".

4                   MR. TUOMALA:   Okay.

5                   CHAIRWOMAN MARTIN:   I would call it a,  
6           you know, a "pleading" --

7                   MR. TUOMALA:   A "filing".

8                   CHAIRWOMAN MARTIN:   -- stating your  
9           position.

10                  MR. TUOMALA:   Okay.

11                  CHAIRWOMAN MARTIN:   And, if your  
12           position -- I mean, I really leave it to you to  
13           decide the legal, technical approach.  If you  
14           have a strong objection to something that's  
15           filed, I'd call it an "objection".

16                  MR. TUOMALA:   Yes.

17                  CHAIRWOMAN MARTIN:   If it's just a  
18           position, you can call it your "position  
19           statement".

20                         It really depends upon what you're  
21           trying to accomplish and how strongly you feel  
22           about it.

23                  MR. TUOMALA:   Okay.  All right.  Thank  
24           you very much.  I appreciate that.

1 CHAIRWOMAN MARTIN: Okay. So, anything  
2 else that we should cover that might be helpful  
3 in facilitating this?

4 MS. BROWN: I would state that, if  
5 there is a outcome that's different than what was  
6 requested, that I would hope that we could reach  
7 a settlement, and then use the settlement as a  
8 supplement or have the Commission consider the  
9 Petition -- the settlement as a supplement to the  
10 Petition.

11 CHAIRWOMAN MARTIN: The Commission  
12 will, as it always has, consider a settlement  
13 agreement as part of its determination on the  
14 original filing. But, certainly, as in any case,  
15 we want to hear from the parties as to their  
16 position on what was requested.

17 MS. BROWN: The only last issue I'd  
18 like to address is timing on this. This is  
19 prospective. There is no immediacy that we are  
20 aware of. Should that change, we will  
21 affirmatively file something in the docket to  
22 alert the Commission of that changed fact.

23 But, as it stands, the circumstance has  
24 not changed since the original filing, even

1           though it is a year old. And there is no tight  
2           deadline in a turnaround time on an order.

3                     Thank you.

4                     CHAIRWOMAN MARTIN: Okay. Thank you.  
5           So, you're going to file a proposed procedural  
6           schedule. And, at the conclusion of that, if  
7           there is not -- still not a time emergency, and  
8           there isn't a plan to act in short order, if can  
9           just let the Commission know that, so that we're  
10          aware that this is not something that's pressing  
11          that we need to call folks back in for, that  
12          would be great.

13                    All right. Any other questions,  
14          Commissioner?

15                    COMMISSIONER GOLDNER: I do not.

16                    CHAIRWOMAN MARTIN: All right. Well,  
17          with that, then thank you all for your help in  
18          clarifying where we are at with this proceeding.  
19          And I think we'll be seeing many of you again in  
20          short order. We are adjourned.

21                    **(Whereupon the prehearing conference**  
22                    **was adjourned at 9:21 a.m.)**