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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 5, 2006 - 10:10 a.m.
Concord, New Hampshire

RE: DW 06-109
PENNICHUCK EAST UTILITY, INC. v.
SANDRA L. CRANE, DANIEL A. CRANE AND
FELIX QUINTAL: Petition for
condemnation. (Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. Below

Diane Bateman, Clerk

APPEARANCES: Reptg. Pennichuck East Utility, Inc.:
John T. Pendleton, Esq.

Sandra J. Crane, pro se

Felix E. Quintal, pro se

Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.

Court Reporter: Steven E. Patnaude, CCR

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P R O C E E D I N G S

CHAIRMAN GETZ: Okay. Good morning.

We'll open this prehearing conference in docket DW 06-109. On August 16, 2006, Pennichuck East Utility filed with the Commission a petition for a condemnation pursuant to RSA 371:1. Pennichuck East seeks easements over certain property located in its Gage Hill Community Water System in Pelham. It states that the easements are necessary in order to assure its right to make necessary upgrades and repairs to the water system. The Respondents are Sandra and Daniel Crane, owners of land at 6 Radcliff Drive, and Mr. Felix Quintal, owner of land at 4 Radcliff Drive. Pennichuck reports that it has been unsuccessful in acquiring easements from the Cranes and Mr. Quintal, despite attempts going back to 2003.

An order of notice was issued on September 13 setting the prehearing conference for today, and requiring publication in a newspaper of general circulation, and that the copies of the order be provided by Certified Mail to Mr. and Mrs. Crane and to Mr. Quintal. I'll note for the record that we have an affidavit of publication has been submitted on September 27.

And, I think then we can take

1 appearances please.

2 **MR. PENDLETON:** On behalf of Pennichuck
3 East Utilities, my name is John Pendleton, and I'm
4 representing their interest in this petition. Thank you.

5 **CHAIRMAN GETZ:** Okay. Good morning.

6 **CMSR. MORRISON:** Good morning.

7 **CMSR. BELOW:** Good morning.

8 **CHAIRMAN GETZ:** And, Mr. Quintal?

9 **MR. QUINTAL:** Felix Quintal, 4 Radcliff
10 Drive, Pelham, New Hampshire. I'm been a -- I've resided
11 there for 26 years. And, I've seen a lot of things going
12 on, and things aren't getting better.

13 **CHAIRMAN GETZ:** All right. Good
14 morning. What we'll do is, I'm not sure if the process
15 has been explained, we take appearances for the record, so
16 that the court reporter has the names, and then we'll give
17 everyone an opportunity to state their position. And,
18 then, that's the first step in the process, that would
19 then lead to whether we go to adversarial hearings, where
20 there will be the equivalent of a trial with respect to
21 the petition that's been made by the Company. Are you
22 Ms. Crane?

23 **MS. CRANE:** Yes. Good morning. Sandra
24 Crane, 6 Radcliff Drive.

1 **CHAIRMAN GETZ:** Good morning.

2 **CMSR. MORRISON:** Good morning.

3 **CMSR. BELOW:** Good morning.

4 **MS. THUNBERG:** Good morning,
5 Commissioners. Marcia Thunberg, on behalf of the Staff.
6 And, present with me today is Mark Naylor, Jim Lenihan,
7 Doug Brogan, and Jayson LaFlamme. Thank you.

8 **CMSR. MORRISON:** Good morning.

9 **CMSR. BELOW:** Good morning.

10 **CHAIRMAN GETZ:** Good morning. Well, is
11 there anything else to hear, before we give an opportunity
12 for all the parties to state their positions?

13 (No verbal response)

14 **CHAIRMAN GETZ:** Okay. Hearing nothing,
15 then we'll start with the Petitioner, Mr. Pendleton.

16 **MR. PENDLETON:** Good morning, your Honor
17 -- your Honors. The petition was filed basically because
18 the Company is very concerned with the situation with the
19 tank and small community water system located on the
20 corner of four properties, two of which are owned by the
21 Respondents. Pennichuck, over the last three to four
22 years, has obtained easements from the two front parcels
23 owned by the Beaucage Family Trust and the Saitows. We've
24 done -- in doing that, we actually had to do fairly

1 extensive surveying work to make those parties comfortable
2 with the lot lines, and there were several different
3 drafts. But, during that period, the Company was also
4 attempting to make contact with the Respondents.

5 It's our understanding at this time that
6 Mr. Quintal objects to the petition. But I do anticipate
7 that or we hope to be able to talk during the technical
8 session about trying to work this out without the need for
9 an adversarial proceeding. But our goal is to obtain the
10 limited easements as requested in our petition, so that we
11 can change that tank, which is located primarily, we
12 believe, on the Crane property. But, to do that, we're
13 going to need to go on to, for limited purposes, the
14 Quintal property. We submitted testimony from Becky
15 McEnroe and from Donald Ware in this case. And, the
16 purpose of that was to let the Commission and the
17 Respondents know that we really did take a responsible
18 look at how we needed to do this and what we needed to do.

19 So, our hope is to resolve this. But we
20 do want to finalize or formalize easement rights as part
21 of the process. And, I should add that my, you know, my
22 belief is that Pennichuck East probably enjoys
23 prescriptive rights to be where they are. That system was
24 a Consumer system. It was taken over as part of the

1 transfer of Consumer's non-Hudson assets to Pennichuck
2 East Utilities -- Utility. And, we find, with a lot of
3 those systems, there were not formal easements recorded.
4 But the systems have been operating for 20 to 30 years,
5 sometimes longer years. So, that is the case with this
6 system. Thank you.

7 **CHAIRMAN GETZ:** Okay. Thank you.
8 Mr. Quintal. This is your opportunity to state your
9 position with respect to how you think this case --

10 **MR. QUINTAL:** Well, my position is, I've
11 worked for 26 years, with my wife, who is now deceased,
12 paying for this property, paying for my home, paying the
13 taxes, interest, whatsoever. And, I don't feel, I realize
14 what they're saying, I know what they're saying, but it
15 doesn't give them a right to come on my property. I had
16 offered them "come in and get out"; was rejected. They
17 don't want that. They want an easement to come on there
18 any time they please. If they wish to change that tank,
19 and they even said in the paperwork, "we're going to put
20 the original tank", but they says, "in the option, if we
21 want to make a bigger tank, we can put it in." There's
22 only 25 homes on that thing. They can no longer expand
23 it. They can't expand that. That's it.

24 They got two people on Vassar Drive that

1 gave them the easement. Why don't they just take that
2 pump house, take the tank, and move it down there. It's
3 facing Vassar Drive to start with. It's going to cost
4 them to change to start with, so why don't they just move
5 it this way here, they would have two people less. So, in
6 30 or 40 years from now, if they have a problem, they
7 won't have to chase whoever owns the property. It would
8 solve a problem.

9 But, I understand, they want to get out
10 the cheapest way they can out of it. Then, they say
11 "well, that depends on this meeting. If the PUC allows
12 it, okay." I never realized that PUC got to give them
13 permission to spend \$60,000 or whatever they're talking
14 about to replace the -- replace that tank.

15 I just don't feel down deep that I spend
16 time working for this property, only to have them come in,
17 "well, we have a right." First, they tried sending every
18 one of us a letter. "Get this signed, go to the Town
19 Hall, get it notarized, send it back to us." Then, about
20 two or three lines down the road, "you can no longer do
21 what you want with that piece of property. It's your
22 property, but you can't do what you want with it." So,
23 it's just going crazy.

24 The next letter I get, they're not

1 happy, they're going to go for eminent domain. Everything
2 is a kind of "we're going to get this one way or the
3 other." Then, they claim they came over the house. They
4 never did that. I used to -- I used to walk my
5 granddaughter around the street. If I seen a leak, I'd
6 turn it in. But I wouldn't do it today, because of their
7 attitude. No trouble with the workers, it's management.
8 They feel that they got a right. I don't think they have
9 a right. I realize it's 25 of us on the line. They
10 should have been happy to say "okay, we'll go and fix it
11 and get out." That's not what they want.

12 That tank probably won't be replaced,
13 but this tank that's in there now, it's got to be at least
14 36, 38 years old, because they built that in the '60s, and
15 early '65 or '6, because my house was built in '69, and I
16 bought it in 1980. At that time, no shut-off, no meters,
17 and Policy Well used to come over to fix it, fix the
18 property up, fix the line. If it broke, they shut the
19 whole thing down and fixed it up. Consumer come in,
20 things start changing.

21 Now, they put a meter, and they charge
22 you by the gallon, at one time it was \$10 a month no
23 matter what you used. So, every time somebody comes in,
24 it's changing. What do you think it's going to do, you

1 know, to the homeowners? Now, they're going to come in
2 and put a tank in there. I can just imagine what they're
3 going to go for, to recoup.

4 So, the whole thing is, why aren't they
5 satisfied just coming in and fix it? But now I'm at the
6 point, I'm not willing to do that. If they do it, I'm
7 going to ask that Mrs. Crane and I get the water for
8 whatever time we own that home, the future people, hey,
9 they're taking our land, they want to use it, pay a little
10 bit. I'm not asking nothing to do impossible. It's a
11 one-way street.

12 I can go on and on, you know. And,
13 then, you see this, what it says here (indicating).
14 Another letter came up when they had the meeting with you
15 people. "He's unemployed." There's a big difference
16 "unemployed" and "retired". You don't gain people's trust
17 by throwing those digs. My neighbor on Vassar Drive, he's
18 retired, same as I am, they never gave him that kind of
19 treatment. They said it's all a mistake. What I think
20 they was trying to do was impress this board here, to show
21 that I'm -- my age and my time are no longer any use for
22 Concord, New Hampshire. I hope you people didn't fight
23 for that.

24 I can go on and on, but I will stop,

1 because I just -- I have no intention of signing over my
2 property, no matter what. They just did a revaluation in
3 Pelham, and I got it here. It's amazing how much it
4 jumped. And, what they were, I don't think a couple of
5 months difference, I got a \$200,000 jump, and the biggest
6 portion went on the land. So, how can they tell me what
7 my land is worth. That should be me.

8 Now, I'm -- first, I'm not used to
9 coming to these places, because I never had to. When I
10 went into the Service, I thought I was fighting to keep
11 peace in this world that, when I come home, I could live
12 in peace, but not the case. Thank you.

13 **CHAIRMAN GETZ:** Thank you. Ms. Crane.

14 **MS. CRANE:** Hi. My concerns basically
15 were the fact that I have a shed that abuts this easement
16 area that they want. And, I wouldn't want any damage to
17 happen, nor would I want my shed to be moved. I had some
18 concerns over the privacy, in trees coming down and maybe
19 losing the privacy that I currently enjoy from the other
20 homes in the area, the two homes in the back on Vassar
21 that have also given an easement. I've been concerned
22 about the size of the tank, where they may place a larger
23 tank. And, I wanted to be sure that this tank would only
24 continue to service the 25 homes, and not be trucked out

1 to service other areas. And, then, I'm listening to large
2 trucks coming in to pump out the water to bring it to
3 other areas.

4 I also had concern over the fact that,
5 if I had wanted to sell my home in the future, and there's
6 this easement, if that would discourage a prospective
7 buyer from wanting to purchase my home. And, the fact
8 that an easement gives them the right to the property that
9 I'm not going to use, but I'm still paying tax dollars
10 for. And, we did have a new assessment, and our property
11 values increased threefold. So, you know, we're looking
12 at some things here. That we understand the need for the
13 tank. We understand that this is a company that's in
14 business to make money, not to lose, but to service us as
15 well.

16 Years ago, I considered putting in my
17 own well, and it would have paid for itself over the time
18 that I spent with the water with the utility company.
19 However, the relationship continued, and I didn't -- and I
20 knew the tank was on my property and I wasn't concerned
21 about it, because it did service me and it did service my
22 neighbors. And, this is why, over the few years that
23 we've gone back and forth, I've said time and again "I
24 don't want to give an easement, but you certainly have my

1 permission to go in any time you need to, to do whatever
2 repairs you need to do."

3 I understand the concerns here are that,
4 in the future, someone else that may own the property may
5 not give permission to go in and work on the tank. But,
6 if the tank is removed and a new one is put in, this tank
7 should be there for another 30 to 50 years. I don't see
8 why they can't just come in and take the tank out and
9 replace it, without me having to sign my property over to
10 them.

11 However, in view of all of that, again,
12 I am concerned over the fact that I'm just losing my right
13 to my property. I don't like that I have to lose my
14 rights to my own property. I feel very strongly about
15 that. And, you know, so, that's the bottom line, along
16 with some other concerns. That's where I stand today.

17 **CHAIRMAN GETZ:** Okay. Thank you.
18 Ms. Thunberg.

19 **MS. THUNBERG:** Yes. Thank you,
20 Commissioners. As the petition states, this is an old
21 Consumers system, and PEU is trying to bring these systems
22 up to legitimate standards, such as acquiring the
23 easements to maintain access to their facilities. And,
24 Staff has, in the past, with other water utilities,

1 supported water utilities actually having either a fee
2 simple or an easement or some kind of guarantee to their
3 facilities, in order to ensure that they provide safe and
4 adequate service, which is one of the requirements for
5 having a franchise.

6 Staff hears the concerns of the
7 customers. And, we'll be trying to work with the
8 customers to resolve this issue. Staff understands that
9 PEU has a right under 371:1 to condemn property. But
10 sometimes the method that is executed can offend people,
11 as is the case here. And, Staff will work with the
12 customers to try to not only allow PEU the right that they
13 have available to them, but do it in a least offensive way
14 as possible.

15 So, with that, again, Staff looks
16 forward to working with the parties in the technical
17 session afterwards to try to reach some amicable solution.
18 Thank you.

19 **CHAIRMAN GETZ:** Ms. Thunberg, have you
20 discussed with Mr. Quintal and Ms. Crane the process and
21 what the technical sessions are, how they're used, and
22 prehearing conferences?

23 **MS. THUNBERG:** Staff has discussed that
24 there will be a technical session, where we can try to

1 hammer out a resolution of this issue, and did briefly
2 explain the procedural hearing or the prehearing and
3 technical session and what happens in each.

4 **CHAIRMAN GETZ:** Thank you.

5 **MS. THUNBERG:** Thank you.

6 **CMSR. BELOW:** Yes, please.

7 Mr. Pendleton, the survey, they indicate that the well is
8 actually located on the Crane property, is that correct?

9 **MR. PENDLETON:** That's our
10 understanding. As far as we know, the well is located in
11 a direct line out of the back of the pump house, and the
12 surveyor located the pump house in relations to what he
13 believed to be the property line. So, if you follow that
14 out at the angle it's brought out at, that's where we
15 believe the tank is.

16 **CMSR. BELOW:** And, your means of access
17 to the pump house is through the easement going in the, I
18 guess, northern direction?

19 **MR. PENDLETON:** Coming in from the
20 Saitow and Beaucage property, right. And, there's
21 actually, on those properties, there is a space where we
22 think we can get in without cutting down any trees. But
23 we may have -- Mr. Saitow understands we may have to take
24 down a couple of pine trees. But, if we do that, of

1 course, under our standard easement, we would replace it.
2 He has some small pine trees on the back corner.

3 **CMSR. BELOW:** And, the other easement
4 that runs along the property lines of all the properties,
5 that's a -- was it a New England Telephone Company
6 easement, "NETCO easement"?

7 **MR. PENDLETON:** I believe that's
8 correct. Are you speaking about the second line on the
9 property on the survey map, that I'm looking at a small
10 version, so I can't --

11 **CMSR. BELOW:** Well, the large, I mean,
12 the one that shows all of the abutting properties around
13 the pump house --

14 **MR. PENDLETON:** Right.

15 **CMSR. BELOW:** -- appears to show about a
16 ten-foot wide easement, more or less centered on the
17 property boundaries, going kind of off in all directions.

18 **MR. PENDLETON:** I will --

19 **CMSR. BELOW:** And, it says --

20 **MR. PENDLETON:** I'm sorry, I didn't mean
21 to interrupt you.

22 **CMSR. BELOW:** It says "existing 10 foot
23 NETT", N-E-T-T-C-O, "easement".

24 **MR. PENDLETON:** That would be my

1 understanding of it. It also -- My understanding also is
2 that there's a setback requirement as well, and I think
3 that may be ten feet in the Town. But, today, I guess I
4 should say I'm not prepared to answer that with a
5 definitive -- with definity, because I haven't spoken to
6 the surveyor about that issue.

7 **CMSR. BELOW:** How do your water lines
8 serve these homes? Where do your water lines run from the
9 pump house and the well?

10 **MR. PENDLETON:** My understanding, and
11 I'm not sure if -- I'll be corrected if I'm wrong, I
12 assume, but I think they go out through the
13 Beaucage/Saitow easement out to the street. I don't know
14 whether there are water mains running back through the
15 Crane or Quintal property to those houses. But my
16 understanding is they go out to the street and they serve
17 the community through water mains that are located within
18 the street right-of-way.

19 **CHAIRMAN GETZ:** Mr. Quintal.

20 **MR. QUINTAL:** I can answer that
21 question. Everything goes down to Vassar Drive, either
22 left or right. It takes a right on Vassar -- on Wellesley
23 Drive and it takes a right on Radcliff. And, anything
24 below that goes towards Route 38. The homes are all in

1 that vicinity. I got pictures here that probably can
2 solve some of your questioning. Would you care that I
3 come forward and I give them to you to look?

4 **CHAIRMAN GETZ:** Please.

5 **CMSR. BELOW:** I think it will help to
6 understand it a little better.

7 **MR. QUINTAL:** I had these done.
8 Because, of course, while my tank -- their tank is on
9 their property, and I had a feeling it's not so. And,
10 these pictures will kind of -- these are the ones
11 (indicating) well, this is the well head right here. And,
12 I took two photos. This was just taken probably a month
13 ago.

14 **CMSR. BELOW:** Okay.

15 **MR. QUINTAL:** And, then they --

16 **CMSR. BELOW:** We'll pass those around
17 and give those back to you.

18 **MR. QUINTAL:** Yes, you can. Most of the
19 stuff here is Mrs. Crane, it shows the tank, the tank is
20 about maybe a foot and a half above ground, it's just
21 buried. That's all it is. And, it also shows where, in
22 my corner, where my peg is, that's the one like that, I'm
23 far enough away, they don't need to bother my property not
24 one bit. They could actually do without it. But they

1 seem to think they got the piece of equipment that can't
2 get by there. I know their equipment. They used to fix
3 the leaks in my -- in the streets. They come in with a
4 little truck. Now, they want to come in with an Amazon.

5 **CMSR. BELOW:** Okay. Thank you.

6 **MR. PENDLETON:** I did confirm that I
7 believe our understanding of where the mains are is the
8 same as Mr. Quintal's. They go out to Vassar Drive, then
9 take a right, and follow it down to and come back through
10 the roadways directly.

11 **CMSR. BELOW:** Okay. Thank you. Now, I
12 guess -- well, I guess I have one more question. What is
13 Pennichuck East's position why, could you just summarize
14 why you feel it's necessary to acquire an easement on
15 Mr. Quintal's land?

16 **MR. PENDLETON:** In order to do the work
17 required, because, according to our survey, the tank abuts
18 and may even go on slightly onto his property, there's no
19 way to replace that tank without going onto his property.
20 And, so, if we're, you know, digging on his property, we
21 also need a place to put the dirt when we're doing the
22 construction, we need a place to bring in the tank, we
23 need a place to get around the pump house. And, so, for
24 those reasons, we think it's necessary to have an

1 easement. And, we try to make it, you know, we use the
2 standard easement document that we use any time we're
3 acquiring use and access easements. It gives us limited
4 rights. It requires us to replace the property as best as
5 we can in the form it was before. And, it allows us to go
6 in only to do work on the utility, it doesn't allow us to
7 go in for unrelated purposes. So, you know, that's the
8 limited goal, is to have the ability to go in.

9 The tank is in such bad condition, and
10 it's on the -- it's been on the eve -- on the brink of
11 collapsing for a number of years, but we didn't want to go
12 forward and simply go in and do it, in that we've made
13 what we thought were pretty reasonable efforts to contact
14 the people. And, there hadn't been regular responses.
15 And, we didn't want to get into a situation where we had
16 work and equipment out there, and we were suddenly in
17 Superior Court on an injunction. So, for those reasons, I
18 think it's the best course of action to clarify the fact
19 that the system is out there and we do have the need to
20 get in there and the right to get in there when we need to
21 service the system, now and in the future. Because, if
22 there's a problem in the future, and we go out and we try
23 to get access to that property, and suddenly there's no
24 water because there's no tank, and we can't get access

1 because we're in court on an injunction, it's going to
2 pose problems for not just these individuals, but the
3 entire community water system.

4 **CMSR. BELOW:** So, you've drawn the
5 proposed easement, it looks like roughly, on sides, 10 to
6 15 feet, and at either end maybe 20 feet, something like
7 10 to 20 feet around the existing tank and pump house, to
8 provide that sort of access around it for --

9 **MR. PENDLETON:** For access of the
10 equipment.

11 **CMSR. BELOW:** Right.

12 **MR. PENDLETON:** Right. And, really, you
13 know, we don't anticipate -- the goal isn't to go back
14 there again for another 25 to 30 years, when we have to
15 replace the tank again. You know, the Beaucages and the
16 Saitows understand that we are going to come in to change
17 filters and check the system. But there's no intent to,
18 you know, to -- we don't have any intent to be going back
19 and digging up the tank every couple of years.

20 **CMSR. BELOW:** Okay. Thank you. That's
21 all.

22 **CHAIRMAN GETZ:** Well, is there anything
23 else that the parties wish to present at this time?

24 (No verbal response)

1 **CHAIRMAN GETZ:** Okay. Then, I would
2 just ask that, after we close this prehearing conference
3 and go to the -- and the parties will have an opportunity
4 for a technical session, this is an opportunity to try and
5 work something out. And, in most of these cases, it's I
6 think a lot better use of people's resources if they can
7 manage to work something out that's acceptable to
8 everyone. But, if it can't be done, then we will wait to
9 see if there's a proposal for some agreement or if we're
10 going to go to hearings on this case. So, -- Ms. Crane?

11 **MS. CRANE:** I do have one last comment.
12 And, I did mention this to the attorney. Basically, the
13 easement has been given on the two properties on Vassar,
14 and the tank is on my property. If the tank has to be
15 removed, can it be moved onto the properties that have
16 already given them easements, instead of having to for us
17 to provide easements on our properties. That the easement
18 is there on Vassar. The tank, it appears that that
19 easement would provide them with sufficient access to put
20 in a new tank on those properties. And, I just feel as
21 though that should be taken into consideration.

22 **CHAIRMAN GETZ:** Well, I think that's
23 certainly one option that the parties can explore in the
24 technical session after we close the prehearing

1 conference, and then the parties can discuss options among
2 themselves. And, if you can work something out, we'll
3 hear that from the parties. If you can't work something
4 out, then we'll hear that as well and we'll have to go to
5 hearing.

6 But, at this point, is there anything
7 else this morning?

8 (No verbal response)

9 **CHAIRMAN GETZ:** Okay. Then, we will
10 close this prehearing conference and wait to see what
11 resolution the parties may or may not come up with. Thank
12 you.

13 **(Whereupon the prehearing conference**
14 **ended at 10:38 a.m. and a technical**
15 **session was convened thereafter.)**

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