

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

November 21, 2016 - 1:38 p.m.  
Concord, New Hampshire

NHPUC DEC08'16 AM 9:53

RE: DW 16-806  
PENNICHUCK WATER WORKS, INC.:  
Request for Change in Rates.  
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding  
Commissioner Robert R. Scott  
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Reptg. Pennichuck Water Works, Inc.:  
William F. Ardinger, Esq. (Rath...)  
Richard W. Head, Esq. (Rath Young...)

Reptg. Residential Ratepayers:  
Donald M. Kreis, Esq., Consumer Adv.  
James Brennan, Finance Director  
Office of Consumer Advocate

Reptg. PUC Staff:  
John Clifford, Esq., Esq.  
Mark Naylor, Dir./Gas & Water Div.  
Jayson Laflamme, Gas & Water Division  
Robyn Descoteau, Gas & Water Division

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

CERTIFIED  
ORIGINAL TRANSCRIPT

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

1  
2 CHAIRMAN HONIGBERG: We're here this  
3 afternoon in Docket DW 16-806, which is a rate  
4 case filed by Pennichuck Water Works. They  
5 have a request for temporary and permanent  
6 rates. This afternoon we're here for a  
7 prehearing conference. We had issued an order  
8 suspending the tariffs and directing that a  
9 proceeding commence to investigate the rate  
10 request, and hear we are.

11 Before we do anything else, let's  
12 take appearances.

13 MR. ARDINGER: Chairman Honigberg, my  
14 name is William Ardinger. I'm with the law  
15 firm Rath, Young & Pignatelli, and with is my  
16 colleague, Richard Head, also with the same law  
17 firm. And also with me today are from  
18 Pennichuck Water Works, the Company's CEO,  
19 Larry Goodhue; the Company's Chief Operating  
20 Officer, Donald Ware; the Company's Director of  
21 Regulatory Affairs, Carol Ann Howe; and the  
22 Company's Regulatory and Treasury Financial  
23 Analyst, Jay Kerrigan.

24 Thank you.

1 CHAIRMAN HONIGBERG: Mr. Kreis.

2 MR. KREIS: Thank you, Mr. Chairman.

3 I am D. Maurice Kreis, fondly known to some as  
4 "Don Kreis". I am the Consumer Advocate, here  
5 with my colleague Jim Brennan, on behalf of the  
6 residential utility customers of this utility.

7 MR. CLIFFORD: Good afternoon,  
8 Commissioners. John Clifford, Staff Attorney.  
9 And with me at counsel's table is Mark Naylor,  
10 Director of the Commission's Gas and Water  
11 Division; Jayson Laflamme, Staff Analyst, Gas  
12 and Water Division; and Robyn Descoteau, Staff  
13 Analyst, Gas and Water Division.

14 Thank you.

15 CHAIRMAN HONIGBERG: I don't believe  
16 we have any intervention petitions, is that  
17 correct?

18 Well, wait. I know we have members  
19 of the public here.

20 MR. CLIFFORD: Right.

21 CHAIRMAN HONIGBERG: But just let's  
22 deal with what we actually have in the file.  
23 The question is, do we have any intervention  
24 petitions?

1 MR. CLIFFORD: No, we don't.

2 CHAIRMAN HONIGBERG: Okay. Thank  
3 you. We've gotten, I don't know, we're  
4 probably up to about 15 or 18 public comments  
5 from people I presume to be customers who are,  
6 at one level or another, not thrilled with the  
7 Company's request.

8 Are there any other preliminary  
9 matters, before I turn to the members of the  
10 public who are in the back?

11 MR. CLIFFORD: None on behalf of  
12 Staff, no.

13 MR. ARDINGER: No, sir.

14 CHAIRMAN HONIGBERG: All right. I  
15 see we have some members of the public here.  
16 Would you like to identify yourselves?

17 MR. DALY: Yes. Geoff Daly, citizen  
18 from Nashua.

19 *[Court reporter interruption.]*

20 CHAIRMAN HONIGBERG: Mr. Daly -- I'll  
21 do it, Steve. Off the record.

22 *[Brief off-the-record discussion*  
23 *ensued.]*

24 CHAIRMAN HONIGBERG: All right. So,

1 we'll go back on the record.

2 Now, if you could identify yourself,  
3 Mr. Daly.

4 MR. DALY: Geoff Daly, from Nashua,  
5 citizen and user of Pennichuck Water.

6 CHAIRMAN HONIGBERG: How do you spell  
7 your last name, Mr. Daly?

8 MR. DALY: D-a-l-y.

9 MR. TEEBOOM: My name Fred Teeboom,  
10 spelled T-e-e-b-o-o-m. And I'm a user of  
11 Pennichuck Water and a citizen of Nashua.

12 CHAIRMAN HONIGBERG: All right.  
13 Neither of you at this point has filed anything  
14 seeking official status in this proceeding. Do  
15 you know what you'd like to do in that regard  
16 at this point? Do you plan to file  
17 intervention requests?

18 MR. DALY: No, sir.

19 MR. TEEBOOM: No, sir.

20 CHAIRMAN HONIGBERG: So, you're just  
21 here to watch the festivities and keep an eye  
22 on what's going on?

23 MR. DALY: Correct.

24 CHAIRMAN HONIGBERG: All right.

1 Anything else we need to know, before we take  
2 the initial positions from the parties?

3 *[No verbal response.]*

4 CHAIRMAN HONIGBERG: All right.

5 Mr. Ardinger, why don't you proceed.

6 MR. ARDINGER: Thank you very much.

7 CHAIRMAN HONIGBERG: And you can --

8 Mr. Ardinger, believe it or not, it will be  
9 better if you stay seated, because the  
10 microphone is in front of you.

11 MR. ARDINGER: Very good. Thank you  
12 very much. And thanks to the Commission for a  
13 chance to make this preliminary position  
14 statement.

15 The proceeding here before you to  
16 approve the rates requested by the Company is  
17 the natural result of the City of Nashua's  
18 acquisition of Pennichuck Corporation in  
19 January of 2012, and this Commission approved  
20 in a prior docket, DW 11-026, the acquisition  
21 of Pennichuck Corporation by the City in a  
22 transaction that resolved over a decade of  
23 dispute between the City and its water utility  
24 that provides service to its citizens.

1 Pennichuck Corporation owns, as you  
2 know, three regulated utility subsidiaries.  
3 One of them is Pennichuck Water Works. This  
4 particular proceeding, and the request that you  
5 have before you, not only for establishing just  
6 and reasonable rates at the level requested by  
7 the Company, but also modifying the method of  
8 determining those rates, reflects a transition  
9 from -- in these water utilities from being  
10 investor-owned utilities to utilities that are  
11 owned by a municipality, which is somewhat  
12 unique, in terms of the structure we have, the  
13 corporate structure.

14 This utility, Pennichuck Water Works,  
15 under this structure, no longer has any access  
16 to equity markets. They must go to the debt  
17 markets to raise capital to finance their water  
18 utility infrastructure needs.

19 This proceeding, here at the end --  
20 nearing the end of Thanksgiving week in 2016,  
21 reflects also the fact that Pennichuck Water  
22 Works has had no permanent rate increase since  
23 June 16th of 2010, effective then. Yet, the  
24 utility, Pennichuck Water Works, has made

1 substantial investments in its water service  
2 infrastructure over that time period.

3 The requested rates, it is our job to  
4 establish to this Commission in this  
5 proceeding, the requested rates we believe are  
6 consistent with the assumptions that underlay  
7 the City's acquisition of Pennichuck in DW  
8 11-026. They reflect important lessons that  
9 the Company and its leadership have learned  
10 about how the capital markets, which are our  
11 source of debt capital to finance the utility  
12 infrastructure we need, how the capital markets  
13 view this structure. Since this time, the  
14 capital markets -- the Company has come before  
15 this Commission twice for a capital -- large,  
16 large financing approvals, and both times we  
17 had on-the-ground, concrete, tangible  
18 experience with what the capital markets need.  
19 This particular rate request and the  
20 modifications to the method of setting rates  
21 that we proposed in this proceeding are  
22 directly responsive to that experience, and  
23 will allow this municipally-owned, regulated  
24 public utility serving the people of Nashua and

1 surrounding communities to continue to finance  
2 its needs going forward.

3           Importantly, the rates requested in  
4 this proceeding, as set forward in the  
5 documents we've already filed, continue to be  
6 far less than those that would result if this  
7 utility had continued to be owned as an  
8 investor-owned utility, where the investor was  
9 seeking an equity rate of return. As you will  
10 see as we get into this process, PWW is seeking  
11 rates that reflect an overall rate of return on  
12 its entire capital base of 4.83 percent.

13 That's because PWW, and its two sister  
14 utilities, under the acquisition process that  
15 started in early 2012, are not requesting an  
16 equity rate of return. They are essentially,  
17 the City of Nashua, when it borrowed 150  
18 million to complete this acquisition, it  
19 transferred its incredibly low rates, 4.09  
20 percent, to hit the general obligation bond  
21 market, directly to its ratepayers. However,  
22 we've learned in this structure that the  
23 capital markets as we go forward will continue  
24 to require a very certain feeling that the

1 Commission, who is our regulator, and the  
2 Company understands that we have to have cash  
3 flows sufficient to meet that debt service in a  
4 way that is very much related to the way they  
5 would look at a municipally owned utility in  
6 the traditional sense.

7 Finally, I'd like to address two  
8 questions that the Commission raised in its  
9 order for a prehearing conference hearing  
10 order. The first is, I read that the  
11 Commission asked the question "doesn't this  
12 proceeding, this request for rates, with its  
13 modification, ask for a type of modification of  
14 the Settlement Agreement that was approved in  
15 the acquisition docket, 11-026? And does that  
16 perhaps require a reopening of the prior  
17 docket, 11-026? Our answer, since I read the  
18 question in the order, is respectfully no. We  
19 don't believe it requires a reopening. We  
20 think this Commission has very clear authority,  
21 under 365:28, RSA 365:28, to modify or amend  
22 prior orders. And, furthermore, you know, as  
23 the Commission has already notified through its  
24 order that service list, which I think, under

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1 the case *Appeal of Office of Consumer Advocate*  
2 in the '90s, we believe that case clearly  
3 established that this Commission has the power  
4 to hold this docket, review the requests we've  
5 made, and come to a conclusion based on whether  
6 the Petitioner can make -- can prove that the  
7 request its made would be for just and  
8 reasonable rates and that the other requests  
9 its made is consistent with the public  
10 interest.

11 The last point we read was about, it  
12 seemed the Commission was -- had directed Staff  
13 to review the adequacy of the rate schedules  
14 that were filed in the rate filing. In fact,  
15 the Company has received communication from  
16 Staff, and we have reviewed the request. There  
17 were some schedules that were not required  
18 under the 1600 rules, but are very thick,  
19 they're like a detailed list of assets, you  
20 couldn't read them if they were printed out.  
21 We have prepared those schedules. We're  
22 providing them in response to Staff. And we're  
23 also going to provide the Excel spreadsheet,  
24 where everything ticks and ties. But we thank

1           you for raising that issue.

2                         That's all I have at this point.

3           Thank you.

4                         CHAIRMAN HONIGBERG:   Thank you,

5           Mr. Ardinger.   Mr. Kreis.

6                         MR. KREIS:   Thank you, Mr. Chairman.

7           On behalf of residential utility customers, I  
8           have to say that I really didn't hear anything  
9           Mr. Ardinger say that I would disagree with in  
10          my capacity as head of the OCA.   This case  
11          raises a few novel issues, because Pennichuck  
12          Water Works is a unique company, at least  
13          unique here in New Hampshire.

14                        The question of what capital markets  
15          require of a company like this is an  
16          interesting one, and clearly relevant to the  
17          outcome of a case like this.   Of course, it's  
18          not the legal standard the Commission is  
19          expected and required to approve rates that are  
20          just and reasonable, and how the just and  
21          reasonable standard applies in a case like this  
22          is probably a case of first impression.   And we  
23          look forward to working with the Company on  
24          figuring out exactly how that really ought to

1 sort itself out in a case like this.

2 CHAIRMAN HONIGBERG: Thank you, Mr.  
3 Kreis. Mr. Clifford.

4 MR. CLIFFORD: Yes. Thank you. I've  
5 prepared some remarks today. Thank you for  
6 allowing us to comment. We have -- Staff has  
7 significant concerns about this rate case and  
8 associated request to substantially modify the  
9 ratemaking provisions of the Settlement  
10 Agreement that was approved in Docket Number DW  
11 11-026.

12 So -- excuse me. First off, with  
13 respect to the Company's request for an  
14 increase of 17.21 percent in annual operating  
15 revenues, we were surprised that Pennichuck  
16 Water Works submitted a notice of intent to  
17 file a rate case. Our analysis of the  
18 Company's 2015 earnings as detailed in its  
19 Annual Report indicates that the Company has  
20 achieved a 6.46 percent rate of return in 2015,  
21 compared to its weighted average cost of  
22 capital of 4.38 percent. So, in other words,  
23 Pennichuck Water Works was overearning during  
24 that period.

1           And it appears that the stated  
2           revenue deficiency in this rate filing is the  
3           result of some proforma adjustments, as well as  
4           inclusion of all of the Company's 2016, i.e.  
5           their post test year, capital improvements.  
6           So, in accordance with our normal practice,  
7           we'll review the Company's test period, the  
8           proposed proforma adjustments, and the impact  
9           of these proposed ratemaking modifications.  
10          However, based on our preliminary analysis,  
11          we're unlikely to support temporary rates for  
12          this proceeding.

13                 And, secondly, with respect to the  
14                 proposals for significant ratemaking  
15                 modifications, one of Staff's most significant  
16                 concerns about the change in ownership of  
17                 Pennichuck, both in DW 04-048 and the  
18                 eminent -- excuse me, the eminent domain  
19                 docket, and in DW 11-026 is the potential  
20                 impact on customers outside of the City.  
21                 Pennichuck Water Works has over 4,000 customers  
22                 in municipalities other than Nashua. The  
23                 concept of putting the utility under the  
24                 ownership of the City caused concerns about

1 fairness and equal treatment in terms of the  
2 service, capital expenditures, and the impact  
3 on natural competition for commercial and  
4 industrial growth at that time. And we heard  
5 those concerns in the 04-048 water case and  
6 again in DW 11-026.

7 So, one of the key safeguards with  
8 respect to this issue was structured -- was  
9 structuring the acquisition by Nashua not just  
10 of Pennichuck Water Works, but of Pennichuck  
11 Corporation. Such that Pennichuck Water Works  
12 and its sister utilities remain under the  
13 jurisdiction of this Commission and governed by  
14 an independent board of directors. In other  
15 words, the separation from the City as the sole  
16 shareholder would help to ensure a continuation  
17 of business decisions that focus on service  
18 to -- excellent service to customers and  
19 maintenance of the utility infrastructure, and  
20 not on any particular favoritism to Nashua  
21 because it owns the Company.

22 In the same vein, Staff and other  
23 parties were concerned about the potential  
24 intermingling of the financial side of the

1 water business with the finances of the City.  
2 And, in order to address this issue, and to  
3 avoid any perception that Nashua is using  
4 customer rates to supplement the City's budget,  
5 a restriction on dividends was included in that  
6 Settlement Agreement. And the three utilities  
7 could pay dividends, but only for two specific  
8 purposes: For its share of the City's  
9 acquisition debt service, the so-called CBFRR  
10 rate that you'll see in the Company's filing,  
11 also called the "City Bond Fixed Revenue  
12 Requirement", and the repayment out of earnings  
13 and profits for the City's eminent domain  
14 related expenses, that was limited to \$500,000  
15 annually, and a \$5 million cap in total,  
16 subject to Commission audit.

17 The Settling Parties in 11-206  
18 [11-026?] were clear that customers would not  
19 include any amounts to repay the City's costs  
20 of prosecuting the eminent domain case. So,  
21 dividends paid out for this purpose are to be  
22 paid only from earnings and profits, and never  
23 included in rates. And Page 16 of the  
24 Settlement Agreement, which I have before me,

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1 states in quote -- and I'm quoting from Page 16  
2 in the Agreement in case number 11-026: "For  
3 the avoidance of doubt, the Settling Parties  
4 agree that such eminent domain expenses and  
5 costs shall not be recovered from PWW, PEU, or  
6 PAC customers." And those references are the  
7 three water utilities.

8 In this rate filing, however, that's  
9 exactly what customers are being asked to do,  
10 including the 4,000 some odd customers who live  
11 in places like Merrimack and Amherst and  
12 Bedford. Pennichuck Water Works is asking to  
13 include \$440,000 in its revenue requirement for  
14 the next ten years to reimburse the City. This  
15 isn't a "modification" of that Settlement  
16 Agreement or the ratemaking protocol contained  
17 in that Settlement Agreement. It's basically a  
18 rejection of one of its key provisions.

19 Approving this is putting customers of all  
20 three utilities on a slippery slope to paying  
21 rates that include City expenses not applicable  
22 to the provisions of water service. So, Staff  
23 opposes the inclusion of such amounts in  
24 customer rates.

1           The proposal is one of a number of  
2 proposals to substantially modify the  
3 Settlement Agreement and the ratemaking  
4 protocols negotiated by a number of parties in  
5 11-206 -- excuse me, 11-026. Pennichuck Water  
6 Works wishes to essentially eliminate the  
7 concept of using a test year for measurement of  
8 its earnings. It's seeking to use a five year  
9 trailing average for both revenues and expenses  
10 as a test year; establish a debt service  
11 revenue requirement of 1.2 -- 1 and a quarter  
12 times the sum of its annual principal and  
13 interest; -- excuse me -- it seeks to eliminate  
14 its WICA Pilot Program, and instead file annual  
15 step adjustments for all of its capital  
16 expenditures; and it seeks to have the  
17 Commission order the Company to file a rate  
18 case every three years; and seeks approval of a  
19 number of other provisions not contemplated in  
20 the 11-026 Settlement Agreement. So, we  
21 believe that the Settlement Agreement approved  
22 by the Commission in DW 11-026 is a  
23 comprehensive agreement negotiated by a number  
24 of parties.

1           And attached to the Agreement are a  
2           series of schedules providing in substance --  
3           substantial detail how rates would be set for  
4           all three utilities in the future under City  
5           ownership of the Pennichuck Corporation. And  
6           Staff doesn't believe that Pennichuck Water  
7           Works or its ultimate shareholder, the City of  
8           Nashua, have provided any evidence that it's  
9           harmed by adhering to the terms of the  
10          Agreement. Instead, the Company's own  
11          testimony points to two successful refinancings  
12          that have been completed since the acquisition.

13                 So, in summary, Staff's preliminary  
14          position in this matter are we are unlikely to  
15          support temporary rates, the justification for  
16          which appears to be proforma adjustments and  
17          ratemaking modifications. And we're opposed to  
18          the inclusion in the customer rates of any  
19          City-incurred costs unrelated to water utility  
20          service. And we oppose any modifications to  
21          the Settlement Agreement approved in DW 11-026.

22                 And Staff will provide its own  
23          testimony on revenue requirement based on the  
24          ratemaking structure approved in that case.

1                   And I have no further comments at  
2                   this time.

3                   CHAIRMAN HONIGBERG: Thank you,  
4                   Mr. Clifford. I know there's a technical  
5                   session that's going to take place after this  
6                   prehearing conference, and it sounds like  
7                   you'll have lots to talk about.

8                   Any sense of how long it will take  
9                   you to get to a hearing on the merits of  
10                  temporary rates? Is this the kind of thing  
11                  that's going to happen in four weeks? Eight  
12                  weeks? Twelve weeks? What do we think? Just  
13                  a ballpark? And I'm not holding you to this.  
14                  I'm just trying to get a sense.

15                  MR. CLIFFORD: Well, on behalf of  
16                  Staff, we'd say it depends on those missing  
17                  schedules. So, we'd have a much firmer answer.  
18                  You know, I wouldn't want you to hold us to it.  
19                  We'd say, if we got those schedules in a pretty  
20                  orderly fashion, maybe the temporary would be  
21                  in February-ish. But we'll have to see what  
22                  comes in. But we'll certainly -- we're happy  
23                  to alert the Commission through our -- through  
24                  informing them what our schedule will be based

1 on what we have after, in our tech session  
2 today.

3 CHAIRMAN HONIGBERG: Okay. That's  
4 helpful. Thank you.

5 Mr. Ardinger.

6 MR. ARDINGER: It wouldn't surprise  
7 you that we were going to provide them, and we  
8 were hoping it would come a little bit earlier  
9 than February. But we expect to chat about  
10 that in the technical session as well.

11 CHAIRMAN HONIGBERG: Yet another  
12 thing you can talk about in the technical  
13 session.

14 MR. ARDINGER: Yes.

15 CHAIRMAN HONIGBERG: All right. Is  
16 there anything else we need to do before we  
17 leave you to your technical session?

18 MR. ARDINGER: If I could?

19 CHAIRMAN HONIGBERG: Yes, Mr.  
20 Ardinger.

21 MR. ARDINGER: One other thing, Mr.  
22 Chairman.

23 The Company has, as you might expect  
24 of an entity that is owned by a city, engaged

1 in a strong set of steps to reach out to the  
2 communities that it serves, including the City.  
3 It has met with the City. It has sent letters  
4 out to all of the key officials, including  
5 state senators, state reps, town officers of  
6 each of the cities and towns it serves, at both  
7 when it filed its notice of intent to file rate  
8 case and when it filed its actual rate case  
9 material. And it's conducted several phone  
10 calls with key officials in the City, including  
11 the president of the Board of Alderman, and the  
12 head of the Pennichuck Special Water Committee.

13 Finally, on December 1st, 2016, there  
14 is a meeting, a publicly noticed meeting  
15 scheduled with the Pennichuck Special Water  
16 Committee, at which the Company will continue  
17 its outreach in the community.

18 CHAIRMAN HONIGBERG: All right.  
19 Well, thank you. This does sound like it's  
20 going to be interesting. And I think there  
21 will be some issues where you'll work some  
22 things out, I suspect some others where you  
23 probably won't.

24 In any event, if there's nothing else

1 we can do for you, we will leave you to your  
2 technical session?

3 *[No verbal response.]*

4 CHAIRMAN HONIGBERG: With that, we  
5 are adjourned.

6 **(Whereupon the prehearing**  
7 **conference was adjourned at 2:01**  
8 **p.m. and a technical session was**  
9 **held thereafter.)**

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