

1 STATE OF NEW HAMPSHIRE

2 PUBLIC UTILITIES COMMISSION

3
4 July 14, 2010 - 2:09 p.m.
5 Concord, New Hampshire

6 NHPUC AUG05'10 PM 3:52

7 RE: DW 10-091
8 PENNICHUCK WATER WORKS, INC.:
9 Notice of Intent to File Rate
10 Schedules. (*Prehearing conference*)

11 PRESENT: Chairman Thomas B. Getz, Presiding
12 Commissioner Clifton C. Below
13 Commissioner Amy L. Ignatius

14 Sandy Deno, Clerk

15 APPEARANCES: Reptg. Pennichuck Water Works, Inc.:
16 Sarah B. Knowlton, Esq. (McLane, Graf...)
17 Reptg. Anheuser-Busch:
18 John T. Alexander, Esq. (Ransmeier & Spellman)
19 Reptg. Residential Ratepayers:
20 Meredith Hatfield, Esq., Consumer Advocate
21 Kenneth E. Traum, Asst. Consumer Advocate
22 Office of Consumer Advocate
23 Reptg. PUC Staff:
24 Marcia A.B. Thunberg, Esq.
Mark A. Naylor, Director/Gas & Water Division
James L. Lenihan, Gas & Water Division
Douglas W. Brogan, Gas & Water Division
Jayson P. LaFlamme, Gas & Water Division

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

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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good afternoon, everyone. We'll open the prehearing conference in Docket DW 10-091. On May 7, 2010, Pennichuck Water Works filed materials supporting a proposed increase in permanent rates and submitted as well a Petition for Temporary Rates. The Company seeks an increase in permanent rates of \$3,916,175 on an annual basis, which equates to 16.23 percent. It also seeks a step adjustment of \$886,639, which would bring the combined increase to 19.91 percent. The Company, in addition, seeks approval of a Water Investment and Conservation Adjustment charge, and it seeks recovery of costs related to the City of Nashua's eminent domain action. And, finally, it seeks a temporary rate increase equivalent to 10.8 percent.

We issued an order suspending the tariff and scheduling a prehearing conference on June 4. I'll note for the record that we have a Notice of Participation from the Office of Advocate, a Petition to Intervene from Anheuser-Busch, and the Company has filed its affidavits of publication.

So, can we take appearances.

MS. KNOWLTON: Good afternoon, Commissioners. My name is Sarah Knowlton. I'm with the

1 McLane law firm. I'm here today on behalf of Pennichuck
2 Water Works, Inc. And, with me today from the Company is
3 Bonalyn Hartley, Donald Ware, Charlie Hoeppe, and Dawn
4 Deblois.

5 CHAIRMAN GETZ: Good afternoon.

6 MR. ALEXANDER: Good afternoon. My name
7 is John Alexander, with Ransmeier & Spellman. I'm
8 appearing on behalf of Anheuser-Busch.

9 CHAIRMAN GETZ: Good afternoon.

10 MS. HATFIELD: Good afternoon,
11 Commissioners. Meredith Hatfield, standing in for Rorie
12 Hollenberg, on behalf of the Office of Consumer Advocate.
13 And, with me today is Ken Traum.

14 CHAIRMAN GETZ: Good afternoon.

15 MS. THUNBERG: Good morning,
16 Commissioners. Marcia -- good afternoon, Commissioners.
17 Marcia Thunberg, on behalf of Staff. And, with me today
18 is Mark Naylor, Jim Lenihan, Doug Brogan, and Jayson
19 LaFlamme. Thank you.

20 CHAIRMAN GETZ: Good afternoon. Is
21 there any objection to Anheuser-Busch's Petition to
22 Intervene?

23 MS. KNOWLTON: No.

24 CHAIRMAN GETZ: Okay. And, noting that

1 Anheuser-Busch has demonstrated rights, duties, privileges
2 or interests that are affected by the proceeding, we'll
3 grant the Petition to Intervene.

4 Ms. Knowlton, a statement of the
5 position for the Company.

6 MS. KNOWLTON: Thank you. On May 7th,
7 2010, the Company filed a request for permanent rate
8 increase seeking an increase in annual gross operating
9 revenues of \$3,916,175 based on a December 31, 2009 test
10 year. This is approximately a 16.23 percent rate
11 increase. The Company has also proposed a step increase,
12 based on capital additions that will be in service and
13 used and useful as of December 31, 2010, and that increase
14 would be 3.68 percent, and would generate approximately
15 \$886,000 in additional annual revenue. The combined
16 increase that the Company is seeking is approximately a
17 19.91 percent increase.

18 The Company is seeking this increase
19 because its rate of return has eroded to 5.65 percent.
20 The increase is largely driven by a number of factors: An
21 increase in property tax; a decline in water usage that is
22 significant; as well as very substantial capital additions
23 that are non-revenue-producing. During the test year, the
24 Company placed in service approximately \$10 million of

1 capital additions, and, by the end of 2010, expects to
2 have placed in service an additional \$4.9 million in
3 capital additions. The Company has also experienced
4 significant increases in its property tax that are also
5 militating the need for a rate increase in this case.

6 As indicated in the Company's filing,
7 the Company is seeking temporary rates as well, an
8 approximately 10.8 percent increase of rates on a
9 temporary basis, as well as an implementation of a WICA
10 charge.

11 The Company has filed a cost of service
12 study in this case. It's proposing a new rate design.
13 And, based on discussions with Office of Consumer
14 Advocate, my understanding is is that OCA will raise
15 issues about whether that rate design should be applied to
16 any temporary rates that might be set in this docket, or
17 just on a permanent basis. And, the Company looks forward
18 to discussing that with the OCA and Staff and parties in
19 the technical session that follows, and thereafter.

20 The Company would also like to let the
21 Commission know that, on June 30th, it was notified by
22 Anheuser-Busch that Anheuser-Busch would be terminating
23 its special contract with the Company. This is an early
24 termination. And, the Company anticipates, based on the

1 communications that it's received from Anheuser-Busch,
2 that there will be some issues embedded in this case
3 regarding what the applicable rates are to Anheuser-Busch
4 pursuant to that contract during the remaining three years
5 that are left.

6 Finally, the Company has included in its
7 request for relief in this case recovery of its expenses
8 incurred in defense of the eminent domain action in DW
9 04-048. I would note that in the Company's filing, while
10 the Company has included a dollar amount in its rate
11 proposal, that the Company has asked for the ability to
12 supplement its filing at a later date to include more
13 details regarding the recovery of those costs. And, the
14 reason why that's the case is because the status of the
15 City's efforts to take the utility by eminent domain are
16 not currently known. The City and the Company jointly
17 filed a motion with the Commission to establish a schedule
18 to update valuation and make a final determination of
19 price on June 30th. And, in that motion, the City and the
20 Company asked that or has indicated to the Commission that
21 they would submit a report on October 1st, 2010 that would
22 update the Commission and the parties to DW 04-048
23 regarding the status of any discussions regarding a
24 potential consensual transaction.

1 So, given that we will know more by
2 October 1st regarding the status of that docket, and the
3 parties' efforts to negotiate a resolution of the dispute,
4 the Company would like to wait until that has occurred
5 before it takes the time of the Audit Staff and the
6 parties in this case to comb through the expenses that are
7 associated with defense of the eminent domain action.

8 I would also note that, in Ms. Hartley's
9 prefiled testimony on permanent rates, on Page 21, there
10 is an inadvertent typo with regard to the Company's
11 position. On Line 3 of that testimony on Page 21, the
12 testimony currently reads "In the event that the City
13 pursues the taking of the Company's assets, the Company
14 will modify this rate case filing to include detail on the
15 estimated \$5,361,008 in costs incurred as well as detailed
16 testimony in support of the same." This sentence, and Ms.
17 Hartley certainly can correct this at some point when
18 she's on the stand in this case, but it should indicate
19 that the Company would only be seeking recovery of its
20 eminent domain costs in the event that the City decides
21 not to pursue the taking of the Company's assets. So, if
22 the City were to walk away from the taking, then the
23 Company would be seeking approximately \$5.3 million then
24 in its defense costs.

1 But, again, you know, our view is that
2 it would be the most efficient and prudent course of
3 action to wait and see, you know, what the outcome of the
4 consensual negotiations are before delving into the
5 details of that aspect of the Company's filing.

6 Finally, I would just note that the
7 Commission knows that the Company has filed a motion for
8 waiver of various Commission rules, to which the Staff
9 assented, and we would ask that that motion be granted.
10 Thank you.

11 CHAIRMAN GETZ: Thank you.

12 Mr. Alexander.

13 MR. ALEXANDER: No objection to the
14 motion.

15 CHAIRMAN GETZ: Do you want to state a
16 position at this point?

17 MR. ALEXANDER: I do. Anheuser-Busch
18 opposes the petition. Following a rate increase last year
19 of about 21 percent, this would be a temporary rate
20 increase of about 61 percent and a permanent rate increase
21 of approximately 64 percent. Most of this would be
22 achieved through a monthly carrying charge of about
23 \$62,000. Anheuser-Busch views this as a fundamental
24 change in the structure of the rate, not just the amount,

1 a fundamental change from what was agreed to in the third
2 special contract. Which -- and that contract had
3 protections, it had a minimum -- has a minimum payment
4 obligation and other protections for Pennichuck in the
5 light of a decline in volume due to conservation.

6 The proposed changes are a disincentive
7 to further conservation. They're calculated using a
8 maximum take requirement of 3 million gallons a day,
9 instead of the contractual 2 million gallons a day. And,
10 most importantly, they're just inconsistent with what the
11 parties agreed to, in the sense of how the rate would be
12 structured. And, they prevent Anheuser-Busch from
13 enjoying the benefits of the contract that was negotiated.

14 We expect to have further issues with
15 respect to allocations in the cost of service study, once
16 we've had a chance to analyze it fully. And, Attorney
17 Knowlton is correct, that Anheuser-Busch has given notice
18 of termination of the special contract, which will be
19 effective July 1st, 2013.

20 CHAIRMAN GETZ: Okay. Thank you.
21 Ms. Hatfield.

22 MS. HATFIELD: Thank you, Mr. Chairman.
23 The OCA does not yet have a position on either the
24 temporary or the permanent rate request of PWW, but we do

1 have a few things that we wanted to bring to the
2 Commission's attention.

3 We appreciate Attorney Knowlton's
4 explanation and clarification of the Company's request
5 with respect to their request to begin recovery of eminent
6 domain expenses. That's certainly an area that the OCA
7 intends to investigate. And, we look forward to
8 discussing during the technical session how the timing
9 that the Company has suggested will impact the schedule of
10 the case.

11 As the Commission knows, this is PWV's
12 third request for a rate increase since 2006, which in and
13 of itself raises concerns for the OCA. At this point in
14 the case, we're focused on the temporary rate proposal.
15 And, consistent with our comments in the PAC hearing this
16 morning, and to which Attorney Knowlton referenced, the
17 OCA does oppose having the new rate design proposed by the
18 Company applied to the temporary rates. And, we look
19 forward to discussing that with the parties and Staff
20 during the technical session. And, again, we would raise
21 the issue that, if that issue is going to be pressed by
22 the Company in litigation, that the OCA would need more
23 time in the procedural schedule in order to allow for a
24 consultant that we're planning to hire to assist us in the

1 temporary phase of the case. If we were able to resolve
2 that issue, we could just focus our work on that issue in
3 the permanent phase of the case. Thank you.

4 CHAIRMAN GETZ: Thank you.

5 Ms. Thunberg.

6 MS. THUNBERG: Good afternoon,
7 Commissioners. Staff will be conducting a thorough
8 investigation of this rate case, and it will conduct
9 discovery and it will conduct a full audit of the
10 Company's financial documents. Staff will likely file
11 testimony, making recommendations on the issues in this
12 case. And, so that the Commissioners know, Staff and the
13 parties have, prior to today's prehearing, worked on a
14 draft proposed procedural schedule, which we will confirm
15 at the technical session following this prehearing
16 conference, and it is likely that we will be filing that
17 this afternoon with the Commission.

18 With respect to the cost of service
19 study, the 16.23 percent permanent rate increase, plus the
20 step increase that's proposed, has been allocated
21 differently among the customer classes, and that is
22 spelled out in the suspension order. In particular,
23 Anheuser-Busch is slated to have an increase of
24 63.72 percent. And, this is one of the issues that Staff

1 will be looking at, whether the allocation to these
2 customer groups is appropriate.

3 With respect to temporary rates, Staff
4 has no position on the temporary rates at this point, but
5 we will be reviewing the need and the appropriateness of
6 that request.

7 With respect to the proposed step
8 increase to rates, the step increase is proposed to cover
9 numerous plant additions that will be placed in service
10 after the conclusion of the test year. And, Staff will be
11 reviewing whether such a step increase is appropriate.

12 With respect to the Water Infrastructure
13 and Conservation Adjustment surcharge, also known as
14 "WICA", the Commission approved, in Docket Number DW
15 08-098, for Aquarion Water Company, a pilot project, and
16 that pilot project was approved in September of 2009.
17 And, Staff will be looking at that pilot, and the results
18 from that pilot, and incorporating that information into
19 this docket as it reviews the appropriateness of a WICA
20 surcharge being applied for Pennichuck Water Works.

21 Pennichuck Water Works also proposes a
22 revision to the manner in which it calculates its overall
23 cost of debt. And, Staff will be reviewing this proposal
24 to determine whether this departure from the traditional

1 method is appropriate.

2 With respect to the legal expenses in
3 defending the eminent domain docket, which was DW 04-048,
4 Staff is fully aware that this is a case of first
5 impression for the Commission, and will develop the record
6 fully on this issue. Staff presently does not have a
7 position on this issue, and makes note that the Company
8 has changed its proposal to only include recovery of these
9 expenses in its request if the eminent domain case does
10 not go -- or, if the taking does not occur.

11 And, that concludes Staff's remarks.
12 Thank you.

13 CHAIRMAN GETZ: Thank you. Commissioner
14 Ignatius.

15 CMSR. IGNATIUS: Thank you.

16 Ms. Knowlton, because the amount to be recovered in the
17 eminent domain case is still unknown, as you say, and
18 there's work yet to be done, and you referenced a report
19 coming in in October, it sounds as though the amount
20 that's unknown could be fairly significant. It's not down
21 to just a few minor details to work out, but that there
22 may be a -- the amount of money that could be in question
23 could change rather significantly between now and October.
24 Why then would the rate case -- why then would that

1 recovery be included in this rate case and not in another
2 proceeding, when you really do know the numbers your
3 dealing with?

4 MS. KNOWLTON: Actually, the Company has
5 submitted a number, which is reflected on Page 21 of
6 Ms. Hartley's testimony, and that is the number that the
7 Company is seeking recovery of. We recognize that that
8 would be subject to audit by the Commission Staff and
9 discovery by the parties in this case. And, in fact, the
10 Commission, in a prior order in 04-048, provided that,
11 after the conclusion of the eminent domain case, the
12 Company could submit those costs to the Commission for its
13 review and audit, so that it could determine the costs to
14 be recovered through rates. And, so, the Company felt
15 that this was the appropriate procedural mechanism to put
16 forth that request. Given that, just prior to the filing
17 of this rate case, the mandate from the Supreme Court
18 issued in DW 04-048, I believe that was sometime in April.
19 So, we have determined the amount of the rate relief that
20 we're seeking, we just have not -- we recognize that the
21 Company has the burden of proof on this issue and, you
22 know, would need to submit the full costs, you know, the
23 substantiation of those costs for review. And, we would
24 want to submit additional testimony, you know, detailing

1 the nature of those costs, but the number is known today.

2 CMSR. IGNATIUS: Then, perhaps I
3 misunderstood. You had said earlier today that you
4 reserve the right to supplement that filing. Did you mean
5 supplement with further testimony?

6 MS. KNOWLTON: With further testimony,
7 that's correct. The number that's in the testimony is the
8 number that the Company is seeking. So, --

9 CMSR. IGNATIUS: Thank you. I thought
10 you said it --

11 MS. KNOWLTON: Yes. No, the number is
12 the number. And, there may -- excuse me one minute. Yes.
13 The number is set forth in the testimony. And, I don't
14 anticipate that that would be changing.

15 CMSR. IGNATIUS: Thank you.

16 CHAIRMAN GETZ: Okay. Anything further
17 this afternoon?

18 (No verbal response)

19 CHAIRMAN GETZ: Okay. Hearing nothing,
20 then we will close this prehearing conference and await a
21 recommendation for a procedural schedule. Thank you,
22 everyone.

23 (Whereupon the prehearing conference
24 ended at 2:28 p.m.)