

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

May 7, 2019 - 10:06 a.m.
Concord, New Hampshire

NHPUC 21MAY19 09:50

RE: DW 18-101
PENNICHUCK EAST UTILITY, INC.:
Petition for Approval of Special
Contract for Woodmont Commons
in Londonderry.
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: Reptg. Pennichuck East Utility, Inc.:
Marcia A. Brown, Esq. (NH Brown Law)
Reptg. Pillsbury Realty Development:
Donald Pfundstein, Esq. (Gallagher...)
Reptg. PUC Staff:
Christopher Tuomala, Esq.
Jayson Laflamme, Asst. Dir/Gas & Water
Anthony Leone, 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

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2 CHAIRMAN HONIGBERG: We are here
3 today in Docket DW 18-101, which is a filing by
4 Pennichuck East Utility for approval of a
5 Special Contract with Pillsbury Realty
6 Development, which is developing Woodmont
7 Commons. This is the second prehearing
8 conference following the issuance of a
9 Supplemental Order of Notice, which followed
10 the filing of revisions to the Special
11 Contract.

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

14 MS. BROWN: Good morning,
15 Commissioners. Marcia Brown, from NH Brown
16 Law, representing Pennichuck East Utility. And
17 with me today is Larry Goodhue, who is the CEO
18 and CFO of the Company; and to his right is
19 John Boisvert, who's the Chief Engineer; on the
20 far right is Carol Ann Howe, who's Director of
21 Regulatory Affairs.

22 And we also Pillsbury Realty
23 Development at the table. Don, if you could --
24 or, Don Pfundstein, from Gallagher, Callahan &

1 Gartrell.

2 MR. PFUNDSTEIN: Yes. Thank you, Mr.
3 Chairman.

4 For the record, my name is Don
5 Pfundstein, from Gallagher, Callahan &
6 Gartrell. We represent Pillsbury, who is one
7 hundred percent in support of Pennichuck's
8 efforts here.

9 We're not a party in the proceeding,
10 but I appreciate the opportunity to be on
11 record and to be here. Thank you.

12 MR. TUOMALA: Good morning,
13 Commissioners. Christopher Tuomala,
14 representing the Staff of the Public Utilities
15 Commission. With me I have Jayson Laflamme,
16 Assistant Director of the Gas & Water Division;
17 also at counsel's table I have Utility Analyst
18 Anthony Leone, also of the Gas & Water
19 Division.

20 CHAIRMAN HONIGBERG: One of the
21 primary purposes of the prehearing conference
22 is to hear the parties' positions before they
23 get into further development of the case. Are
24 there any preliminary matters we need to deal

1 with before that happens?

2 MS. BROWN: If I could just note for
3 the record that, although Pennichuck East had
4 filed its affidavits of publication for two of
5 the newspapers that service its franchise
6 territory, the Concord Monitor, although I do
7 have the newspaper page, the affidavit is still
8 yet to arrive, and we will be filing that
9 eventually. But it did get published in time,
10 just to put that into the record.

11 Thank you.

12 CHAIRMAN HONIGBERG: Anything else?

13 MR. TUOMALA: No, Mr. Chairman.

14 CHAIRMAN HONIGBERG: All right.

15 Ms. Brown, why don't you start us off.

16 MS. BROWN: And we have -- Pennichuck
17 East has a prepared statement, just to get a
18 few statements into the record. Thank you.

19 By way of brief background,
20 Pennichuck East Utility provides water service
21 in the Town of Londonderry, and that community
22 of Londonderry receives its water through
23 purchased water contracts from Manchester Water
24 Works and the Town of Derry. Woodmont Commons

1 is a very large multi-use development that is
2 being built in Londonderry within Pennichuck's
3 franchise. It has received -- Woodmont Commons
4 Development has received approvals from the
5 Town of Londonderry, and, in particular, the
6 development needs fire protection. Thus,
7 Pillsbury is in the need of having to build a
8 water storage tank.

9 To that end, Pennichuck East and
10 Pillsbury have agreed to a cost-sharing
11 arrangement to pay for one tank that would
12 address both parties' needs. That was
13 documented in the first iteration of the
14 Special Contract. PEU otherwise would need to
15 have built a smaller water tank in the vicinity
16 over the next several years, even if Woodmont
17 had not occurred. But joining forces with
18 Pillsbury allows significant benefits to all
19 parties, including Pennichuck's future --
20 existing and future customers.

21 The cost-sharing arrangement triggers
22 a provision of Pennichuck's tariff, on Page 36,
23 it's the Main Pipe Extension, Paragraph 5,
24 allows for special contracts when there is a

1 deviation from the tariffed rates, and that is
2 happening in this case, because the
3 cost-sharing arrangement is a 49 PEU to 51
4 percent Pillsbury cost share.

5 There are benefits with this Special
6 Contract that still remain, even after the
7 revisions that have been resubmitted. As
8 previously noted, had Pennichuck needed --
9 built this water storage tank on its own, these
10 would have resulted in higher costs in rates
11 ultimately to PEU's customers, and still being
12 able to partner with Pillsbury results in lower
13 costs to PEU and its customers.

14 There were additional benefits that
15 still inure to this project, and that is
16 improved pressure, improved fire protection,
17 and also down the road there will be less
18 purchased water from Manchester Water Works to
19 cover fire protection, and that fire protection
20 is at a higher rate. And so, this water
21 storage tank will allow PEU to avoid those
22 future higher rates.

23 Just to update the Commission on
24 financing, back in 2018, PEU had applied to the

1 SRF and the Drinking Water Ground Water Trust
2 Fund; PEU was denied. It is presently too late
3 to apply again for those programs, because even
4 if Pennichuck were to be awarded funds, the
5 funds would not be available until mid-2020.
6 Therefore, PEU is still going to go forward
7 with its Fixed Asset Line of Credit with
8 CoBank. And eventually, when the assets are
9 used and useful, it will convert that CoBank
10 line of credit to a CoBank term loan through
11 its QCP -- QCPAC program.

12 I'd like to emphasize that right now
13 time is lost money. There are, as I said,
14 benefits to the ratepayers of avoiding future
15 lost -- future purchased water costs for fire
16 protection, and also there's the issue of the
17 CIAC taxation.

18 Now, the revisions to the Special
19 Contract were due to the Tax Cuts and Jobs Act,
20 which the Commission is aware. Although this
21 Special Contract was filed in June of 2018, and
22 the Tax Cuts Jobs Act went into effect in
23 January of 2018, it was well into 2018 before
24 the water utility industry understood that the

1 exemption from ordinary income of the CIAC had
2 been removed. And so, therefore CIAC was now
3 taxable. And therefore, the significant
4 contribution that Pillsbury is making would
5 cause a tax liability for PEU.

6 And so, for that reason, the parties
7 have gone back to the Special Contract, revised
8 only Section 4 to address the CIAC tax. And
9 how they have addressed that CIAC tax is to
10 take the 49/51 cost-sharing formula, which is
11 on Schedule A of the Special Contract, and they
12 have brought that forward and applied it to the
13 tax. And it's important to note that, even
14 with this additional tax liability, the
15 cost-sharing arrangement still -- with
16 Pillsbury to build this tank still remains
17 mutually beneficial to Pillsbury, to
18 Pennichuck, and to Pennichuck's customers.

19 If I can bear your attention on the
20 issue of timing. As we said time is of the
21 essence here. PEU very much needs the Special
22 Contract approved, so that it can resolve the
23 tax liability as to Pillsbury. And don't mean
24 to be melodramatic, but the delay in approving

1 this Special Contract threatens PEU's ability
2 to secure a contract for this upcoming
3 construction window, the purchased water
4 benefit -- or, avoidance of purchased water
5 continues to slip away.

6 And if I can touch upon the CIAC tax
7 docket, which is -- or, tariff revisions for
8 the CIAC tax, in Docket DW 18-189, the longer
9 that docket remains unresolved, the longer PEU
10 cannot collect its CIAC tax for ongoing CIAC
11 contributions that it's now receiving in its
12 ongoing business operations. The result of
13 this is that PEU stands to burn through its net
14 operating loss carryforwards and reduce the
15 future benefit of those tax assets to the
16 benefit of the ratepayers that had paid for
17 those.

18 To put this in further perspective,
19 the net operating loss carryforwards, when PEU
20 burns -- or, PEU, rather, stands to burn
21 through all of those NOL carryforwards in this
22 single year if its forecasted ongoing CIAC
23 activities continue. That means PEU and its
24 affiliates will have to start paying income

1 taxes in the next fiscal year. And if PEU is
2 coming in for a rate case soon, that tax
3 expense will be in the revenue requirement
4 request, which will result in increased
5 customer rates. This is something the Company
6 is trying to avoid.

7 To also put into the record the
8 importance of past resolution of the CIAC issue
9 with Pillsbury, and thus the other docket, DW
10 18-189, is that customers in Litchfield, that
11 are suffering under the PFAS contamination that
12 is being funded -- a line extension is being
13 funded by Saint-Gobain, the delay in the
14 resolution of the CIAC tax in this docket and
15 the 189 docket will cause customer hook-ups to
16 be delayed, because the contributions from
17 Saint-Gobain, which are significant, will
18 trigger an enormous tax liability for PEU. And
19 furthermore, Saint-Gobain is under a consent
20 decree with Department of Environmental
21 Services to have the project completed in
22 November of this year. So, the construction
23 has to happen this summer, and resolution of
24 the CIAC tax liability has to happen before

1 that.

2 So, I appreciate your patience while
3 we put that into the record. We hate to paint
4 the picture that this Special Contract docket
5 is holding up a calamity, but, in essence, it
6 is. Due to the confluence of this docket and
7 DW 18-189, the negative -- the overall negative
8 impact to ratepayers and potential water
9 customers in New Hampshire, and the mutual
10 benefits of this Special Contract and sharing
11 of the CIAC tax needs to be considered in an
12 expedited manner. And we greatly appreciate
13 the Commissioners' and the Staff's time in
14 helping resolve and approve this docket.

15 Thank you.

16 CHAIRMAN HONIGBERG: Mr. Tuomala.

17 MR. TUOMALA: Thank you, Mr.

18 Chairman.

19 After Staff had reviewed the refiling
20 of the Special Contract and its supporting
21 documents, there were still issues remaining
22 for Staff to explore with the Company, most of
23 which have been touched upon by Attorney Brown,
24 specifically, the allocation of the income tax

1 as a result of receipt of CIAC for PEU.

2 And furthermore, there was additional
3 language in the contract regarding a future
4 special contract regarding a main extension
5 that we had further questions that we wanted to
6 resolve.

7 Since the filing, we've propounded
8 one set of data requests to the Company, which
9 they promptly responded to, and we look forward
10 to speaking with them today at the technical
11 session, and hopefully resolve this docket as
12 timely as we can.

13 We certainly are aware of the urgency
14 of both this docket and Docket DW 18-189 that
15 Attorney Brown had mentioned. And we -- Staff
16 is working very diligently in order to resolve
17 both those matters.

18 Thank you.

19 CHAIRMAN HONIGBERG: Mr. Tuomala
20 alluded to it, and I should have noted that
21 there's a technical session that will follow
22 this prehearing conference.

23 Ms. Brown, early in your statement
24 you made reference to the law change that took

1 effect on January 1 of 2018, and said something
2 about how that -- how knowledge of it hadn't
3 penetrated down to the industry. I don't think
4 it's material, I don't know that it's
5 significant to how we resolve these issues.
6 But I'd caution you that, if you look at
7 utility regulator seminars and agendas
8 regarding the Tax Act and its effects, the
9 industry in parts of the country had its hair
10 on fire with respect to the Tax Act as early as
11 February of 2018.

12 So, while the details or the
13 ramifications of the law's change might not
14 have been fully known and absorbed, everybody
15 knew about it, and everybody knew it was a
16 problem, and the industry was wrestling, as
17 with the regulators who were also wrestling
18 with how to deal with it.

19 And I think it's fairly well known
20 that, I know Staff is aware and it has done
21 some research on it, as you have no doubt as
22 well, that different states are dealing with
23 the CIAC issue differently. And that's
24 probably creating problems for the industry

1 nationally, as they don't quite know how
2 regulators are reacting.

3 The point I'm making though is don't
4 rely too much on lack of knowledge as being
5 relevant to whether you could have or should
6 have known about it and done something about
7 it, or tried to deal with it in a contract.
8 There may be very good and valid reasons why it
9 couldn't or wouldn't have been appropriate or
10 was not possible to fully incorporate all
11 possibilities in what was filed in June of
12 2018, but it wasn't because nobody knew. It
13 wasn't because it was hidden, and it wasn't
14 because people weren't concerned about it
15 everywhere, with respect to its possible
16 ramifications.

17 But, like I said, I don't know that
18 it's material. You've got a lot of other
19 substantive issues that are identified in the
20 Order of Notice. Mr. Tuomala is aware of them.
21 I think we understand why you need to move
22 quickly.

23 Commissioner Bailey.

24 CMSR. BAILEY: As you're proceeding

1 through the technical session with Staff, and
2 you give us further information, I would be
3 very interested to understand why it's
4 reasonable for your existing ratepayers to pay
5 the 49 percent of the tax on this CIAC that
6 Woodbury [Woodmont?] Commons or Pillsbury is
7 proposing, or that you're proposing to allocate
8 that way. And why it's reasonable for
9 Saint-Gobains to pay 100 percent of that tax
10 liability.

11 And I think that's what you said your
12 proposal is, based on the tariff provisions.

13 MS. BROWN: Yes. Understood. And
14 this docket is just addressing the relationship
15 between Pillsbury and PEU, and their late
16 finding of this extra expense. And I didn't
17 mean to imply that no one else knew about it.
18 These parties didn't know about it. Therefore,
19 they needed to go back to the contract and
20 revise it.

21 But, with respect to Saint-Gobain,
22 having -- there's a difference here between
23 treating Pillsbury differently with a special
24 contract, because we've got this contribution

1 already in the works. With the other CIAC
2 folks, the Company wants to treat it as the
3 proposed tariff revisions have put forth, which
4 is, if the contributor is incurring the -- or,
5 triggering the tax, that it pay for the tax.

6 But we will definitely address that,
7 the reason why Pillsbury ought to be treated
8 differently, which I believe is your concern.

9 CMSR. BAILEY: Yes.

10 MS. BROWN: Okay.

11 CHAIRMAN HONIGBERG: All right. If
12 there's nothing else, then we will adjourn the
13 prehearing conference and leave you to your
14 technical session. Thank you, all.

15 ***(Whereupon the prehearing***
16 ***conference was adjourned at***
17 ***10:24 a.m., and a technical***
18 ***session was held thereafter.)***