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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: We are here this
3 morning in Docket DW 18-189, which is a
4 petition by Pennichuck Water Works, Pennichuck
5 East, and the Pittsfield Aqueduct Company,
6 regarding tariff amendments. We suspended the
7 tariff, scheduled a prehearing conference and
8 technical session to follow. We have a pending
9 motion to intervene, request to intervene.

10 Before we do anything else, let's
11 take appearances from the Company and Staff.

12 MR. HEAD: Great. Thank you, Mr.
13 Chairman. Richard Head, from Rath, Young &
14 Pignatelli, on behalf of the Petitioners. With
15 me at the table here are Larry Goodhue, CEO of
16 Pennichuck; Donald Ware, the COO of Pennichuck.
17 And at the table behind me, we have Carol Ann
18 Howe, Assistant Treasurer; and Jay Kerrigan,
19 Financial Analyst; and also William Ardinger,
20 also from Rath, Young & Pignatelli.

21 MR. TUOMALA: Good morning,
22 Commissioners. Christopher Tuomala,
23 representing the Staff of the Public Utilities
24 Commission. To my left, I have Jayson

1 Laflamme, Assistant Director of the Gas and
2 Water Division here at the Public Utilities
3 Commission; and to his left is Anthony Leone, a
4 Utility Analyst in the Gas & Water Division as
5 well.

6 CHAIRMAN HONIGBERG: All right. We
7 have a Petition to Intervene from Mr.
8 Pfundstein. Mr. Pfundstein, you want to enter
9 your appearance?

10 MR. PFUNDSTEIN: Yes, Mr. Chairman.
11 For the record, my name is Donald Pfundstein.
12 I appear on behalf of Pillsbury Realty
13 Development, LLC. With me this morning is
14 Susan Parigian, who is with the client's
15 outside accounting firm.

16 CHAIRMAN HONIGBERG: All right. Mr.
17 Head, we received your objection.

18 Mr. Pfundstein, is there anything
19 you wanted to say in response to Mr. Head's
20 filing?

21 MR. PFUNDSTEIN: Well, yes. I'd like
22 to address my petition, if I could.

23 CHAIRMAN HONIGBERG: Sure.

24 MR. PFUNDSTEIN: As I think the

1 Commission knows, Pillsbury has an interest in
2 a docket dealing with a special contract with
3 Pennichuck East, with respect to the
4 construction of a water storage facility in
5 Londonderry, in part, to serve its Woodmont
6 Commons Project. Our contribution in capital
7 is approximately \$1.441 million.

8 After the special contract was
9 negotiated, and I believe pending before the
10 Commission, the Company apparently discovered
11 that the federal tax law changes now impose a
12 tax on the receipt of the CIAC. And under the
13 current formulas, the latest iterations that
14 we've seen, it apparently grosses up for an
15 additional \$500,000 for our client.

16 We say that \$500,000 indicates a
17 substantial interest in the effect of this
18 proceeding, and as such we should be granted
19 intervenor status. We --

20 CHAIRMAN HONIGBERG: Pretty good
21 point, Mr. Pfundstein. Mr. Head.

22 MR. HEAD: Really, our focus on our
23 objection, I don't repeat our objection, is the
24 question of timing. We have a number, you

1 know, this affects a number of routine regular
2 projects that are showing up with Pennichuck on
3 a regular basis. So, until this gets resolved,
4 it has a detrimental impact to the ratepayers.

5 So, the primary concern that we have
6 in the intervention is the issue of delay.
7 We've asked for, if the Commission were to
8 grant intervention, that it be restrictive in
9 the way that we described in our objection.

10 CHAIRMAN HONIGBERG: Refresh my
11 memory on what specifically you said about
12 that.

13 MR. HEAD: Sure. Fair enough. So,
14 there are three conditions we had asked to
15 impose. One is that they be allowed to
16 participate in technical sessions and the
17 discussions; that they be allowed to
18 participate with argument at the hearing; but
19 that they not be allowed at this stage to file
20 discovery requests or present witnesses.

21 Really, the issue is a legal issue.
22 It can be dealt with in discussions. It can be
23 dealt with in argument. And we would ask that
24 their role beyond that be limited.

1 CHAIRMAN HONIGBERG: What's your hope
2 with respect to when this proceeding will be
3 finished?

4 MR. HEAD: Really, as soon as
5 possible. I don't -- you know, obviously, the
6 Commission's schedule is paramount. We have a
7 pending issue with Fluorinated Chemicals
8 arising out of the Merrimack situation. That
9 contract is really in the process of being
10 negotiated today. So, we cannot enter into
11 that contract -- the Company cannot enter into
12 that contract until this is resolved, but that
13 work has to be done this spring and summer.
14 But the Company can't enter into that contract
15 until the CIAC issue is resolved.

16 CHAIRMAN HONIGBERG: Mr. Tuomala,
17 does Staff have a position on the intervention?

18 MR. TUOMALA: Staff has no objection
19 to the intervention.

20 CHAIRMAN HONIGBERG: We're inclined
21 to grant intervention. I don't know, we have
22 discussed, but haven't resolved whether any
23 limitations would be appropriate. It doesn't
24 seem like on its face that they would be

1 necessary, given the nature of the issues in
2 play.

3 But, if they're needed, after you
4 have your technical session, if you all can't
5 agree on a schedule, we can revisit the issue
6 whether limitations would be appropriate.

7 So, the intervention petition is
8 granted. At this point, with no express
9 limitations, but that issue can be reraised, if
10 appropriate.

11 I should have noted for the record
12 that Commissioner Bailey is under the weather.
13 That's why she's not here today.

14 Is there anything else in the way of
15 preliminary matters that we should talk about,
16 before we hear the positions of the parties?

17 MR. HEAD: I don't think so.

18 CHAIRMAN HONIGBERG: All right. Mr.
19 Head, why don't you start us off.

20 MR. HEAD: Thank you. This is, as
21 Attorney Pfundstein mentioned, this is an issue
22 that came up that arises out of the 2017
23 Federal Tax Act, in which an exemption for
24 utilities was removed relative to taxation of

1 CIAC. And that was not immediately recognized
2 by the Company, that change within the Tax Act.
3 Once it was recognized, that prompted the
4 filing with this Commission.

5 And really, the issue is, if the
6 Company receives a CIAC now under the 2017 Act,
7 that is now taxable, and the question is "who
8 has to pay that tax?" We're asking that it be
9 funded by the -- by the developers, who are
10 profiting from the projects, and not be imposed
11 upon the ratepayers generally. It's the same
12 reason why we have the CIAC that's coming to
13 the Company in the first place. Really, now,
14 there's an additional charge that the Company
15 is being charged as a result of the change in
16 the Federal Tax Act.

17 In the prefiled testimony of Mr.
18 Goodhue, we did modify the formula that we are
19 proposing slightly, based upon conversations we
20 had with Attorney Pfundstein prior to today's
21 hearing. And that relates to the one-half year
22 depreciation that occurs in the first year
23 prior to the payment of that tax on the CIAC.

24 And we wanted to, we thought in

1 fairness, that really what we're asking the
2 Commission to grant the Company is the amount
3 that the Company owes in tax, rather than have
4 the Company use credits that have been
5 essentially paid for by the ratepayers on other
6 projects. So, we don't want those credits to
7 be used for the benefit of a particular
8 development project, when really those credits
9 and those benefits should be granted to the
10 existing ratepayers.

11 So, the CIAC tax is a gross-up,
12 because once they pay the tax, there's a tax on
13 that amount. So, the formula takes that into
14 account that was proposed in Mr. Goodhue's
15 testimony, but subtracts one-half year of
16 deductions, because really that first -- that
17 tax payment is going to take into account that
18 one-half year depreciation that occurs.

19 One of the questions that will come
20 up during the course of this proceeding is
21 "Well, why don't we" -- "why doesn't the
22 developer get the benefit of depreciation over
23 the life of that asset that's being given to
24 the Company?" And really, the answer to that

1 is two-fold: One is that that is paying for
2 the -- what the Company has to incur in
3 operation and maintenance of that asset. It's
4 paying for the property taxes. And it's also
5 ultimately paying for the -- for the
6 replacement of that asset after its useful life
7 is over.

8 So that, again, what we're looking
9 for is that the developer, who is putting in a
10 project, is profiting from that project, should
11 not have, as a result of a CIAC that's given to
12 the Company, a resulting burden on the rest of
13 the ratepayers.

14 So, the formula we've proposed is
15 very simple. What is the tax grossed up that's
16 charged to the Company as a result of the
17 changes to the federal Tax Act, taking into
18 account the one-half year depreciation that
19 reduces that tax burden on that first year of
20 the actual amount that is owed, but that the
21 depreciation not be factored into what the
22 Company -- what the developer receives.

23 Because, ultimately, if that were to take -- if
24 that were taken into account, other ratepayers

1 would be forced to bear a burden as a result of
2 that developer's providing that CIAC.

3 One thing I'll note though is that
4 the one-half year depreciation only applies to
5 CIAC that is plant equipment. It would not
6 apply to property or cash CIACs. Thank you.

7 CHAIRMAN HONIGBERG: Mr. Pfundstein,
8 anything you want to add to what you've already
9 told us?

10 MR. PFUNDSTEIN: Very quickly.

11 Our position is it's all in the
12 details. Depending upon what methodology is
13 used makes all the difference in the world.
14 Other jurisdictions have used different
15 methodologies, ranging from the present value
16 method, to some combination of use of NOL, some
17 combination of use of investment tax credits.

18 The formula that, in fact, is in the
19 latest filing from Pennichuck East actually
20 comes out of Florida, which was originally
21 adopted back in '86. And there are other
22 mechanisms that provide a little bit more
23 relief to the contributor of the capital, yet
24 enable the Commission to get to the result of

1 just and reasonable rates and protect the
2 ratepayer in that process.

3 So, as we indicated in our Petition
4 to Intervene, we want to continue the
5 discussion to explore these alternative
6 methodologies with the Company, but now with
7 the guidance of the Commission Staff, to see if
8 we can come to a formula that we believe is
9 more appropriate, yet meets the goals of the
10 Company and satisfies the standard you have to
11 apply.

12 CHAIRMAN HONIGBERG: Mr. Tuomala.

13 MR. TUOMALA: Thank you, Mr.
14 Chairman.

15 After Staff had reviewed the filing,
16 we came to the same position as Mr. Pfundstein
17 had just stated, in what are the other details
18 and possibilities that could be used or
19 applied, instead of the tax burden solely lying
20 on that of the contributor.

21 We also wanted to look into the
22 actual tax implications for the Petitioners'
23 parent company, the Pennichuck Corporation, and
24 what they face in relation to this proposed

1 tariff change.

2 We also wanted to consider what this
3 tariff effect would have on contributions from
4 agencies like DES or other public entities,
5 which contribute CIAC in the form of grants or
6 loan forgiveness for State Resolving Fund
7 loans, and how this tariff would impact those
8 CIAC contributions and whom would be
9 responsible for that tax liability.

10 We anticipate issuing some discovery
11 in this matter, but we look forward to speaking
12 with the parties at the technical session and
13 filing a proposed discovery schedule as soon as
14 possible.

15 CHAIRMAN HONIGBERG: All right.
16 Thank you, Mr. Tuomala. Thank you, Mr. Head
17 and Mr. Pfundstein.

18 I don't think there's anything else
19 for us to do, except leave you to your
20 technical session. If you are unable to reach
21 an agreement on a schedule and you need further
22 assistance, we'll do what we need to do.

23 Otherwise, we'll adjourn the
24 prehearing conference --

1 MR. HEAD: If I can just add?

2 CHAIRMAN HONIGBERG: Sure. Mr. Head.
3 Sorry.

4 MR. HEAD: No. I apologize. Just
5 very quickly. One of the sort of overriding
6 factors in this that I think differentiate some
7 what's happening on a national basis is the
8 unique structure that Pennichuck has in the way
9 in which the regulated utilities recover their
10 expenditures, their funds, and really it's
11 dollar-for-dollar. So, there's not some
12 alternative source. When that tax burden is
13 due, it has to be paid and there has to be
14 funds for it. And that's sort of the
15 overriding concern in this docket. Thank you.

16 CHAIRMAN HONIGBERG: Okay.
17 Understood. So, with that, we will adjourn the
18 technical session -- I'm sorry, adjourn the
19 prehearing conference and leave you to your
20 technical session.

21 MR. HEAD: Thank you.

22 **(Prehearing conference was**
23 **adjourned at 10:25 a.m., and a**
24 **technical session followed.)**