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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

February 14, 2024 - 9:03 a.m.

21 South Fruit Street
Suite 10
Concord, NH

RE: **DW 23-101**

**PENNICHUCK WATER WORKS, INC.,
PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY, INC.:**

Joint Petition for the Approval of
a Consolidation of Pennichuck East
Utility, Inc., and Pittsfield
Aqueduct Company, Inc., with
Pennichuck Water Works, Inc.
(Prehearing conference)

PRESENT: Chairman Daniel C. Goldner, *Presiding*
Commissioner Pradip K. Chattopadhyay
Commissioner Carleton B. Simpson

Sarah Fuller, Esq./*PUC Legal Advisor*

Tracey Russo, Clerk

**APPEARANCES: Reptg. Pennichuck East Utility, Inc.,
Pittsfield Aqueduct Company, Inc.,
and Pennichuck Water Works, Inc.:**

James J. Steinkrauss, Esq. [*Rath Young*]
William Ardinger, Esq. [*Rath Young...*]
Marcia A. Brown, Esq. [*NH Brown Law*]

Reptg. the Town of Bedford, NH:

Madeline K. Osbon, Esq. [*Upton Hatfield*]

Reptg. the Town of Litchfield, NH:

Laura Spector-Morgan, Esq. [*Mitchell...*]

Reptg. the Town of Londonderry, NH:

Jennifer P. Lyon, Esq. [*Sheehan Phinney*]

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

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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:

Michael Crouse, Esq.
Office of Consumer Advocate

Reptg. New Hampshire Dept. of Energy:

Matthew C. Young, Esq.
Suzanne G. Amidon, Esq.
Jayson Laflamme, Director/Water Group
Anthony Leone, Water Group
(Regulatory Support Division)

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P R O C E E D I N G

1
2 CHAIRMAN GOLDNER: Okay. Good morning.
3 I'm Chairman Goldner. I'm joined today by
4 Commissioner Simpson and Chattopadhyay. We're
5 here this morning for a prehearing conference in
6 Docket Number DW 23-101.

7 On December 15, 2023, the Petitioners,
8 who consist of three separate Pennichuck utility
9 companies, filed a petition titled "Joint
10 Petition for the Approval of a Consolidation of
11 Pennichuck East Utility and Pittsfield Aqueduct
12 Company, with Pennichuck Water Works". The
13 Office of the Consumer Advocate and the
14 Department of Energy have each filed a notice of
15 appearance in this matter.

16 The Town of Litchfield, the Town of
17 Bedford, and the Town of Londonderry filed
18 Petitions to Intervene. On February 6th, 2024,
19 the Petitions to Intervene were granted.

20 This hearing was originally scheduled
21 for February 6, 2024, pursuant to the
22 Commission's January 5th, 2024, order commencing
23 an adjudicatory proceeding and scheduling the
24 prehearing conference. On February 4th, 2024,

1 the Commission issued a procedural order
2 rescheduling the prehearing conference to today,
3 February 14th, 2024.

4 We'll now take appearances, pardon me,
5 starting with the Petitioners.

6 MR. STEINKRAUSS: Hi. I'm James
7 Steinkrauss, Rath, Young, Pignatelli.

8 CHAIRMAN GOLDNER: Thank you. And the
9 Office of the Consumer Advocate?

10 MR. CROUSE: Good morning,
11 Commissioners. My name is Michael Crouse, Staff
12 Attorney to the Office of the Consumer Advocate.
13 Since I was feeling lonely, I brought my esteemed
14 colleague, Marc Vatter, Director of Economics.
15 We're representing the interests of residential
16 ratepayers.

17 Thank you.

18 CHAIRMAN GOLDNER: Very good. The Town
19 of Litchfield?

20 MS. SPECTOR-MORGAN: Good morning.
21 Laura Spector-Morgan, from the Mitchell Municipal
22 Group, on behalf of the Town of Litchfield.

23 CHAIRMAN GOLDNER: Thank you. The Town
24 of Bedford?

1 MS. OSBON: Good morning. Attorney
2 Maddie Osbon, from Upton & Hatfield, on behalf of
3 Bedford.

4 CHAIRMAN GOLDNER: Thank you. And the
5 Town of Londonderry?

6 MS. LYON: Good morning. Jennifer
7 Lyon, of Sheehan Phinney, for the Town of
8 Londonderry.

9 CHAIRMAN GOLDNER: Thank you. And the
10 New Hampshire Department of Energy?

11 MR. YOUNG: Good morning,
12 Commissioners. Matthew Young, on behalf of the
13 Department of Energy. With me today are Jayson
14 Laflamme, who is the Director of the Water Group;
15 Suzanne Amidon, who is Co-Counsel in this docket;
16 as well as Jason Leone -- or, I'm sorry, Anthony
17 Leone, who is an Analyst in the Water Division.

18 CHAIRMAN GOLDNER: Okay. Very good.

19 MR. STEINKRAUSS: I'm sorry, Chairman
20 Goldner.

21 CHAIRMAN GOLDNER: Yes.

22 MR. STEINKRAUSS: I would also like, my
23 colleague, William Ardinger, from Rath, Young,
24 Pignatelli; as well as my sister, Marcia Brown,

1 of Brown Law, on behalf of the Petitioners.

2 CHAIRMAN GOLDNER: Okay. Very good.

3 Thank you.

4 Anyone else today? Is there anyone
5 here from the public?

6 *[No verbal response.]*

7 CHAIRMAN GOLDNER: Okay. Okay, I'd
8 like to offer the following framework for today's
9 proceeding: I would invite the Petitioners, the
10 OCA, the Town of Litchfield, the Town of Bedford,
11 and the Town of Londonderry, and the DOE, to make
12 opening statements regarding this proceeding, and
13 hear from the parties if there's any issue with
14 filing the procedural schedule by February 28th,
15 2024.

16 In the opening statements, we're most
17 interested in the following, and I'll try to read
18 slowly, because there are six items: The
19 proposed sequencing of the consolidation with the
20 Pennichuck Board of Directors, the approval of
21 the City of Nashua, and Commission approval;
22 number (2) have the parties discussed how our
23 order dismissing the Petitioners' Rate Case
24 Petition without prejudice affects the proceeding

1 in this docket; (3) how should rate-setting take
2 place, once the merger has been completed, and
3 whether any work can be done in parallel; (4) if
4 the Settlement Agreement in DW 11-026 set up
5 three -- set up these three utilities in
6 perpetuity; (5) if the Commission has the legal
7 authority to combine the three utilities; and (6)
8 whether notification of the parties in DW 11-026
9 is needed or advisable.

10 Okay. While inviting all parties to
11 comment, we'd like to hear from the DOE, in
12 particular, about the Department's experience
13 with utilities that have contamination issues in
14 one area, but not in another, and/or where some
15 parts of the community are growing faster than
16 another. And whether it is possible to have any
17 kind of consolidation, given differences between
18 communities and companies.

19 Following the statements of position,
20 we may have some preliminary questions for the
21 Company and other parties.

22 Any concerns with this approach, or
23 anything to add, before we begin with the
24 Petitioners?

1 MR. STEINKRAUSS: No.

2 CHAIRMAN GOLDNER: Okay. Thank you.

3 Seeing none, we'll start with -- start with the
4 opening statement from the Petitioners.

5 MR. STEINKRAUSS: Good morning,
6 Commissioners and Staff. My name is James
7 Steinkrauss. I represent Pennichuck Water Works,
8 Inc., Pennichuck East Utility, Inc., and
9 Pittsfield Aqueduct Company, for the 2023 Joint
10 Consolidation or Merger Petition.

11 I'm joined today by my colleague,
12 William Ardinger, of Rath, Young, Pignatelli;
13 Mr. John Boisvert, Chief Executive Officer and
14 Chief Engineer; Mr. Donald Ware will be joining
15 us, he's the Chief Operating Officer; Mr. --

16 CHAIRMAN GOLDNER: He just joined. He
17 has just joined behind you.

18 MR. STEINKRAUSS: Here he is. Mr.
19 George Torres, Chief Financial Officer and
20 Treasurer. Mr. Boisvert, Mr. Ware, and
21 Mr. Torres filed written testimony in the
22 Companies' Joint Petition. Mr. Jay Kerrigan,
23 Manager of Regulatory Affairs, is also attending,
24 but will not be participating; Attorney Marcia

1 Brown, from Brown Law, is also in attendance
2 today with the Pennichuck team.

3 All these individuals, except for
4 Attorneys Ardinger and Brown, are employed by
5 Pennichuck Water Works, and hold exact same
6 titles and roles with all the subsidiary
7 corporations, including Pennichuck East Utility,
8 Pittsfield Aqueduct, and with Penn Corp., the
9 parent.

10 I would also like to recognize that
11 this hearing is Mr. Boisvert's first prehearing
12 conference as Chief Executive Officer of PWW,
13 PEU, PAC, and Penn Corp.

14 On January 30th, 2024, the Company did
15 submit five exhibits, and a cover letter, with an
16 Exhibit List to the Commission in this docket for
17 the purpose of this hearing. All of the exhibits
18 related to notifications provided by the Company
19 to various parties, stakeholders, and customers,
20 prior to filing the present Petition. Those
21 Exhibits, 1, "PWW Core Customer Rate Notice and
22 FAQs"; Exhibit 2, "Letter to the City of Nashua
23 Board of Alderman"; 3, "Letter to the Town of
24 Milford"; 4, Exhibit 4, "Letter to the Town of

1 Milford Utilities" -- "Water Utilities"; and 5,
2 Exhibit 5, "Letter to the Town of Merrimack".

3 I'd also like -- also ask that the
4 Commission take administrative notice of Dockets
5 DW 11-026, and reference to certain other
6 dockets, including DW 23-088. I'll also
7 reference prior PWW, PEU, and PAC rate cases
8 potentially.

9 I don't anticipate calling any
10 witnesses, and I may not even use this witness --
11 exhibits at this point. And hope that my -- our
12 opening remarks will address most of the
13 Commission's concerns.

14 So, procedurally, the Company filed the
15 instant Petition on December 15, 2023. Posted a
16 copy of the Notice of Adjudicatory Proceeding on
17 its website on January 5th. Prior to filing the
18 Petition, the Company included references to the
19 planned joint consolidation and merger in the
20 Notice of Filing for Consolidated Rates in Docket
21 DW 23-088 filed with the Commission on
22 October 13, 2023, as well as providing notices to
23 the communities, elected officials, and customer
24 notices that are marked in Exhibits 1 through 5.

1 So, with that, in this docket, in DW
2 23-101, the Petitioners have requested the
3 Commission to approve the acquisition by PWW, the
4 largest utility, of PEU and PAC as in the public
5 interest. The acquisition will be accomplished
6 by a merger of PEU and PAC into PWW, with PWW
7 being the surviving utility.

8 We believe that the proposed
9 acquisition is in the public interest for several
10 reasons, including a combination will create
11 greater economies of scale; provide improved
12 access for the three utilities to lower cost debt
13 capital; the combination will reduce the burdens
14 and costs of the current "three-utility"
15 regulatory process and in place substitute a
16 "single utility" process; and (4) the combination
17 will eliminate the complexities associated with
18 maintaining and administering numerous
19 affiliation agreements.

20 However, we believe the consideration
21 of the PWW acquisition must include a review of
22 the consolidated rate proposal that was filed and
23 noticed to the customers and interested parties
24 in DW 23-088. The reason we believe it is

1 straightforward. The most important reason the
2 proposed acquisition is in the public interest is
3 that the resulting rates will benefit the public
4 in several important ways, including (1) the
5 proposed rates will avoid rate shock to our PEU
6 customers that would result from applying our
7 current approved rate methodology in a
8 stand-alone rate case; (2) the proposed rates
9 will avoid numerous destabilizing effects that
10 could include PEU customers seeking the
11 alternative of drilled wells or even
12 municipalities initiating costly proceedings to
13 consider municipalization; (3) the proposed rates
14 will enhance long-term stability through the
15 diversification of customers across the larger
16 merged systems; and (4) the proposed rates will
17 avoid undermining the financial stability of PEU
18 in a manner that could undermine the ability of
19 the Pennichuck system to provide the required
20 payments to the City of Nashua that enables the
21 City to pay its debt from the 2012 acquisition.

22 Accordingly, we've discussed With the
23 parties a proposal to amend this Petition in this
24 docket to incorporate the consolidated rate

1 proposal as a fundamental and integral part of
2 the review. The amendment will request the
3 Commission determine in this docket that the
4 proposed rates are just and reasonable.

5 Our request to establish a two-track
6 process in this docket to address both the merger
7 proposal and the consolidated rate proposal is
8 consistent with New Hampshire statutes and with
9 Commission practice.

10 And I'll specifically cite the
11 consolidated dockets DW 09-051 and DW 08-052, in
12 which the Commission approved the acquisition of
13 the North Country system by Pennichuck East
14 Utility, as well as the rates for PAC, that
15 avoided a 311 percent rate for the North Country
16 system customers.

17 Also citing DE 96-227, in which the
18 Commission authorized the acquisition of certain
19 Southern New Hampshire customers in Hudson by
20 PWW, and a consolidation of those rates with the
21 PWW system.

22 And, finally, PSNH/CVEC Docket DE
23 03-030, which the Commission cited in its order
24 on February 6th, regarding the acquisition and

1 new PSNH rates for all of its customers.

2 On a final note, and addressing the
3 Commission's concern, the Petitioners received
4 indications from representatives of the City of
5 Nashua that the City intends to file an
6 intervention in this docket, and we intend to
7 waive any objection to the City's participation.

8 And, with that, I'll turn it over to my
9 colleague, Mr. Ardinger.

10 MR. ARDINGER: Thank you, Mr. Chairman
11 and Commissioners.

12 My name is William Ardinger. I'm with
13 the firm Rath, Young & Pignatelli, representing
14 the Companies and the Petitioners in this case.
15 I appreciate the chance to just say one follow-up
16 word to my colleague's lead.

17 My connection to this case is that I
18 was the lead attorney representing the City of
19 Nashua in the acquisition by purchasing a
20 publicly -- previously publicly traded
21 investor-owned utility to resolve a over
22 decade-long dispute between the City and its --
23 the privately owned utility, Pennichuck, which
24 served most of its citizens. And that

1 acquisition was unique. My regular practice
2 involves doing mergers and acquisitions, business
3 transactions, including the one in front of this
4 Commission, when I first moved back to my home
5 State of New Hampshire, of NU, Northeast
6 Utilities, acquiring Public Service Company of
7 New Hampshire.

8 This was unique, because, in my
9 experience, no municipal enterprise had ever
10 entered the publicly traded markets to acquire a
11 previously privately owned utility. Why is that
12 important in this case? I believe that the
13 Petition before you, including not just the
14 proposal to merge the three utilities into a
15 single, more efficient, more scaled utility, but
16 also excluding the consolidation of the rate
17 structure in a manner that avoids rate shock for
18 9,000 customers of PEU. This is a natural
19 evolution of the original acquisition.

20 In 11-026, this Commission approved the
21 acquisition, approved a ratemaking methodology
22 that was entirely different than the traditional
23 ratemaking methodology that this Commission
24 applies to privately owned utilities who seek a

1 rate of return on equity.

2 In this structure, the City of Nashua
3 requests no rate of return on equity. All it
4 requests is a direct repayment amount that repays
5 its general obligation debt that the City issued
6 to finance the acquisition of this previously
7 publicly traded company.

8 That what that means is that what we've
9 seen since 11-026 is the natural evolution of the
10 Pennichuck utilities, from a privately owned
11 structure, which had a 50/50 debt-to-equity
12 ratio, to a structure that is essentially a
13 municipal water utility. And this has been
14 accomplished in two tracks over the years. The
15 financing structures that the Company benefited,
16 and, frankly, its ratepayers benefited greatly by
17 historically low interest rates, where it
18 restructured its debt that was accumulated under
19 the privately owned years into a much better debt
20 structure for its companies.

21 Secondly, the ratemaking methodology in
22 11-026 has been modified regularly by order of
23 this Commission, to reflect the slow transition
24 of these companies to a better structure that

1 reflects municipal ownership without equity.
2 This is how our structure -- our structure very
3 much, functionally, when you stand back,
4 resembles a municipal water utility.

5 Why is this important? That right now,
6 PAC, the smallest utility, cannot access debt.
7 PEU cannot access a broader debt market. And PEU
8 is facing potentially, on a stand-alone basis,
9 using the ratemaking methodology that this
10 Commission has approved, a potential 25 to 30
11 percent increase, where the annual bill, as
12 presented in the Petition to this Commission, the
13 annual bill of PEU customers could rise from over
14 \$800 a year, to \$1,270 a year.

15 The Pennichuck team said "Now is the
16 time to bring before this Commission, and the DOE
17 Staff, and all the parties, including the City of
18 Nashua, a proposal that takes this next step."

19 Interestingly, one of the great members
20 of the Public Utilities Commission Staff over the
21 years, who has since retired, Mark Naylor, at the
22 time he asked me "Why aren't we doing this
23 combination now, like Pennichuck utilities have
24 regularly taken failing water systems,

1 incorporated them, and had a single rate
2 structure?" And the reason was, because this
3 utility said, handles 60, almost 60 communities,
4 in one way or another. And that, when the City
5 of Nashua is now the owner, these communities,
6 the Mayor -- then Mayor Donnalee Lozeau said "We
7 need to build trust." We need to make sure that
8 no communities, like Bedford, like Litchfield,
9 like Londonderry", who are in this case, "feels
10 that the City of Nashua is taking advantage of
11 them through this acquisition." Over the time,
12 the trust has been built. But it's very
13 important that the trust has been built because
14 this Commission's accountable oversight has
15 existed.

16 This is not a municipal water utility,
17 like Manchester's, that can change rates without
18 this Commission's approval.

19 One time, Commissioner Amy Ignatius
20 asked me, when I used to sit at this desk, "Why
21 are you still regulated?" And the answer is,
22 "because the accountability and the staff to what
23 our proposals are builds trust."

24 So, right now, we come before this

1 Commission, I saw the order that the Commission
2 issued in the separate rate docket. It may be
3 that we misfiled this as two separate dockets.
4 This is a single, integrated proposal that has
5 every bit of financial, technology, and
6 commonsense behind it, but it depends on
7 rationalizing the rate structure.

8 And, so, what we're asking this
9 Commission to do in this docket is to allow us to
10 have two tracks, to allow us to propose with the
11 parties, and we've discussed this idea with the
12 parties already, have a two-track procedural
13 schedule, that will allow this Commission, and
14 all the parties, to have full examination of the
15 effects of the merger, of the improvements to the
16 synergies in the debt markets, of the long-term
17 stability benefits in the face of situations
18 where we have very serious groundwater/drinking
19 water issues, and regulated supplies, it is a
20 policy of this state to build out regulated,
21 monitored supplies as a counter to dealing with
22 potentially toxic wastewater situations.

23 We believe Pennichuck has a significant
24 role to play in that. And that now is the time

1 to ask this Commission to complete this next
2 phase of the natural evolution.

3 I am sorry to double up on the
4 Petitioners' time, but I wanted to provide some
5 historical background to the Commission with the
6 financial history. And I thank you very much for
7 the opportunity to speak to the Commission.

8 CHAIRMAN GOLDNER: Thank you. Anything
9 else from the Petitioners?

10 MR. STEINKRAUSS: No. Thank you.

11 CHAIRMAN GOLDNER: Thank you. We'll
12 move now to --

13 MR. STEINKRAUSS: Oh, I'm sorry. We do
14 have one comment.

15 MS. BROWN: I had the luxury of scoping
16 out one of the questions that you had posed to
17 the parties while the other two were talking.
18 And I just briefly wanted to address Point 4
19 and 5.

20 You had asked whether, in the DW 11-026
21 docket, which was the acquisition docket, and, in
22 particular, Order 25,292 precluded merging of the
23 three companies, or whether it created three
24 companies in perpetuity? And I would just remind

1 the Commission of its order -- I mean, its
2 authority under RSA 365:28, "Altering Orders",
3 that it has robustly used that to revisit any of
4 its past orders.

5 So, to answer the question of "Did the
6 Order 25,292 create three companies in
7 perpetuity?" We don't read that express language
8 in -- or, implied language in that order at all.
9 And, then, furthermore, "Does the Commission have
10 authority to merge?" And I would point the
11 Commission to RSA 365:28.

12 Thank you very much.

13 CHAIRMAN GOLDNER: Thank you. Anything
14 else from the Petitioners?

15 MR. STEINKRAUSS: No.

16 CHAIRMAN GOLDNER: Okay. Very good.
17 We'll move to the Office of the Consumer
18 Advocate.

19 MR. CROUSE: Thank you, Commissioners.

20 We don't know yet whether it's truly in
21 the public interest for the Pennichuck
22 Corporation to merge its three operating
23 subsidiaries and implement consolidated rates.
24 But we do think that it's an idea worth

1 considering, and likely permissible under New
2 Hampshire law.

3 And, so, since we, the OCA, believe
4 that it's a reasonable opportunity that the
5 Pennichuck Corporation should have its
6 opportunity to pitch its two-track petition, so
7 that we all can dive deep and figure out whether
8 it's actually going to be in the public interest.

9 With respect to some of the Commission
10 questions that were presented, the one that I
11 noted wasn't addressed was whether there was a
12 procedural schedule that could come out by
13 February 28th. And I don't see why that couldn't
14 be done. The OCA is certainly open to working
15 with all the parties here to make that happen.

16 With respect to whether the three
17 subsidiaries should exist in perpetuity, or
18 whether they should exist in the sense that they
19 could be merged, the OCA hasn't seen language
20 that makes those three utilities existing in
21 perpetuity. I think the Settlement Agreement
22 says within itself that it should not be taken as
23 precedent, and we acknowledge the point raised by
24 Attorney Marcia Brown.

1 I believe all of those questions are
2 addressed. And, so, the OCA's position is to
3 support the two-track path presented by the
4 Pennichuck Corporation, so we can understand
5 whether or not it's actually in the public
6 interest.

7 Thank you.

8 CHAIRMAN GOLDNER: Okay. Thank you
9 very much. Let's move now to the Town of
10 Litchfield.

11 MS. SPECTOR-MORGAN: The Town of
12 Litchfield also agrees that it makes sense to
13 consider the consolidation and the rate issues in
14 one docket. And, so, we agree to the two-track
15 procedural system.

16 CHAIRMAN GOLDNER: Okay. Thank you
17 very much. The Town of Bedford?

18 MS. OSBON: We also agree with the
19 two-track method for the case.

20 CHAIRMAN GOLDNER: Okay. The Town of
21 Londonderry?

22 MS. LYON: Thank you.

23 With regard to that third question,
24 "How should the rate-setting be completed and can

1 it be parallel?" The Town of Londonderry is very
2 concerned right now that the docket does not
3 include the rate consideration. The stand-alone
4 rate case that would proceed with PEU would
5 potentially have a much higher rate to
6 Londonderry customers, we're hearing 20 percent.

7 And, so, the consolidated rate-setting
8 should -- can and should be completed in
9 parallel.

10 CHAIRMAN GOLDNER: Okay. And we'll
11 move now to the New Hampshire Department of
12 Energy.

13 MR. YOUNG: Thank you, Commissioners.

14 I believe I will address the six or, I
15 guess, seven of the DOE points raised. It might
16 be a little out of order, but please let me know
17 if I left anything out.

18 So, I think I'll start, the DOE does
19 stand by its Motion to Dismiss in Docket 23-088,
20 and does believe the Commission made the correct
21 decision on that Motion. In that hearing and in
22 that Motion, I think the DOE laid out three
23 primary concerns. The first of which being the
24 City of Nashua's involvement; the second was

1 notice to the parties of 11-026; and then,
2 finally, the timing issues, in that a merger
3 docket has no -- or, a rate case has a
4 twelve-month sort of constraint, whereas a merger
5 docket doesn't, and, so, how that would have
6 worked in the two dockets.

7 These concerns still remain. We do
8 acknowledge that, in Commission Order 26,942,
9 dismissing that case, the Commission noted that
10 it was mindful of the complex issues against the
11 -- involving the viability of PEU and PAC. The
12 Department is also mindful of those
13 considerations, and those we heard today as well.

14 The Department in that hearing, and in
15 our Motion to Dismiss, didn't take a position on
16 some of the issues discussed today and at that
17 hearing. We also do acknowledge that I think the
18 Commission noted in its decision that it was
19 probably likely that it would create a more
20 efficient, maybe centralized utility to address
21 some of the viability concerns in PEU.

22 So, with that in mind, as previously
23 mentioned, we had heard its proposal by the
24 Company. It's been described as a "two-track

1 approach". I guess I would note that we're still
2 working on a procedural schedule. And, whether
3 that's two tracks simultaneously, what sort of
4 exactly that two-track path looks like I think
5 remains to be seen.

6 Should the Commission, I think -- let
7 me start, I guess, if the Company were to file a
8 revised Petition and the Commission were to allow
9 for review of the consolidated rates, along with
10 the merger docket, the Department would be
11 interested in a few -- of offering a few
12 suggestions, I think for Commission
13 consideration.

14 First, and maybe it goes without
15 saying, the Department would expect the
16 utilities -- or, the utilities to file a revised
17 Petition, which would add the rate case
18 consolidation. We would also expect that the
19 filings in 23-088, to the extent possible, would
20 be incorporated into this docket. And what I
21 mean by that is, we would expect the 2022 test
22 year. It's my understanding that we had begun
23 our -- in the case of that docket, a preliminary
24 review. So, I think, for efficiency sake, that

1 probably makes the most sense.

2 And, then, of course, we maintain that
3 the City of Nashua should intervene and become a
4 participant in this docket. We think that's
5 important.

6 Addressing another one of the
7 Commission's points, I'm not sure which number, I
8 believe number six, we do believe the parties of
9 DW 11-026 should be provided notice of the
10 merger, and an opportunity to intervene as well.

11 And I think that likely gets to the
12 Commission's question about authority. I think
13 that any Commission authority would likely
14 require, you know, sort of, lack of a better
15 term, reopening of that Settlement. And I think,
16 as has been established here today, the RSAs
17 would contemplate their involvement as well.

18 The Department would also expect to
19 address maybe the timing issue that I described
20 earlier, as we would expect and hope that the
21 Company would, I guess, for lack of a better
22 term, waive the twelve-month statutory deadline
23 for any rate case consideration.

24 We also do have some concerns that, if

1 the merger and the merger rates are approved, I
2 think that we would expect a full calendar year
3 stay-out provision, and that those individual
4 systems could be tracked, to sort of give --
5 provide a better picture of the consolidation.

6 And, then, I think, finally, and
7 this -- I'm not sure this addresses the
8 rate-setting question from the Commission, but I
9 think, if we were to go down this path and get to
10 the end, and if the City of Nashua were to, you
11 know, reject the merger, I think it's important,
12 just to kind of be up front, that the Department
13 would then oppose recovery of any rate case
14 expenses at that point. And I think just sort of
15 stating that at the beginning is probably useful
16 for everybody.

17 Regarding the question on contamination
18 and growth consolidation -- or, growth in a
19 consolidated docket, I think it is -- I think the
20 just and reasonable rates are dependent on the
21 level of subsidization from one system to
22 another, and that is -- that's something that we
23 raised in our position statement in this docket
24 in late January. And I think that's something we

1 would definitely be looking at in this docket.

2 In regards to the question "in
3 perpetuity", just to address that, I think that I
4 would have to review the Settlement to see if
5 there's language that I'm not remembering at this
6 moment. But I think, as discussed here today,
7 that questions of notice to the other parties,
8 and the RSAs mentioned earlier, would allow for
9 the merger.

10 So, the Department does believe that
11 these items that I've mentioned are important for
12 the Commission to have a complete record in this
13 docket moving forward. I think they're important
14 for the Department to review all the matters that
15 would be involved in this fairly complicated
16 docket. And I think it would be important to
17 understand how the cross-subsidization will
18 affect rates. And I think that's a big factor in
19 the -- whether we would believe, come to the
20 conclusion that these would result in just and
21 reasonable rates.

22 And, I think, finally, I would just --
23 I would mention, too, the Department's Motion was
24 based on a lot of issues we've discussed to date.

1 There hasn't been, from the Department's
2 perspective, a lot of -- or, really any
3 discussion about merits of whether, you know,
4 claims of viability, things like that. It's been
5 largely in the sequencing and, I guess, legal and
6 procedural questions. So, it's not a -- the
7 Motion wasn't a matter of, you know, unreliable
8 records or anything like that. So, I think
9 that's just important to sort of to distinguish
10 kind of how we arrived here today.

11 So, with that, if I omitted anything,
12 please feel free to ask.

13 CHAIRMAN GOLDNER: Thank you. No, you
14 were very thorough, Mr. Young.

15 We'll move now to Commissioner
16 questions, beginning with Commissioner Simpson.

17 CMSR. SIMPSON: Thank you. So, I'll
18 follow up on a couple of items that were just
19 noted by the Department.

20 Would the Company waive the
21 twelve-month rate statutory requirement.

22 MR. ARDINGER: May I answer, Jim?

23 MR. STEINKRAUSS: Go ahead.

24 MR. ARDINGER: Thank you, Commissioner.

1 The Company realizes that this is a
2 complex docket. We know that, in general, the
3 law requires a response to a rate petition within
4 twelve months. What we're facing, in
5 economic/functional terms, is that PEU has not
6 had a rate case in three years. The modified
7 rate methodology, that relies on three-year rate
8 cases, because all costs are not paid by -- there
9 is no equity payment, it's paid by, you know,
10 revenue requirement. And, so, we've pushed it to
11 the very end to avoid this.

12 So, there is some leeway that we have
13 discussed with the parties a little bit. But,
14 if, you know, say, for example, this were set up
15 as a fully sequenced, which, as a matter of, from
16 my view as a transaction lawyer, working with all
17 the debtor -- the creditors and everything, we
18 cannot close a merger, and then prosecute a rate
19 case. It is on the rate case that all the
20 parties make the decision "does this make sense,
21 as in the public interest?"

22 If we move that out a couple of months,
23 there's some leeway. But, if the waiver ends up
24 stretching it to, you know, a year and a half,

1 24 months, we start to run into very serious
2 viability problems.

3 CMSR. SIMPSON: Okay. And, then, you
4 just touched on an issue from the other docket,
5 with respect to the sequencing of the
6 transaction. This Commission has, obviously,
7 voiced a concern with adjudicating the questions
8 at hand amidst significant uncertainty as to
9 whether or not the City will approve the merger.

10 So, can you enlighten us as to your
11 client's position, since this Commission raised
12 that concern?

13 MR. ARDINGER: Yes, sir. And, Jim, may
14 I reply to that?

15 MR. STEINKRAUSS: Yes. Go ahead.

16 MR. ARDINGER: Yes. We think that the
17 Commission's concern expressed in its order, and
18 the parties' concerns, when we've had discussion
19 about the participation of the City early, and
20 more actively, in this docket, is completely
21 valid. And we have reached out in response to
22 the Commission's order, and concerns of the
23 parties, all the parties, really. And we believe
24 we -- I can represent that I've spoken with City

1 corporation counsel, they used to be a client of
2 mine, I love the City of Nashua, and they have
3 told me that they will intervene.

4 We still are working out a process with
5 the Board of Aldermen and the Mayor for them to
6 receive more information more currently, say this
7 docket runs for twelve, you know, twelve months,
8 while the parties examine all the details of
9 this, we think that the City should try to be
10 responsive to the Commission's reasonable request
11 for participation, by showing a current review in
12 the Special Water Committee, they have a Special
13 Water Committee. CEO Boisvert is the principal
14 contact, Larry Goodhue was. And we intend to
15 work with the City, which is not our client, an
16 independent body, which has an amazing dual
17 purpose. They represent all the citizens of
18 Nashua in a governmental way, but they serve in
19 the corporate governance system as our
20 shareholder, we want to have them perform both
21 roles more currently and more available to the
22 parties to see, so that there is a reduced
23 perception of risk.

24 Subject to the City's valid fiduciary

1 duties, that they would -- that we would all go
2 through a very difficult period where this
3 Company must prove that the merger is in the
4 public interest, and must prove that the rates
5 are just and reasonable, that, if we got to the
6 end, and we all saw the Commission agree with
7 that, that the City wouldn't pull the rug out
8 from under us.

9 So, we agree with the leadership of the
10 Commission in that order, the parties have
11 expressed it, and we are trying to work with the
12 separate diplomatic entity to get their
13 participation more active before this
14 Commission's proceeding.

15 CMSR. SIMPSON: Okay. So, no
16 definitive decision yet with respect to the City
17 facilitating a merger effort prior to this
18 Commission issuing an order on that question?

19 MR. ARDINGER: The City, there may be
20 votes that could be had. For example, --

21 CMSR. SIMPSON: By whom?

22 MR. ARDINGER: By the -- the City can
23 only take action, in its capacity as a
24 shareholder, by a vote of the Mayor and Board of

1 Aldermen, which is their legislative body.

2 CMSR. SIMPSON: Okay.

3 MR. ARDINGER: And, so, ultimately,
4 where there is a merger -- there are two merger
5 agreements in evidence here, it needs to be
6 finalized. It may be that, with conditions in
7 the merger agreement, we can work the City, the
8 Company, to have them vote to approve the merger
9 agreement, subject to a ratification later down
10 the road. These are signs without asking, you
11 know, it's one -- the Commission deserves to be
12 able to be treated with respect by another
13 governmental instrumentality, but as the City
14 deserves to be treated with respect in its role
15 by a state instrumentality, like this Commission.

16 CMSR. SIMPSON: Okay. So, more to
17 come?

18 MR. ARDINGER: Yes, sir.

19 CMSR. SIMPSON: With respect to a
20 stay-out that was raised by the Department, has
21 the Company contemplated a stay-out provision at
22 this point?

23 I know we're very early in this
24 proceeding. But have you contemplated what a

1 stay-out provision, should the merger be approved
2 and consolidated rates are set?

3 MR. ARDINGER: Thank you, again, for
4 the question.

5 We have not had time to fully
6 contemplate the meaning, this is like a letter of
7 intent in a deal, it's a very short statement, a
8 "stay-out". It depends on the time. We would
9 not expect -- let's say, for example, that the
10 Commission were to approve, and its order were to
11 go final and non-appealable. And we were able to
12 close this merger, as we had hoped, by January 1,
13 2025, those new rates would take effect for all
14 PW customers on precisely that date, that would
15 be the governing tariff, it would go forward.
16 The Company does not anticipate filing a rate
17 case immediately after that work is done.

18 It is important to note, Commissioner,
19 that the current rate structure that has been
20 approved by this Commission contemplates kind of
21 a rolling three-year test year upgrade of the
22 rates and costs. That this would be based on --
23 this proceeding is based on the '22 test year.
24 The '25 test year would be completed, you know,

1 by the end of calendar '25, and then there would
2 be a collection of data reporting. At that
3 point, the current ratemaking methodology
4 indicates that, in order for the Company to stay
5 current with costs and have the cash necessary to
6 meet its covenants, there would be a rate case
7 with respect to the '25 test year.

8 We need to understand a little bit more
9 about the request. But we feel we can work with
10 them.

11 CMSR. SIMPSON: Okay. Thank you.

12 And my final question, I haven't heard
13 a term that you used, Attorney Ardinger, for
14 several years, and I've only heard it in the
15 context of other states.

16 MR. ARDINGER: Oh-oh.

17 CMSR. SIMPSON: And I find it somewhat
18 ironic, given the structure of Penn Corp. and its
19 subsidiaries, and that term is
20 "municipalization".

21 I first would welcome you to expound on
22 that risk, as you articulated it, and to describe
23 the factors that led you to inject that point
24 into this prehearing conference?

1 MR. ARDINGER: The way I -- thank you,
2 Commissioner.

3 The way I raised it was to describe
4 what we faced back in 2010 and 2011, which was
5 the City was moving toward an actual legal
6 municipalization, under the municipalization, of
7 one or more of the Pennichuck utilities. And the
8 way we resolved it was to avoid that process, and
9 just go into the market and acquire the shares,
10 and we'd maintain that corporate structure.

11 In terms of the fear now, when you have
12 rate shock, and rate shock can be, you know, a
13 percentage increase that's too large, families
14 being pressed over time to affordability levels
15 that make them put pressure on their political
16 leadership to consider options. That what I'm
17 most concerned about is that, for our load, which
18 is our customer base, that we would lose revenues
19 in at least one of two ways.

20 One way is that customers, in the PEU
21 territory, might say "This is too expensive. Why
22 don't I drill a well into the groundwater, and
23 get my groundwater, drinking, and household water
24 that way." That's one way that would reduce our

1 revenue structure and put additional pressure on
2 the viability of this.

3 Another way would be, those citizens
4 going and complaining to their political
5 apparatus, and saying "Hey, selectmen, people,
6 there is not the right answer. Why don't you go
7 through the process of actually seeking to
8 acquire the assets and all the goodwill and all
9 of the infrastructure, and have us run, like
10 Manchester, a separate." That also is a negative
11 for this structure, because it reduces revenues
12 that cover fixed costs.

13 You know, these utilities, as I get the
14 sense you know better than I do, is they're huge
15 fixed-cost enterprises, that it's -- there is
16 not -- there are variable costs, but there are
17 gigantic fixed costs. And, unless we maintain
18 our revenue breadth, we lose it.

19 So, in that way, I was referring to the
20 possibility that municipalization would be one
21 strategy for customers who are upset about rates
22 to respond.

23 CMSR. SIMPSON: Are you aware of any
24 even initial efforts to municipalize portions of

1 Penn Corp.'s subsidiary service territories?

2 MR. ARDINGER: Not formally. But I am
3 not -- I'm not able to answer that question right
4 now. I would be surprised if there weren't
5 communities thinking about options. It is very
6 important to us, Commissioner, directly, why it's
7 been proposed this way, is that we avoid, forget
8 about the financial aspect, the distress to
9 families of filing that stand-alone rate case, as
10 it's required under the current orders of the
11 Commission, by a certain date. It's better that
12 we file this, which, instead, for PEU customers,
13 of going to \$1,275 a year for the average single
14 family, would go to a number that's like --
15 that's lower, you know, 675, for that family.

16 There are assumptions in those numbers,
17 Commissioner, that your great team would plumb,
18 but that's the rough answer. And, so, this would
19 be something, a proposal, that we believe would
20 be very beneficial to the communities served by
21 these utilities.

22 CMSR. SIMPSON: Thank you.

23 MR. ARDINGER: Thank you.

24 CMSR. SIMPSON: Okay. That's all I

1 have. Thank you.

2 CHAIRMAN GOLDNER: Thank you. Let's
3 move now to Commissioner Chattopadhyay.

4 CMSR. CHATTOPADHYAY: So, I have some
5 very basic questions. I'm just trying to
6 understand the landscape.

7 You had mentioned how, beginning 2011,
8 with the -- you know, being a regulated utility,
9 with how the Commission accommodated and allowed
10 the Company to have a glide path wherein you
11 moved from a equity/debt construct to a 100
12 percent debt construct, and that has led to a
13 situation which is more like you have a municipal
14 construct.

15 So, what I want to understand, you
16 still cannot effectively become a municipal
17 entity, because Nashua has other towns involved.
18 Is that a correct understanding?

19 MR. ARDINGER: Yes. May I answer, Jim?

20 MR. STEINKRAUSS: Go ahead.

21 MR. ARDINGER: Yes, Commissioner. That
22 is important. The municipal utility laws in New
23 Hampshire contemplate essentially that the
24 municipality would serve a single territory. If

1 they served outside of the territory, they would
2 be exposed to the regulatory jurisdiction of this
3 Commission, unless they maintain rates that are
4 below -- at or below the level they're charging
5 their own citizens.

6 CMSR. CHATTOPADHYAY: Okay. So, as
7 long as the entity or entities exist the way they
8 are, and Nashua owns them, and there are
9 customers that reside in other towns, other
10 municipalities, this is the structure that has to
11 be maintained?

12 MR. ARDINGER: Yes, Commissioner, and
13 for two reasons.

14 One is, the thought that, if they were
15 to try and allege or create a pure municipal
16 department, they would still be exposed to the
17 serving outside of their own home community.
18 That's one.

19 The other is, as corporations, that
20 provide these utility services, the law -- the
21 RSAs in New Hampshire say, as a matter of law,
22 they are subject to this Commission's regulatory
23 jurisdiction, regulatory jurisdiction with
24 respect to financing, and with respect to rates,

1 including any settlement agreement in this case,
2 this body, this Commission, has legislative power
3 to set rates in its deep roots of that authority.

4 So, yes. While we are a corporation
5 structure, which has benefits, corporate
6 governance has benefits that maybe municipal
7 governance systems don't have, and it provides
8 assurance, frankly, of accountability for those
9 non-Nashua communities, that the decisions are
10 being made in the best interest of all. We would
11 be subject to this Commission's jurisdiction as
12 long as we had corporations.

13 CMSR. CHATTOPADHYAY: So, I'm going to
14 go to the question about "stay-out", and I think
15 the parties can respond, but really I'm asking
16 this question to DOE, because you had raised that
17 point.

18 You had also said that you have a
19 degree of comfort with the 2022 test year,
20 because that information is already filed. So,
21 you've been taking a look at it. So, I'm trying
22 to understand, when you say "stay-out", when does
23 that start? Are you intending to say that it
24 starts after the merger has been approved, or

1 you're comfortable with the stay-out provision,
2 you know, somehow allowing them, the Company, to,
3 immediately after the merger is approved, if not
4 right away, maybe at least in two, three months,
5 they are able to have the rates, the consolidated
6 rates -- consolidated rates put in place.

7 So, I'm trying to understand, can you
8 give me more context as to what you meant by
9 "stay-out", and how it's going to play out?

10 MR. YOUNG: Certainly, Mr.
11 Commissioner. Thank you for the question.

12 So, we would -- we would expect at
13 least one full calendar year under the new
14 consolidated rate framework, paradigm. That,
15 once they're in place, one full calendar year
16 before a new rate case could be filed, would be
17 our expectation.

18 CMSR. CHATTOPADHYAY: So, to clarify,
19 so, this is after the merger?

20 MR. YOUNG: Yes.

21 CMSR. CHATTOPADHYAY: Okay.

22 MR. YOUNG: Just from our perspective,
23 the rates could only go into effect once the
24 merger is complete, because then that would be

1 the new entity.

2 CMSR. CHATTOPADHYAY: And, so, you're
3 essentially saying that it's almost like a
4 twelve-month need to have rates will begin then,
5 or am I overreading it?

6 MR. YOUNG: Could you say that another
7 way?

8 CMSR. CHATTOPADHYAY: There's, you
9 know, there's a question of waiver of the
10 twelve-month requirement. Is that somehow
11 impacting your thinking?

12 MR. YOUNG: So, the --

13 CMSR. CHATTOPADHYAY: And it's possible
14 I'm confusing myself here.

15 MR. YOUNG: So, the twelve-month
16 requirement that I was referring to is, once the
17 rate case is filed, it has to be completed within
18 twelve months, or the rates, essentially, can go
19 into effect. Whereas, the stay-out provision
20 would be to provide a full calendar year of the
21 rates in effect.

22 I hope that helps.

23 CMSR. CHATTOPADHYAY: It does. Thank
24 you.

1 MR. YOUNG: And, if I may, just while I
2 do have the microphone, I just wanted to note,
3 regarding Commissioner Simpson's question about
4 "municipalization", if I said that right, I
5 believe that was discussed in the testimony on
6 Bates 110-111.

7 CMSR. SIMPSON: Thank you for pointing
8 that out.

9 MR. YOUNG: And I think just -- sorry
10 one other point of clarification for Commissioner
11 Chattopadhyay. We would -- the stay-out
12 provision for a full calendar year, sort of, from
13 the Department's perspective, would be to -- the
14 point would be to evaluate the impact of the
15 merged rates on the individual systems, and how
16 that -- how everything put together in the
17 consolidated rate is functioning.

18 CMSR. CHATTOPADHYAY: Yes. Thank you.
19 I think I was -- that part I wasn't fully
20 capturing. So, I understand what you're saying.

21 MR. YOUNG: Yes.

22 CHAIRMAN GOLDNER: Okay. I'd like to
23 return to the sequencing question briefly. So, a
24 question for the Company.

1 Would the Company -- does the Company
2 have any concerns relative to the Pennichuck
3 Board of Directors' approval of the merger? That
4 was -- that's the third entity.

5 MR. STEINKRAUSS: No, Chairman.
6 Actually, in the testimony, the prefilled
7 testimony, the Board had actually authorized the
8 Companies to pursue this merger. So, we do not
9 have a concern, obviously, subject to a final
10 vote, but do not have that concern.

11 CHAIRMAN GOLDNER: Okay. So, one green
12 checkmark.

13 The approval of the City of Nashua,
14 we've talked about, they will participate or
15 intervene, apply for intervention, in this
16 docket.

17 And I think, I just want to repeat back
18 what I think I heard on the City of Nashua's
19 approval. I think I heard you say that "the
20 Mayor and the Board of Aldermen would vote to
21 approve the merger." Is it as simple as that or
22 is there more to the process?

23 MR. STEINKRAUSS: Well, there would be
24 a Special Water Committee that considers it

1 first. That's the first vote. And, then, it
2 would then go to a vote of the Mayor and
3 Aldermen.

4 But I think what my colleague had
5 mentioned is that, given with the anticipated
6 intervention of the City, we expect them to be a
7 participant in the process. And we may be able
8 to seek a vote, preliminary vote from the City,
9 subject to the Commission's final order on the
10 merger and rates.

11 So, a condition on -- a closing
12 condition on that. So, that's what I think is
13 anticipated.

14 MR. ARDINGER: Yes.

15 CHAIRMAN GOLDNER: Okay. And, then,
16 what does the Mayor -- the Committee, and then
17 the Mayor and Board of Aldermen, need to approve
18 the merger? This is where we get into the "egg
19 and chicken" problem.

20 Can you help us understand that
21 process? They will intervene in this docket, but
22 how does that allow us to move forward
23 expeditiously?

24 MR. ARDINGER: Thank you, Mr. Chairman.

1 A good question again.

2 What is -- what they need to do, as
3 shareholder, is, once they have data in front of
4 them that allows them to complete the due
5 diligence that a shareholder would do, they will
6 ultimately be able to vote in favor of going
7 forward with the merger, as shareholder, that the
8 law requires a shareholder vote, or to not do it.

9 In most corporate transactions, what
10 happens is, you can have the Board of Directors
11 do exactly what this Board has done, which is
12 approve the merger, approve the rate structure,
13 authorize the Company to come forward to this
14 body and make a presentation and seek approvals.

15 And it could be that, in this case,
16 because it's not like publicly-traded
17 shareholders, that a process could occur where
18 there is an interim review. Where, based on --
19 even though this process is not yet done, and the
20 data of this process is not yet fixed, the City
21 and Board of Aldermen might be able to express
22 their intent to close on a merger, assuming a
23 certain set of data, like what the current filing
24 status is in the docket, what the current

1 requests are. And that could stay in place.

2 I think it's important to note that,
3 just like our creditors, we'll only issue the
4 necessary required consents to closing when they
5 have all the facts fixed, and that will be, you
6 know, nearer the end of the deal. We have
7 reached out to all of our creditors. We've
8 explained this all to them. The process is well
9 underway. We don't expect trouble. But you know
10 how the process works. It's at the end.

11 We would expect that the City would
12 also have some kind of final action after this
13 body has made its determination of what -- of
14 whether this is in the public interest, the
15 merger, and whether the rates are just and
16 reasonable for all customers.

17 CHAIRMAN GOLDNER: And this is what's
18 perplexing, at least to me, is that I assume, or
19 would presume, that the Pennichuck Board of
20 Directors needs data and analysis, and so forth,
21 to approve the merger. Why is that different
22 than what the City of Nashua needs?

23 MR. ARDINGER: It is a little bit
24 different, because the sole function of the Board

1 of Directors of the Penn Corp. and these entities
2 is devoted to ensuring that these utilities are
3 viable, completely able to continue to carry out
4 their lawful requirement to provide safe drinking
5 water at a reasonable cost to customers.

6 The City's portfolio is, by definition,
7 much greater, property taxes, schools, police,
8 fire, everything in front of the City
9 development. I think that that still, that --
10 and very often, you know, in regular corporate
11 mergers, you don't go out to the shareholders
12 until things have solidified a little bit more.
13 I think the City is more flexible in this than a
14 typical, like a publicly-traded shareholder group
15 would be, where it's very expensive to go out.

16 I think that perhaps the Company
17 should, I don't know how this would be developed
18 yet, but, you know, the goal would be to develop
19 a process where the City and Board of Aldermen
20 could express their support in some way that
21 could be taken into account before this
22 Commission, even before the Commission has
23 settled on its just and lawful responsibility to
24 determine whether these requests are appropriate

1 and in the public interest.

2 CHAIRMAN GOLDNER: So, I'm just taking
3 that to the next step. So, the Pennichuck Board
4 of Directors has reviewed the data, based on the
5 2022 test year, and is positive or supportive of
6 the merger moving forward. Why wouldn't you just
7 take that same information, pardon me, to the
8 City of Nashua, and to move this ball forward?

9 MR. ARDINGER: In fact, the Company has
10 taken it to representatives of the executive
11 leadership of the City. It's indicated it to the
12 Mayor, to -- and in meetings with the -- the
13 President of the Board of Aldermen is Councilor
14 Wilshire, they have taken this to them, and have
15 received, you know, no indication that the City
16 would not be supportive of this positive
17 stabilization proposal. It just hasn't gone that
18 extra step to some kind of public vote yet. It
19 would, you know, the Mayor has got to decide is
20 it -- what is the right time, and then that is
21 the purview of the Mayor setting the agenda.

22 But the Company, as a very important
23 asset of the City, has every right to work with
24 that executive leadership, and develop maybe a

1 process that the Mayor would think that it's not
2 too soon to bring it.

3 Why couldn't they do it like the Board?
4 That's a great question. I think they're
5 different in their roles. But I think it's
6 incumbent upon my client to work aggressively
7 with the City leadership to see if there is
8 something that they could do that could send a
9 signal, an even greater signal of support for
10 this proposal.

11 CHAIRMAN GOLDNER: Okay. Yes, we
12 definitely look forward to the application for
13 intervention from Nashua.

14 MR. ARDINGER: Yes, sir.

15 CHAIRMAN GOLDNER: I think that would
16 be -- that would be very helpful.

17 MR. ARDINGER: The Company heard the
18 Commission's statement in its last order, in the
19 rate docket, very clearly.

20 CHAIRMAN GOLDNER: Thank you.

21 MR. ARDINGER: And we appreciate it.

22 CHAIRMAN GOLDNER: Thank you. Yes,
23 we're all trying to solve an "egg and chicken"
24 problem, --

1 MR. ARDINGER: Yes, sir.

2 CHAIRMAN GOLDNER: -- and moving that
3 forward efficiently.

4 So, the Company heard the Department's
5 list of -- I captured seven items that the
6 Department felt like were very important, in
7 terms of moving this forward. Does the Company
8 have any concerns with the Department's -- the
9 Department's concerns that were listed?

10 MR. ARDINGER: As we've heard it, and
11 it's, you know, it's short and brief, and there
12 are always devils in the details, the Company
13 thinks we can work with that list.

14 The Company position is that we
15 appreciate the Department of Energy is taking our
16 concerns, which we ratcheted up, and we think
17 that this dual track is so vital, it's the
18 fundamental purpose for this is to save
19 ratepayers from a rate shock, to consider both,
20 in some procedural way, that lawyers can work on,
21 we appreciate the Department of Energy being open
22 to the concept of a two-track in this docket,
23 with an amended petition. And we think we can
24 work with that list. As long as we know the

1 details of what they're asking on some of the
2 questions that the Commissioners have asked, like
3 "stay-out", is that, you know, calendar year,
4 twelve months? We just need to make sure that
5 we're protecting running into a brickwall, and
6 because we don't understand it. But we
7 appreciate what the Department has offered. And
8 we think we can work with it, in a technical
9 session or meeting that could commence after this
10 hearing.

11 CHAIRMAN GOLDNER: And I'll ask this
12 question of the Company first, and then the Towns
13 maybe second.

14 And that is, the rates for Nashua are
15 the PWV rates, correct?

16 MR. ARDINGER: Yes, sir.

17 CHAIRMAN GOLDNER: And, so, the issue
18 is with the PEU, I think, right, that has the
19 rate shock issue? And, so, sort of one person's
20 rate shock is sort of another person's rate
21 shock, if you put things together. So, wouldn't
22 Nashua have the largest concern with rate shock
23 for their customers, given that the PWV rates
24 would be the ones that would be the most

1 significantly changed upward?

2 MR. ARDINGER: I think the answer is
3 "yes". However, it is in the City's, under this
4 structure, self-interest to continue to have a
5 stable three-utility system, with the revenues
6 that are generated from the three-utility
7 customer bases, because they rely on that revenue
8 to provide the cash flow necessary to service the
9 GO debt that they issued to facilitate this
10 acquisition. Therefore, in the discussions we've
11 had with the City, we've heard them say "This
12 makes sense."

13 To be precise, there is no question,
14 like in the PSNH acquiring Connecticut Valley
15 Electric Company assets back a while ago, there
16 is an effect on PWW Core customers. Their rates
17 will be slightly higher than they otherwise would
18 be on a stand-alone basis, at least in the first
19 couple of years. But their annual bill will
20 still be lower than the customers in the system.
21 In other words, the rate proposal has the rates
22 coming together. It's very beneficial for PEU.

23 But, you know, it's in the interest of
24 the City of Nashua. And Mayor Lozeau and Mayor

1 Donchess have been clear, they care deeply about
2 their relationship with these other communities,
3 and want to do right be all parties, as well as
4 their self-interest, let's not deny it. So, I
5 think the answer is "Yes, there is a negative
6 effect."

7 One important thing is, the City has to
8 face that right, you know, earlier, you know,
9 rather than later, I think, and communicate more
10 in this process that it's in their self-interest
11 and that they support it. And that's the
12 discussion we've just had, about trying to
13 develop a way to communicate that between these
14 diplomatic instrumentalities.

15 CHAIRMAN GOLDNER: Okay. Thank you.
16 Would the Towns care to comment on this rate
17 question?

18 *[Atty. Spector-Morgan indicating in the*
19 *negative.]*

20 MS. LYON: I can try and offer a little
21 bit more context.

22 I mean, the Town of Londonderry does
23 not take a position on consolidation, of course.
24 But they are concerned about PEU's already high

1 rates, they're already high. And, so, an
2 additional rate shock from a stand-alone
3 litigation of -- stand-alone rate would be
4 extremely detrimental. And not only from the
5 20 percent increase for a temporary rate, but the
6 costs of litigating a stand-alone case, that
7 could potentially become moot after
8 consolidation.

9 These are concerns that the Town has.

10 CHAIRMAN GOLDNER: I just want to
11 clarify, because, in my mind, it's the other way
12 around, but I could be wrong.

13 So, if PEU is -- if the goal is to
14 prevent rate shock at PEU, in the consolidation,
15 wouldn't PEU be the biggest beneficiary of the
16 consolidation?

17 MS. LYON: We are hopeful of that, yes.

18 CHAIRMAN GOLDNER: Okay. Okay. I just
19 want to make sure I understood.

20 MS. LYON: Yes. And perhaps I'm
21 conflating the --

22 *[Court reporter interruption.]*

23 CHAIRMAN GOLDNER: Just repeat back
24 please. It's hard to hear up here.

1 MS. LYON: I'm sorry, I lost what I
2 said already.

3 Yes. PEU -- we would hope that the
4 rates would go down after consolidation. We're
5 just concerned about the short-term rate shock of
6 the potential single rate litigation that we hope
7 does not happen.

8 CHAIRMAN GOLDNER: I see. So, "big
9 shock" versus "huge shock" is the distinction.
10 Okay. No, that is helpful. Thank you.

11 So, now, I just want to just to sort of
12 wrap up here with some meat and potatoes, on
13 making sure I understand what's being proposed
14 here.

15 So, I think what I heard was all the
16 parties talk about "two tracks". So, we have a
17 consolidation track and we have a rate case
18 track. Did I hear consensus this would be in a
19 single docket, in this docket, or did I hear that
20 folks want to do this in two separate dockets?

21 MR. STEINKRAUSS: Chairman, I can speak
22 to that.

23 The thought was to amend the existing
24 Merger Petition, to incorporate those rate

1 schedules and information from the rate -- the
2 consolidated rate docket that was dismissed, and
3 move forward in a single docket.

4 CHAIRMAN GOLDNER: And, so, it would be
5 in this docket?

6 MR. STEINKRAUSS: 23-101.

7 CHAIRMAN GOLDNER: In 23-101?

8 MR. STEINKRAUSS: That's correct.

9 CHAIRMAN GOLDNER: So, does anyone have
10 any concerns with that proposal from the Company?

11 *[No verbal response.]*

12 CHAIRMAN GOLDNER: Okay. Seeing none.

13 And, then, I think I also heard no
14 concerns with the parties getting together and
15 proposing a procedural schedule to the Commission
16 with those two tracks by February 28th, haven't
17 heard any concerns with that path forward. And
18 that's -- the Commission provides deadlines in
19 order to keep processes moving. So, I hope
20 everyone appreciates that. But I want to also
21 make sure it's reasonable?

22 MR. YOUNG: No issue from the
23 Department.

24 CHAIRMAN GOLDNER: Okay.

1 MR. STEINKRAUSS: No issue from the
2 Company.

3 MR. CROUSE: Sounds good to the OCA.

4 CHAIRMAN GOLDNER: Thank you. And I'll
5 just say that I'm hopeful we get a single
6 procedural schedule, of course. If there are --
7 if there are issues with that, what I would ask
8 for is a filing by the 28th, with, hopefully, a
9 consensus schedule, but, if there's not, then, if
10 there's a party in disagreement, please file your
11 disagreement in the docket, so that we can sort
12 through the procedural schedule and get something
13 aligned so we can move forward.

14 And maybe I'll wrap up with when can we
15 expect to see the amended petition?

16 MR. STEINKRAUSS: Yes. I think, after
17 discussions after this session, with DOE and the
18 parties, OCA and the parties, we anticipate
19 filing relatively soon, hopefully, within the
20 next two to three weeks.

21 CHAIRMAN GOLDNER: Can we also ask for
22 that by the 28th?

23 MR. STEINKRAUSS: We can certainly
24 attempt to file that by the 28th.

1 CHAIRMAN GOLDNER: Yes. Thank you very
2 much. Yes, I think it's in everyone's best
3 interest to keep things moving.

4 MR. STEINKRAUSS: And, to be clear, we
5 will also, with filing that Petition, file it, I
6 think the Company agrees that we would also
7 submit the notice of that filing to all the
8 11-026 parties as well.

9 CHAIRMAN GOLDNER: Okay. I think, just
10 to make sure that the Commissioners have
11 everything, we'll take a brief break, to make
12 sure that we have everything in order.

13 Before we do that, I'll just ask if the
14 parties have any additional concerns, before we
15 take a brief break?

16 Attorney Crouse.

17 MR. CROUSE: Just one comment, and it's
18 in response to Attorney Matthew Young's statement
19 about the potential intervenors from the prior --
20 the purchase of Nashua of the Pennichuck
21 companies. I certainly don't want to
22 mischaracterize, so I would invite Matthew Young
23 to respond to my statement.

24 But, with respect to Pennichuck's offer

1 to notify all of those intervenors, we certainly
2 wouldn't have issue with that. But whether or
3 not they should be granted automatic
4 intervention. A number of years have passed.
5 And, so, the OCA's impression is that those
6 intervenors should still demonstrate that they
7 still have standing to meet that intervention
8 standard, than just automatically being accepted
9 into docket.

10 But I would invite Attorney Young to
11 clarify if I've misunderstood.

12 Thank you.

13 MR. YOUNG: Thank you. The Department
14 was focusing on notice, and just the opportunity
15 for intervention. So, of course, the
16 requirements would have to still be met.

17 CHAIRMAN GOLDNER: Okay. Thank you.

18 Anything else, before we take a brief
19 break?

20 *[No verbal response.]*

21 CHAIRMAN GOLDNER: Okay. So, we'll
22 just take ten minutes, return at 10:25, and wrap
23 up. Thank you.

24 *(Recess taken at 10:15 a.m., and the*

1 *prehearing conference resumed at*
2 *10:28 a.m.)*

3 CHAIRMAN GOLDNER: Okay. I think we
4 just have one follow-up question, and it's
5 related to the "rate case expense" comment that
6 the Department made.

7 So, if the -- and this is a question
8 for the Company. If Nashua, if the City, does
9 reject consolidation, the Department's position
10 was that "rate case expenses can't be recovered
11 in this rate case." And I'd like to get the
12 Town -- or, the Pennichuck's comment on the
13 Department's position?

14 MR. ARDINGER: And may I?

15 MR. STEINKRAUSS: Sure.

16 MR. ARDINGER: Thank you, Mr. Chairman,
17 for the question.

18 Again, we just first, you know, heard
19 that concept. We understand, in concept, what it
20 is. Our current ratemaking system, you know,
21 there is no equity owner that easily bears to a
22 reduced rate of return or profit level, the
23 costs, what's built into our ratemaking structure
24 now is a CBFRR, City Bond Fixed, you know,

1 Revenue Requirement payment, which is fixed.

2 And I think the details that we'll need
3 to discuss with the parties, with the Department
4 and the parties, is what is -- how do they
5 mean -- what are their ideas about how to give
6 effect to that concept in details?

7 As a matter of concept, the Company,
8 again, thinks we can work with this. We have
9 some ideas. But it is a Department idea, and we
10 want to make sure that we understand exactly what
11 they're going for.

12 I'm sorry for the vagueness and not
13 precise, it's just that we're not 100 percent
14 sure of the details of how it would be effected,
15 under our current legal structure.

16 CHAIRMAN GOLDNER: Okay. Would the
17 Department like to comment on the Company's
18 position?

19 MR. YOUNG: I don't think the
20 Department has anything to add at this time.
21 There is a technical session after this, so,
22 hopefully, this could be discussed then.

23 CHAIRMAN GOLDNER: Okay. Very good.

24 I'll just ask if there's anything else

1 that we need to cover today, either from the
2 Commissioners or the parties?

3 *[Cmsr. Simpson and Cmsr. Chattopadhyay*
4 *indicating in the negative.]*

5 CHAIRMAN GOLDNER: None from the
6 Commissioners. Anything from the parties?

7 MR. STEINKRAUSS: No.

8 MR. CROUSE: I think this might be
9 important just to raise this issue, of whether or
10 not Pennichuck Water Works is a surviving entity
11 or a new entity, when contemplating the
12 consolidated rates?

13 I don't want to mischaracterize the
14 position of any of the other parties. But my
15 understanding, and I recognize I am the novice
16 amongst the experienced here in this room, is
17 that Pennichuck would be absorbing these
18 utilities, and is already an established utility,
19 and would be a surviving established utility
20 afterwards.

21 So, regardless of whether this merger
22 ultimately gets approved, should the Commission
23 grant the consolidation of rates, it seems to me
24 that would have the full effect and force of law,

1 that, regardless of whether the City of Nashua
2 approves this merger, Pennichuck would be
3 required by law to follow the Commission's lawful
4 direction.

5 So, when I'm hearing some conversation
6 about "chicken and egg", and which comes first,
7 whether or not there's a narrative that the
8 Commission might be delegating some of its
9 authority to the City of Nashua, I just wanted to
10 take this opportunity, before a technical
11 session, so the parties might better understand
12 and address that. Because the way I see it is
13 how I presented it.

14 And thank you for allowing me to raise
15 that.

16 CHAIRMAN GOLDNER: Thank you. Would
17 the Department first, and then the Company
18 second, and the towns third, like to comment on
19 Attorney Crouse's point?

20 MR. YOUNG: The Department's
21 understanding is that it would be a new entity,
22 with new rates, as we expressed in the Motion to
23 Dismiss. And that, if that new merged entity was
24 denied, I guess, either way, really, if Nashua

1 says "no" to merger, that issue of what happens
2 to the consolidated rates that we have worked
3 weeks and months is still there.

4 I think I will wait to hear what the
5 Company has to say before anything further.

6 CHAIRMAN GOLDNER: Thank you.

7 MR. ARDINGER: May I address the
8 question? Thank you, Mr. Chairman.

9 The Company, as we've mentioned, views
10 the benefits of the consolidated, the merger, the
11 legal merger, as fundamentally integrated with
12 the benefits of the consolidated rate proposal.
13 And it's very hard to separate them.

14 We agree with the OCA's statement. PWW
15 is a legal entity right now. It is a licensed,
16 regulated utility. It is subject to this
17 Commission's jurisdiction, as are the other two.

18 Upon consummation of the merger, PWW
19 would be a licensed, regulated entity, and fully
20 subject, it is not a new entity. It is, as a
21 matter of corporate law, PWW, but now it's just
22 acquired the assets, franchise rights, and
23 customer base of the other two. We use the
24 merger as the legal method of doing that, because

1 it's the most efficient legal way, rather than an
2 asset acquisition, rather than some other form.
3 But it is a legal entity now. It exists now.
4 It's going to be a legal entity after, and it
5 would be fully subject.

6 On the matter of this Commission's
7 authority to set rates for licensed utilities, in
8 this state, the Commission's authority to set
9 rates, through its legislative power, for
10 licensed utilities, is plenary. It is subject to
11 constitutional constraints, to the legal
12 standards, and, you know, justness and
13 reasonableness.

14 But this Commission has its own, as I
15 understand it, and I am less experienced than my
16 colleague from the OCA, in front of this hearing
17 room, but I've studied the regulatory
18 requirements, this Commission has the authority
19 to commence an investigation, on its own motion,
20 to reinvestigate rates, as to whether they're
21 just and reasonable, and, if it determines
22 they're not, to reset the rates.

23 So, the fact is that, you know, if, for
24 some reason, we were not able to get -- satisfy

1 the Commission that the merger we proposed is in
2 the public interest, and prove that the rates we
3 proposed are just and reasonable, at that point,
4 we're not exactly sure where we'll be, you know,
5 twelve months into the future. But we do
6 acknowledge and recognize this Commission's
7 plenary authority to examine every licensed,
8 regulated utility, and set just and reasonable
9 rates. That's the law.

10 MR. CROUSE: If I may follow up, and
11 Attorney Matthew Young looks like he has a
12 comment as well.

13 The full, transparent reason I wanted
14 to bring this up is that, in the prior docket,
15 23-088, Commissioner Simpson raised the concern
16 to the Department about "what happens if the
17 merger is not granted, and how do those rate case
18 expenses get handled?"

19 And I think it would ultimately depend
20 on why the City of Nashua chooses to reject the
21 merger, to see if there is some bad reason. But,
22 regardless of the approval or rejection, the
23 Commission's approval of the consolidation rates,
24 if that's how that plays out, still has the full

1 force and effect of law that Pennichuck would
2 have to carry out. And it sort of becomes
3 Pennichuck's problem, "well, we got the rates we
4 asked for, and the City is Nashua told us not to
5 merge."

6 And, so, I just wanted to make sure
7 that was an issue that was fully transparent
8 before the parties and the Commission.

9 Thank you.

10 CHAIRMAN GOLDNER: Attorney Young.

11 MR. YOUNG: I'm not sure I have much
12 more to add at this point. I'm happy to discuss
13 with counterparties in a technical session.

14 You know, I still think that, I won't
15 say "regardless of this discussion", I think the
16 merger is -- the merger question, and whether
17 Nashua approves it, is pivotal in this docket,
18 and whether the consolidated rates would go into
19 effect.

20 And I think I'll leave it there for
21 now.

22 CHAIRMAN GOLDNER: Okay. All right.

23 Thank you.

24 Is there anything else that we need to

1 cover today?

2 [No verbal response.]

3 CHAIRMAN GOLDNER: All right. Nothing
4 coming from the Towns.

5 Okay. Thank you. The Commission
6 awaits the parties' filing of a procedural
7 schedule and amended petition by February 28th,
8 2024, recognizing that the amended petition is --
9 it might take a little bit more time, but we're
10 asking for everything by the 28th. After which,
11 the Commission will issue a prehearing order on
12 this matter.

13 MR. YOUNG: Mr. --

14 CHAIRMAN GOLDNER: Yes.

15 MR. YOUNG: Not to interrupt, I wanted
16 to catch you before you closed the proceeding. I
17 apologize, I did anticipate sort of a closing
18 argument of sorts.

19 But I would just note that the
20 Department does intend to discuss with the
21 Company, in their new filing, there were some --
22 there were some issues with -- there was an Excel
23 spreadsheet filed, and also some *pdf* documents
24 that were a bit amiss. So, we do intend to sort

1 of discuss formatting, making sure that the
2 public pdf documents are, you know, appropriately
3 readable by the public and the parties for
4 discovery purposes.

5 So, I just sort of wanted to note that
6 for the Commission.

7 CHAIRMAN GOLDNER: Okay. Okay. And I
8 don't -- when I asked "if there's anything
9 further?", I just assumed that folks would
10 mention it if they did. But if there is anything
11 that anyone wants to highlight before we close
12 the hearing, now is the opportunity?

13 MR. STEINKRAUSS: I would just say, the
14 Company is prepared to address those concerns in
15 its amended petition.

16 CHAIRMAN GOLDNER: Okay. Thank you.
17 Excellent.

18 Okay. All right. Seeing nothing else,
19 I'll conclude the prehearing conference, and we
20 are adjourned.

21 ***(Whereupon the prehearing conference***
22 ***was adjourned at 10:38 a.m., and a***
23 ***technical session was held***
24 ***thereafter.)***