

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

**City of Nashua: Taking Of Pennichuck Water Works, Inc.
Docket No. DW 04-048**

Post-Hearing Reply Brief Of The Pennichuck Companies

Nashua's Initial Brief makes one point clearly: the City has yet again failed to demonstrate that its proposed taking of Pennichuck Water Works will result in net benefits to the public. Because Nashua cannot marshal the facts to support its case, it has resorted instead to disparaging Company officials and this Commission's regulatory process, as well as relying on "facts" that it failed to include in the record and now seeks to rely on without exposing such information to the scrutiny of the discovery and hearing process. The Commission should reject Nashua's last ditch act of desperation. The failings of Nashua's Brief are too numerous to address comprehensively in this Reply Brief, and therefore Pennichuck will focus on a limited number of claims by Nashua that are most indicative of the problems with its case at large.

I. PUBLIC INTEREST—NASHUA HAS MISSTATED THE FACTS.

The overriding theme of Nashua's public interest case is the City's claim that Pennichuck's "technical and managerial expertise is limited and adversely impacts customers." Nashua Brief at 9. In support of this argument, Nashua makes a series of misstatements that must be corrected:

Nashua's Claim

Construction of PWW's water treatment plant resulted in cost overruns, and the PUC could not determine whether those costs were reasonable. Nashua Brief at 11.

PWW's President "chose to provide false testimony"¹ regarding the CMMS package. Nashua Brief at 14.

Fact

PWW's water treatment plant will be completed below the engineer's final budget estimate. Its costs have been fully transparent and audited by PUC staff. The increase in price between the engineer's preliminary and final construction estimate was due to the increased cost of materials and fuel. The public nature of the bid process resulted in a preliminary estimate being released two years in advance of the final estimate. Tr. Day VII at 20-21.

PWW's President inadvertently referred to OPS 32 instead of MP2, and the Company offered to correct the record. Nowhere in the record did Mr. Ware ever testify that PWW used Synergyn for its CMMS package. Tr. Day VII at 54-57; Tr. Day IX at 92-94, 115-19.

¹ Nashua's allegation is a serious one. As Nashua must be aware, knowingly providing false testimony is a crime. *See* RSA 641:1 (perjury). Further, Nashua's allegation is based on an affidavit that is not even part of the record. *See* Nashua's Brief, footnote 54.

Nashua's Claim

Nashua's revenue requirement will be lower than PWW's. Nashua Brief at 55-56.

Nashua will be able to eliminate PWW's administrative expense. Nashua Brief at 57.

Fact

Mr. Sansoucy's projection of PWW's revenue requirement for 2007 of \$29.5 million contains millions of dollars in errors. He projected an increase of well over 20% in PWW's operation and maintenance expense from 2006 to 2007 without explanation (an error that is compounded by 4% annually over the 30 years of projections)², overstated PWW's income taxes by at least \$1.6 million³, and significantly overstated PWW's depreciation expense.⁴

Nashua's claim that it can eliminate PWW's administrative expense is plainly incorrect. The amounts reported as administrative expense in the PUC annual report filed by PWW includes salaries of employees providing necessary services to PWW that Nashua itself will need to duplicate. These include items such as the extensive engineering services provided by Mr. Ware (PWW's President), the human resources and regulatory services provided by Ms. Hartley (PWW's Vice

² See Exh. 1017, GES-2 (Revised) in which Mr. Sansoucy claims to escalate PWW's O & M expenses at an annual rate of 4%, but begins by inexplicably using a 2007 figure of \$11,800,000, almost 30% above the amount actually budgeted for 2006 by PWW, as shown in Exh. 3016X (Attachment JFG-1 Revised Schedule B). See also Exh. 1070 at 113 (lines 111 and 119), which shows that actual 2005 annual O & M totaled only \$9,127,323, an amount that varies only slightly from the 2006 budget figure relied on by Mr. Guastella.

³ Mr. Sansoucy applies a tax rate of 39.6% to Net Operating Income before Income Taxes in the amount of \$11,398,000 resulting in an income tax of \$4,515,000 (Exh. 1017, GES-2 (Revised) lines 20 and 27). Mr. Sansoucy, however, fails to reflect interest expense anywhere on this schedule. As a result, his net operating income figure does not reflect any reduction for interest payments on debt, which must be removed in order to determine taxable income, and the amount of tax calculated by Mr. Sansoucy therefore is significantly overstated. Mr. Guastella's schedule for PWW (Exh. 3016X, Attachment JFG-1 Revised, Schedule B) shows that interest expense is between approximately 35 and 55% of net operating income, depending on the Company's capital structure at any point in time. (Obviously, higher levels of debt will generate higher interest payments in any given year. When the higher level of interest expense is deducted from net operating income, the level of income tax necessarily will be reduced.) Even applying the lowest end of this range shows that Mr. Sansoucy overstated PWW's level of income tax expense by at least \$1.6 million in the first year alone. If PWW's debt to equity ratio were at the higher end of the range, the overstatement of income taxes (and, therefore, the revenue requirement) would be off by substantially more each year.

⁴ Mr. Sansoucy projects PWW's 2007 depreciation expense to be \$4,489,000, without providing any support for that figure. PWW's annual report for 2005 shows that its actual depreciation for 2005, the last year for which there is any actual data in the record, was only \$2,532,870. Exh. 1070 at 59 (line 4). While additions to utility plant could be expected to increase annual depreciation somewhat from year to year, Mr. Guastella's Attachment JFG-1 Revised, Schedule B (Exh. 3016X) already reflects the budgeted increase for 2006 for such additions. Mr. Sansoucy has provided no support for almost doubling annual depreciation in only two years.

Nashua's Claim

Any expenses that Nashua failed to include in its model of operating expenses would also have to be incurred by PWW. Nashua Brief at 56.

Many of the adjustments made by Mr. Ware were wrong. Nashua Brief at 61.

"Similarly sized" water companies, such as Hanover Water Works and Aquarion Water Company, operate at rates lower than Mr. Guastella's analysis requires. Nashua Brief at 65.

In addition to these misstatements, Nashua relies on "facts" that are not in the record.

The Commission should ignore the following references in Nashua's brief and the arguments that are based on them because they refer to documents and information that are not in the record and that were never subject to discovery or cross examination—Footnote 54 (Affidavit of Stephen Siegfried attached to Nashua's Motion to Strike); Footnote 130 (which candidly states "Although not reflected in the testimony..."); Footnotes 262 and 263 (Internet websites); Footnotes 331 and 339 (PUC website).

II. NASHUA'S VALUATION IS FLAWED.

Most of the valuation arguments raised in the City's Brief are repetitive of the arguments made throughout the progress of this case, and therefore have been fully responded to and refuted by PWW's initial Post-Hearing Brief, as well as the testimony and reports of PWW's

Fact

President), and the accounting and customer service functions performed by others who are included in this line item. *See* Tr. Day IX at 132, 150-51; Exh. 1070 (F-58, lines 30-34).

Costs omitted by Nashua for additional charges from its contractors and for City personnel will need to be added to Mr. Sansoucy's revenue requirement model. Costs for all of these functions are already included in PWW's cost of operations, and therefore are reflected in the data provided by PWW's witnesses.

The only incorrect adjustments made by Mr. Ware were for property taxes and, perhaps, some portion of insurance expense. All other adjustments were correct, and Nashua failed to provide any evidence to the contrary.

PEU and PAC are comprised of up to 35 separate water systems. They are not comparable to a single, integrated system such as the ones cited by Nashua.

valuation witnesses. Throughout its Brief, the City misstates applicable law and appraisal authority, and mischaracterizes the testimony of the experts in this case. The City's arguments do nothing to dispel the fact that the appraisal performed by Robert Reilly is the only appraisal in this case performed by a qualified appraiser using accepted appraisal methodologies in full compliance with all recognized appraisal standards. As such, Reilly's appraisal provides the only credible, reliable evidence of the fair market value of the PWW assets. If, and only if, the Commission determines that the proposed condemnation of PWW is in the public interest, the Commission should find that the fair market value of the assets being condemned is \$273,400,000 as of December 31, 2005. This discussion will not attempt to respond to each point made in the City's Brief, or to rehash all of the previous arguments made, the majority of which have been fully addressed in previous filings, but rather will focus on some of the more significant misstatements regarding valuation in the City's Brief.

A. THE SANSOUCY AND WALKER VALUATION IS NOT CREDIBLE.

Throughout this case, the Commission has been presented with a near overwhelming amount of evidence that Walker and Sansoucy are not unbiased, impartial and objective appraisers, that they did not employ standard appraisal methodologies or comply with recognized appraisal standards, and that their value conclusion is not credible. The City blithely dismisses this evidence in its Brief, going as far as stating that Sansoucy and Walker "have been found by numerous judges and other fact finders to be credible and competent witnesses." Nashua Brief at 39. The City's statement could not be further from the truth. As the evidence demonstrated, Sansoucy and Walker have been repeatedly and harshly criticized by other courts and tribunals, in most instances for the same types of errors, omissions, and deviations from standard appraisal

practice Sansoucy and Walker committed in this case. *See* Tr. Day III at 271-282; Tr. Day VI at 6-9.

The City cites just two cases in support of its statement that “numerous” courts have found Sansoucy and Walker credible and competent: neither of the cases contains such statements. In one, the appellate court simply upheld the trial court’s denial of a motion to exclude Sansoucy because he is not a licensed appraiser, finding only that “[t]he trial court has broad discretion to permit a witness to offer expert testimony.” *Public Service Co. of New Hampshire v. Town of Bow*, 139 N.H. 105, 108 (1994). The second case cited by the City makes no mention at all of Sansoucy or Walker, or the credibility of the expert testimony. *Crown Paper Co. v. City of Berlin*, 142 N.H. 563 (1997).

Several courts and other tribunals have found Sansoucy and Walker’s valuations severely lacking in credibility. During Sansoucy’s cross-examination, the Commission indicated it would like to review those previous orders. Tr. Day III at 283. As the following summary demonstrates, many of those criticisms focus on the same errors and deficiencies Sansoucy and Walker have committed in this case:⁵

- *Mirant New York, Inc. v. Town of Stony Point Assessor*, 824 N.Y.S.2d 756, 2006 WL 2559525 (N.Y. Sup. August 28, 2006).
 - Rejects Sansoucy’s income (discounted cash flow) and cost (RCNLD) approaches. (p. 10.)
 - Criticizes Sansoucy for utilizing unreliable data previously rejected by the court in his income and sales approaches. (p. 11.)
 - Notes that Sansoucy utilized a trended original cost method, despite the fact he had previously opined that various deficiencies precluded the sole use of that method. (p. 21.)

⁵ If the Commission requires complete copies of these decisions because it cannot easily obtain them itself for review, they will be provided upon request and served upon all parties.

- Criticizes Sansoucy and Walker for failing to investigate and verify the accuracy of the cost records and lacking any knowledge as to what the cost records actually represented. (p. 22.)
 - Rejects Sansoucy's trended original cost method in favor of a "sticks and bricks" RCNLD method. (p. 23.)
 - Criticizes Sansoucy for failing to separately value the intangible assets such as engineering and architectural drawings. (p. 23.)
 - Found that Walker's and Sansoucy's methods of calculating functional and economic obsolescence, and curable and incurable physical depreciation were erroneous and not credible. (pp. 26-27.)
 - Found Sansoucy's age life conclusions were not supported by empirical data. (p. 28.)
- *Orange and Rockland Utilities, Inc. v. Assessor of the Town of Haverstraw*, 824 N.Y.S.2d 769, 2006 WL 2336306 (N.Y. Sup. August 11, 2006).
 - Rejects Sansoucy's income (discounted cash flow) and cost (RCNLD) approaches. (p. 10.)
 - Criticizes Sansoucy for utilizing unreliable data previously rejected by the court in his income and sales approaches. (p. 13.)
 - Notes that Sansoucy utilized a trended original cost method, despite the fact he had previously opined that various deficiencies precluded the sole use of that method. (p.23.)
 - Criticizes Sansoucy and Walker for failing to investigate and verify the accuracy of the cost records and lacking any knowledge as to what the cost records actually represented. (p. 23.)
 - Rejects Sansoucy's trended original cost method in favor of a "sticks and bricks" RCNLD method. (p. 36.)
 - Criticizes Sansoucy for failing to separately value the intangible assets such as engineering and architectural drawings. (p. 35.)
 - Found that Walker's and Sansoucy's methods of calculating functional and economic obsolescence, and curable and incurable physical depreciation were erroneous and not credible. (pp. 28-29, 37, 43-44.)
 - Found Sansoucy's age life conclusions were not without any evidentiary support. (p. 44.)
- *County of Wayne v. Michigan State Tax Comm'n*, 2002 Mich. Tax. LEXIS 8, Michigan Tax Tribunal 2002, Docket No. 273674 (2002), *aff'd* 682 N.W.2d 100 (Mich. Ct. App. 2004).
 - Rejected Sansoucy's valuation as unreliable. (pp. 54-55.)
 - Criticized Sansoucy's testimony as including unsupported assumptions and methodologies that were simply subjective. (pp. 34, 45, 54-55.)
 - Noted Sansoucy admitted that the sales comparison approach is rarely used to value public utility property. (pp. 28-29.)
 - Noted Sansoucy admitted that adjustments to the alleged comparables were inherently subjective and speculative, but he nonetheless claimed that they should be done. (pp. 28-29.)

- Found that Sansoucy's opponent's conclusion that "the admittedly subjective adjustments required [to the allegedly comparable sales] could not be made in a manner that would allow them to have confidence in the result is more credible than Sansoucy's unsupported claim to the contrary." (p. 29.)
- Criticized Sansoucy for lack of complete and accurate data on the allegedly comparable sales. (pp. 29-32.)
- Noted that "Sansoucy also frequently misuses regulatory terms of art and Michigan regulatory concepts. The extent to which Petitioner's explanations or terminology are confused is an indication that they failed to meet their burden of proof." (p. 58.)
- *Matter of Niagara Mohawk Power Corp. v. City of Cohoes Bd. of Assessors*, 280 A.D.2d 724 (3d Dept. 2001).
 - Found that Sansoucy lacked qualified expertise to testify as an appraiser, noting that Sansoucy is not a licensed appraiser, is not a member of any appraisal organizations and has never trained under the supervision of a qualified appraiser. (p. 2.)
 - Rejected Sansoucy's valuation report "since he admitted he failed to include many of the underlying facts and calculations upon which he relied to estimate an RCN value, including information gleaned from one of his employees who neither identified the source of the information nor independently confirmed its accuracy." (pp. 2-3.)
- *Intermountain Power Agency v. Property Tax Div. of the Utah State Tax Comm'n, Utah Tax Commission*, Appeal No. 99-0576 (November 20, 2001).
 - Rejected Sansoucy's valuation because he used an appraisal method that was not appropriate. (p. 42.)
 - Found Sansoucy's cost approach not sufficiently documented to give it much credibility. (p. 43.)
 - Criticized Sansoucy's income approach because he relied upon evidence that would not have been available as of the valuation date. (pp. 43-45.)
 - Rejects Sansoucy's sales approach, in part, because his sales were not comparable; four of the six were post-lien sales, two were actually one combined sale and three of the "sales" were never consummated. (p. 45.)
- *Sprague Energy Corp. v. Town of Newington*, New Hampshire Superior Court (Docket No. 94-E-161) (May 30, 1996), *rev'd on other grounds* 142 N.H. 804, 710 A.2d 1005 (N.H. 1998).
 - Rejects Sansoucy's valuation and found "it bears no relationship to any reasonable relationship to any reasonable assessment of fair market value." (p. 17.)
 - Criticized Sansoucy's description of his sales comparison methodology as indecipherable, prompting the court to exclaim in frustration "What the hell does that mean?" (pp. 18-19.)
 - Found that as the specifics of Sansoucy's valuation are revealed, it becomes clear "how totally inappropriate his methodology is in this case." (p. 19.)

- Stated that “Sansoucy’s matrix is nothing more than a walk in the Twilight Zone. It simply has no basis in reality.” (pp. 19-20.)
- Found that the arbitrariness of [Sansoucy’s] assessment underscores the lack of credibility of his entire report.” (p. 21.)
- *Energy North Natural Gas, Inc. v. City of Nashua*, New Hampshire Superior Court, Docket No. 93-E-348 (February 14, 1995).
 - The opinion notes that the court “did not rely on Mr. Sansoucy’s appraisal to determine the fair market value of the property.” (p. 10.)
 - Criticized Sansoucy’s sales approach as “at best, a cursory market analysis.” (p. 9.)
 - Found that Sansoucy’s “inability or unwillingness to develop an independent income analysis considerably weakened his credibility.” (p. 10.)
 - Criticized Sansoucy’s age life conclusions as “disingenuous.” (p. 10.)
- *Southern New Hampshire Water Company, Inc. v. Town of Hudson*, New Hampshire Superior Court, Docket 92-E-545, 547 (October 5, 1993) (Lynn, J., Opinion and Order), *aff’d* 139 N.H. 139 (N.H. 1994).
 - Notes “the fact that [Sansoucy] enjoys the dubious distinction of being the only person ever to have been censured by FERC for improper and unethical conduct.”⁶ (p. 6.)
 - Notes that Sansoucy “candidly admitted that he had misrepresented certain facts to FERC and acknowledged that the episode was not one of the prouder moments in his life.” (p. 6.)

As more thoroughly discussed in PWW’s Post-Hearing Brief, Sansoucy and Walker, as in the cases cited above, produced a report in this case that bears no relationship to the fair market value of the PWW assets.

Apparently recognizing the flawed nature of their consultants’ appraisal, the City desperately cites to an article written in February 2003 by John Joyner and one of his associates entitled “Tapping Public Assets” for support. Nashua Brief at 38. However, the City conveniently failed to point out that Mr. Joyner testified that neither he nor his associate are appraisers or valuation experts and that the references that they relied on were from articles written in 1996 (regarding water companies) and 1999 (regarding electric companies) and were, thus, not even based on current data or recognized appraisal treatises. Tr. Day IX at 52, 55, 81-

⁶ A copy of the FERC suspension order was entered into evidence as Exh. 3072.

82; Exh. 1099 at 6, 23 fn 3. Reliance on testimony from individuals who are not qualified and/or credible appraisers and on flawed data and valuation methodology is entirely consistent with the rest of the City's case.⁷

B. THE REILLY VALUATION PROVIDES THE BEST EVIDENCE OF THE FAIR MARKET VALUE OF THE PWW ASSETS.

1. Reilly's Valuation is the Only Appraisal that Complies with USPAP.

The evidence presented in this case, summarized in PWW's Post-Hearing Brief, outlines Sansoucy's and Walker's numerous flagrant violations of the USPAP standards, in particular the strict prohibition against appraisers acting as advocates and appraisers within the same assignment. Exh. 3259 at 183. In its Brief, the City makes claims that because Reilly critiqued the Sansoucy appraisal, he was engaged in advocacy to the same extent as Sansoucy and Walker. Nashua Brief at 42. The City's argument reveals a stunning lack of understanding of the USPAP standards. USPAP specifically allows an independent appraiser to review and critique the work of another appraiser. *See* USPAP Standard Rule 3 – Appraisal Review. In contrast, Sansoucy and Walker's extensive advocacy for the condemnation, promises to reach a certain valuation, and contracts for additional compensation if successful are specifically prohibited by USPAP. Exh. 3017A at 3-5; Exh. 3259 at 182; Tr. Day VIII at 22-24. Reilly's appraisal remains the only appraisal of the PWW assets that complies with USPAP.

⁷ Also, the City's brief cites to Joyner's report for the proposition that "regulated utilities 'usually sell for at or close to their "rate base" . . ." Nashua Brief at 38. However, Walker and Sansoucy admitted in their testimony that regulated utilities sell for a multiple of rate base. Exh. 1007 at 4. Also, Walker testified at the hearing that rate base does not equal fair market value. Tr. Day III at 251; Tr. Day VI at 83. Therefore, this late and ill-fated attempt to use the testimony of Joyner nets the City nothing more than an argument that is inconsistent with its own valuation witness testimony.

2. Reilly Correctly Concluded in His Income Approach that the Pool of Hypothetical Buyers for the PWW System Would Include Both Municipal and Private Buyers.

In its Brief, the City argues that Reilly's income approach is invalid because it assumes the pool of hypothetical buyers for the PWW system includes both municipal and private buyers. The City constructs a tortured reading of RSA 38, concludes that the only potential municipal buyers for the PWW system are the cities, towns or districts within PWW's service area, and extrapolates from that conclusion that the only "likely" municipal buyer is Nashua itself. The City implies, without explanation, that this conclusion destroys the validity of Reilly's valuation.

As a preliminary matter, the limitation the City relies upon as restricting the potential acquirers of PWW to only those cities, towns and districts within PWW's service area applies to condemnations, and is not a broad limitation on all acquisitions, even those that may be consensual. To read the statute otherwise would mean that, once established, an existing municipal utility could never expand beyond its borders. However, the City's convoluted statutory argument is a red herring. The Commission does not need to resolve the parties' dispute concerning the scope of RSA 38:6 to reach a conclusion in this case. Even under the City's interpretation of the statute, Reilly's conclusion concerning the pool of hypothetical buyers, and his valuation, stands.

Under the City's interpretation, the potential municipal acquirers of PWW include all cities, towns, village districts, and existing or yet-to-be formed regional water districts within PWW's service area, which would include Nashua, Amherst, Bedford, Derry, Epping, Hollis, Merrimack, Milford, Newmarket, Plaistow, Salem, and the Merrimack Valley Regional Water District. Exh. 3001 at 7. The City's unsupported assertion that Nashua is the only practical likely buyer is simply wrong. The testimony in this case revealed that the Town of Bedford has

already voted to acquire the PWW assets used to serve Bedford. *See, e.g.*, Tr. Day XI at 148. Regardless, Reilly's valuation is not premised on the existence of a particular municipal buyer or even a majority of municipal buyers, only the presence of one or more municipal buyers in the pool of hypothetical purchasers of the PWW system. Tr. Day VIII at 75-76, 186. The Supreme Court of New Hampshire has held, in a case in which Sansoucy himself testified, that it is error to ignore the impact municipal buyers have even when there is only one potential municipal buyer identified. *Southern New Hampshire Water Company, Inc. v. Town of Hudson*, 139 N.H. 139, 142 (1994) (“[t]he utility’s analysis, however, fundamentally and erroneously depends on the assumption that a purchase of utility’s property would be regulated by the PUC. The town could acquire the utility’s property . . .”).⁸

Indeed, Sansoucy, in his previous valuations of the PWW system, calculated the fair market value by assuming a municipal buyer. Exh. 3212 at 9 (“the income analysis presented from the view of the hypothetical municipal utility presents a sound indicator of value.”) In this case, Sansoucy and Walker have admitted the existence of one or more hypothetical buyers in the mix, Tr. Day 111 at 252, but have committed the same fatal error identified by the New Hampshire Supreme Court in *Town of Hudson* by ignoring the impact those municipal buyers have on the valuation. In other cases, rather than assuming that the presence of municipal buyers has no impact on value, he has regularly assumed just the opposite: that the presence of municipal buyers will result in an increase in value. Exh. 3212 at 9; Exh. 3200 at 4-7; *Intermountain Power Agency v. Utah Tax Comm’n*, Appeal No. 99-0576 at 25 (Nov. 20, 2001). The City’s criticism in its Brief of Reilly’s hypothetical buyer analysis is pure obfuscation.

⁸ Sansoucy testified for the town in the *Town of Hudson* case, in opposition to the utility’s challenge that his fair market value appraisal for tax purposes, which included the impact of the presence of potential municipal buyers, was too high. *Town of Hudson*, 139 N.H. at 142.

Reilly's valuation is the only one that correctly considered the important impact of the hypothetical buyer.

3. **The Reilly Valuation Contains the Only Valid Cost Approach, the Preferred Method for Valuing Special Purpose Properties Such as the PWW Assets.**

The numerous errors and deficiencies in Sansoucy's and Walker's half-hearted attempt at a cost approach valuation of the PWW assets are outlined in PWW's Post-Hearing Brief and will not be repeated here. However, one point raised in the City's Brief illustrates the extent to which Sansoucy and Walker plainly disregard standard appraisal practice. The City's Brief notes that Sansoucy and Walker gave the cost approach no weight because the second step of the cost approach – the economic obsolescence calculation – would have reduced the cost approach to an amount equal to those derived by the income and sales methods. Nashua Brief at 34. This position simply defies logic. Each of the three approaches must be conducted independently. If the same income stream is used for the income approach and the economic obsolescence calculation, the result will necessarily be the same. Therefore, although there are a number of ways to calculate economic obsolescence, the one way that is not appropriate is by simply plugging in the same income numbers used in the income approach. Simple mathematical principles would indicate that repeating the income approach analysis within the economic obsolescence calculation will always result in identical cost approach and income approach valuations, thus reducing the cost approach from an independent valuation analysis to a wholly useless exercise, contrary to the fundamental principles of appraisal practice.

4. **Reilly's Valuation Included an Appropriate 2% Growth Rate.**

The City's Brief also argues that the 2% growth rate used by Mr. Reilly, which represents "inflation only," Tr. Day VIII at 98-99, is flawed. Nashua Brief at 49-51. This growth rate represents a conservative decision, because Mr. Reilly knew "that there would be real growth."

Tr. Day VIII at 99. Reilly assumed there would be a 2% growth in bond revenue and expenses. *Id.* The City attempts to characterize Mr. Reilly's growth rate as incorrect and relies on the testimony of Mr. Guastella to do it. However, Mr. Guastella's analysis was performed for a different purpose and has no relationship to the fair market value analysis of the PWW assets.⁹ Mr. Reilly thoroughly explained his 2% growth rate to the City, and these explanations are not refuted by the City's irrelevant argument. Tr. Day VIII at 101-10.

III. CONCLUSION

For the reasons set forth in the Pennichuck Companies' Post Hearing Brief and as further set forth above, Nashua's proposed taking is not in the public interest and, in fact, will do real harm to the customers of the Pennichuck Utilities and to the State of New Hampshire. If the Commission determines that the taking proposed by Nashua should proceed, the PWW assets should be valued at \$273,400,000 as of December 31, 2005 based on the appraisal presented by Reilly.

⁹ The City mischaracterizes the Guastella testimony. Guastella did not testify that a declining rate base will *always* result in declining earnings, but instead stated that *all other things being equal*, a declining rate base would result in declining earnings. (Tr. Day VIII at 156.) The City also mischaracterizes Guastella's analysis. While Guastella projected a declining rate base for 2010 to 2015, he projected net income *increasing* from 2011 to 2015 at more than 2% annually. Although done for an entirely different purpose, Guastella's analysis is consistent with Reilly's conclusions regarding growth rate.

Respectfully submitted,

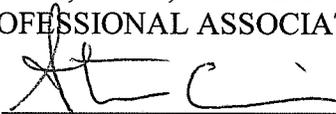
Pennichuck Water Works, Inc.
Pennichuck East Utility, Inc.
Pittsfield Aqueduct Company, Inc.
Pennichuck Water Service Corporation
Pennichuck Corporation

By Their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: December 3, 2007

By:

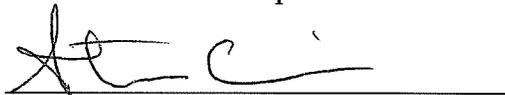


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Certificate of Service

I hereby certify that on this 3rd day of December, 2007, a copy of the foregoing Post-Hearing Reply Brief has been forwarded by electronic mail to the parties listed on the Commission's service list in this docket.



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