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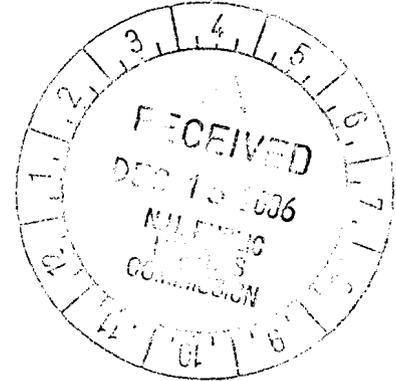
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December 15, 2006

Debra Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301



Re: DW 04-048 City of Nashua – Petition for Valuation

Dear Ms. Howland:

Attached please find the original and six (6) copies of Staff's Opening Statement with respect to the above captioned docket. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Marcia A.B. Thunberg".

Marcia A.B. Thunberg
Staff Attorney

CC: Service List

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

City of Nashua – Valuation Petition

Docket No. DW 04-048

STAFF’S OPENING STATEMENT

I. Standards Staff Has Applied in This Case

Staff (Staff) of the New Hampshire Public Utilities Commission (Commission) submits this opening statement in accordance with the procedural schedule established for this docket, as amended by the Commission’s secretarial letter dated November 22, 2006.

Since the inception of this case, Staff has analyzed Nashua’s proposed municipalization of Pennichuck Water Works, Inc. (PWW) as to whether it is in the public interest; the threshold set forth in RSA 38:10. Pursuant to RSA 38:3, Nashua’s municipal vote created a rebuttable presumption that municipalization of assets within Nashua was in the public interest. No presumption exists as to assets located outside Nashua.

In evaluating public interest, Staff has turned to past New Hampshire Public Utilities Commission orders supporting the use of the net benefits test for determining public interest. Overlaying the net benefits test is the fact that Nashua’s municipalization is a government taking of private property which traditionally places the burden of proof on the petitioner to prove a sufficient nexus exists between the necessity of the taking and the purported benefits. Staff has balanced Nashua’s claimed public benefit of the taking against the social costs of the loss of the property in its present form.

II. Nashua's Articulated Benefits of Municipalization

As stated in Staff's April 13, 2006 testimony, Staff understands Nashua's benefits to be:

a) Nashua's taking will lower customer rates; b) the taking will further the goal of a regional water district; c) the taking is essential to the economic viability and orderly economic growth of Nashua and the region; d) the taking will promote the retention of local control over water resources; e) Nashua will be a better watershed steward than PWW; f) the taking will enable Nashua to continue safe and adequate service while providing an adequate level of customer service; and g) the taking will not harm Pennichuck Corporation shareholders because a fair price will be paid for the assets and capital gains taxes can be avoided by reinvesting the sale proceeds.

III. Additional Evidence Reviewed By Staff

In Staff's April 13, 2006 testimony filed with the Commission, Staff evaluated evidence presented by the numerous parties in this docket. Staff concluded that based upon the evidence presented, Nashua's municipalization of the assets of Pennichuck Water Works, Inc. would not create net benefits to the public as a whole and was not in the public interest.

Since Staff's April, 2006 testimony, parties have filed additional evidence with the Commission in the form of testimony and attachments and the parties have conducted additional discovery among themselves. On May 22, 2006, Pennichuck Water Works, Inc. (PWW), Pennichuck East Utilities, Inc. (PEU), Pittsfield Aqueduct Company, Inc. (PAC), Pennichuck Water Service Corporation (PWSC), and Pennichuck Corporation (PC) (collectively, the Pennichuck Companies) filed Reply Testimony of Donald L. Ware, John F. Guastella, and Robert F. Reilly. Mr. Ware's testimony covered issues relating to public interest and Nashua's

use of Veolia Water North America-Northeast, L.L.C. (Veolia) as a contractor. Messrs. Guastella and Reilly's testimony related to the issue of valuation.

On May 23, 2006, the City of Nashua (Nashua) filed Reply Testimony of Mayor Bernard Streeter, Alderman David Rootovich, Alderman Brian McCarthy, Katherine Hersh, Brian McCarthy, John M. Henderson, P.E., George E. Sansoucy, Glenn C. Walker, Philip G. Ashcroft, David W. Ford, P.E., Paul F. Noran, P.E., Carol Anderson, Ruth E. Raswyck, Brendan Cooney, Steven L. Paul, Esq., and Allan Fuller, Ph.D.

The panel including Messrs. Streeter, Rootovich, and McCarthy offered testimony on public interest issues including: Nashua's draft Water Ordinance; how the Aldermen will oversee rate design, capital and operating budgets, as well as development of a regional water system; accusations that the Pennichuck Companies failed to protect the Pennichuck Brook watershed; disapproval of the sale of the so-called Southwood property; Nashua's efforts to protect watersheds by enacting storm water management ordinances and wetlands setbacks; correction of errors in Staff's testimony; how the Pennichuck Companies' expansions are subsidized by Nashua ratepayers; and a statement that Nashua would submit to the Commission's franchise authority.

The panel including Katherine Hersh, Brian McCarthy, and John M. Henderson offered testimony that: provided examples of how the Pennichuck Companies have failed to implement measures whenever it would threaten the ability of Southwood Corporation to develop land that was formerly set aside for protection; that provided documentation of steps Nashua has taken to protect the Pennichuck Brook watershed; that sets forth their conclusion that Pennichuck's real estate development activities, combined with the failure to implement watershed protection

measures have contributed to water quality and supply problems in the watershed; and that responds to inaccurate statements made by John Joyner.

Messrs. Sansoucy and Walker offered testimony on: valuation issues, Nashua's ability to be a true regional water utility in the Merrimack River valley; Nashua's affirmation that it would treat satellite customers and Nashua customers equally; that Nashua can provide better quality service at a lower cost; and that certain statements by Pennichuck Company witnesses' contained misstatements about operating costs.

Messrs. Ashcroft, Ford, and Noran, all employees of Veolia, offered testimony on public interest issues that rebutted inaccuracies and misleading statements they allege exist in testimony provided by Pennichuck Company witnesses and responded to customer service concerns raised by Staff.

Ms. Racwyck and Ms. Anderson offered testimony concerning public interest and customer service issues.

Mr. Cooney offered testimony critiquing public opinion polling information formulated by Pennichuck Company witness R. Kelly Meyers. Attorney Paul offered testimony on the tax consequences of the sale of Pennichuck Water Works, Inc. assets. Dr. Fuller offered testimony on the Pennichuck Brook watershed and his opinion that the Pennichuck Companies have not been good watershed stewards.

On July 20, 2006, Nashua filed Reply Testimony of Mayor Bernard Streeter, Alderman Brian McCarthy, and George E. Sansoucy, P.E. Messrs. Streeter, McCarthy, and Sansoucy offered testimony to rebut positions taken by Staff witnesses Randall S. Knepper, Mark A. Naylor, and Amanda O. Noonan. Messrs. Streeter, McCarthy, and Sansoucy stated that: Staff unfairly criticized Nashua's petition; Pennichuck's acquisition of scattered water systems

adversely impacts rates; Staff's position denies Nashua the opportunity to obtain local control of its water; Staff is incorrect in believing Pennichuck Water Works, Inc. is better able to achieve regionalization; the isolated water systems have nothing to do with regionalization; municipal entities are better able to form regional partnerships; Staff ignored examples of inter-municipal cooperation; the Pennichuck Companies' allocation formula creates subsidies; Nashua is committed to providing satellite systems with the same service as Nashua customers; Nashua will operate the water system according to the terms of the Water Ordinance; Nashua will accept binding conditions from the Commission; the Pennichuck Companies have mismanaged the watershed; and that the Pennichuck Companies' goal to develop 500 watershed acres held by Southwood Corporation "may be the straw that breaks the camel's back."

On November 14, 2006, Nashua filed Update Testimony of George E. Sansoucy and Glenn C. Walker on the issue of valuation.

On November 14, 2006, the Pennichuck Companies filed Limited Update Testimony of Donald L. Ware, John F. Guastella, and Robert F. Reilly. Mr. Ware updated operations cost figures and criticized cost projections developed by Nashua. Mr. Guastella offered testimony on Mr. Sansoucy's cost estimates, projected revenue requirements, and rates. Mr. Reilly offered testimony on valuation and specifically updated the fair market value of Pennichuck Water Works, Inc.'s assets to be \$273,400,000 as of December 31, 2005.

IV. Staff's Opinion on the Evidence

In Staff's opinion, Nashua's filings and discovery have expanded upon the previously asserted benefits of the taking, but have not added new benefits. That being the case, Staff has once again revisited its assessment of Nashua's asserted benefits. After reviewing this additional information, it remains Staff's opinion that Nashua's case falls short of providing net benefits

with respect to the elimination of PWW and its affiliates as a regional water utility, customer service issues, Dig Safe requirements, treatment of satellite systems, and rate impacts on the other Pennichuck companies due to the loss of efficiencies and economies of scale. In short, Staff does not believe Nashua has satisfied the test that net benefits will result from its proposed municipalization sufficient to prove the taking is in the public interest.

In its more recent testimony presenting municipal ownership as the best means for achieving a regional solution to water related problems, Nashua accused PWW of failing to work cooperatively and offered Manchester and Portsmouth as examples of municipal systems that have deferred their own municipal needs to work cooperatively with other water customers outside their municipal boundaries. Nashua makes the inference that Nashua will follow their example. Staff reviewed whether Manchester and Portsmouth were in fact doing what Nashua stated they were doing. Having reviewed this issue, Staff sees no evidence that Manchester or Portsmouth have committed capital investment to connect other customers or other systems. Evidence instead supports that these municipal systems have expanded beyond their bounds and added new customers to their existing distribution system only when it has been at no additional cost. As to Nashua's accusation that PWW is not a regional player, testimony in this docket illustrates Pennichuck has been cooperative and a catalyst in regional water solutions. One example that is worth repeating is the statement of the Town of Bedford's planning director, Karen White, that when Bedford faced water supply shortages, Manchester Water Works (MWW) had no interest in expanding its water service within the Town of Bedford. Only upon the involvement of Pennichuck did Bedford receive wholesale water from MWW and Merrimack Village District. Pennichuck also has wholesale water arrangements with Hudson, Merrimack, Amherst, and Milford. This type of evidence directly refutes the City of Nashua's witness

George E. Sansoucy, P.E.'s May 20, 2006 reply testimony that Pennichuck is unable to "work cooperatively with the other municipally owned systems that surround the PWW system." See, GES 5/20/2006 Testimony at 3 lines 11-14. When pressed in discovery, Nashua has been unable to corroborate this witnesses' statement. When asked, Nashua could not name one specific municipality PWW could not work cooperatively with. When viewed in its whole, Staff is unable to view this issue as a net benefit supporting municipalization.

Staff still has concerns about Nashua's rate arguments. In its initial testimony, Nashua clearly recognized the efficiencies and economies of scale that existed among the Pennichuck Companies and relied upon them to justify taking PAC and PEU. In its Reply Testimony, Nashua now argues that those efficiencies and economies of scale are evidence of inappropriate subsidies that Nashua customers provide to bankroll Pennichuck's acquisitions of water systems. Nashua was right the first time. Staff is keenly aware of the cost allocation methodology used by Pennichuck. Staff and the Commission regularly review the allocation in filings such as rate cases. Staff believes that Nashua core customers are protected from subsidies that may arise from the Pennichuck Companies' expansions through PAC and PEU by the cost allocation formula this Commission has approved. The only subsidy that expressly exists is that within Pennichuck Water Works itself, which was approved in Docket No. 97-058. In that docket, the Commission found the consolidation of PWW satellite system rates with the Nashua core rates to be in the public interest. Significantly, this subsidy will now be somewhat offset when satellite customers, who do not receive water from the Nashua treatment plant, will help pay for the treatment plant upgrades by virtue of that consolidated rate. This type of ebb and flow in rate design acts as a safety net and has been recognized by this Commission and nationally as a

public benefit in dealing with the challenging issues surrounding water systems and compliance with state and federal requirements.

Nashua's Reply Testimony of Fuller, Hersh, and McCarthy elaborated on their view of Pennichuck utilities' stewardship of the watershed. They claim that Pennichuck utilities have mismanaged the watershed. Staff has reviewed this evidence and believes that this evidence misses the mark. The Department of Environmental Services (DES) has primary jurisdiction over watershed management. DES has many statutes and rules regulating watersheds and what conduct can occur in them, thus Staff believes it reasonable to know, at a minimum, if any Pennichuck entity has violated any statutes, rules, or regulations of DES. To date, no evidence has been produced that shows a Pennichuck entity has violated any statutes, rules, or regulations of DES, or any ordinances of Nashua or any other municipality relating to watershed management.

Further, despite Nashua's awareness of the Commission's approval of the Southwood transfer in the early 1980's, Nashua's land use boards have continued to approve all development within those lands. It was not until 1998 that Nashua enacted a water supply protection ordinance. The State legislature provides extensive powers to municipalities to control the use of land within their municipal boundaries. Staff cannot accept that Nashua can now complain that Pennichuck failed to preserve certain watershed lands when Nashua had the power to do something about and failed to preserve watershed lands. Given the substantial authority provided to municipalities by the legislature to regulate the use of land, Staff finds that Nashua's attempt to now present itself as a victim of Pennichuck is unpersuasive.

Nashua's Reply Testimony also presented additional argument directed toward Staff's concern over customer service issues, billing, and how those functions will be coordinated

between Nashua's billing department and Veolia. Having reviewed Nashua's testimony, Staff still does not believe there will be adequate staffing to address customer service issues. Staff remains concerned that responsibility for customer service functions will be divided between Nashua and Veolia when those two functions are frequently intertwined. Staff remains concerned that no Nashua employee will be involved in the day to day operation of the water utility, with a contractor solely responsible for operations and cost control. In addition, Staff remains concerned regarding the lack of Nashua's commitment to DigSafe and public safety.

Respectfully submitted,

STAFF OF THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Date: December 15, 2006

By, *Marcia A. B. Thunberg*
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CERTIFICATE OF SERVICE

I, Marcia A. B. Thunberg, Esquire, hereby certify that a copy of this motion has been forwarded to the parties listed on the Commission's service list in this docket.

Date: December 15, 2006

Marcia A. B. Thunberg
Marcia A. B. Thunberg, Esq.