

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

City of Nashua: Petition for Valuation Pursuant to RSA 38:9

DW 04-048

NASHUA’S OBJECTION TO PENNICHUCK’S MOTION TO STRIKE

NOW COMES the City of Nashua (“Nashua”) and objects to Pennichuck Water Works, Inc.’s (“PWW”) *Motion to Strike the City of Nashua’s Motion for Rehearing and Clarification Regarding Order No. 24,878*, and in support thereof states as follows:

1. Pennichuck has misstated the law. For decades, it has been a well-settled principle in New Hampshire that “when the terminal day of a time limit falls upon Sunday that day is to be excluded from the computation”. *HIK Corporation v. Manchester* 103 NH 378, 381 (1961).

2. In *HIK*, a motion for rehearing was due “within twenty days” of January 9, 1961 or January 29, which was a Sunday. The motion was filed on January 30. The New Hampshire Supreme Court stated that “[i]n view of the *recognized principle* that when the terminal day of a time limit falls upon Sunday that day is to be excluded from the computation (86 C.J.S. Time, s. 14(2)), we consider the motion was seasonably filed.” *Ibid* (emphasis added).

3. In this case, Nashua was required to file its Motion For Rehearing under RSA 541:3 “within thirty days” of July 25, 2008, the date of Order No. 24,878, or on Sunday August 24, 2008. Because August 24th was a Sunday, Nashua timely filed its Motion on August 25, 2008.

4. Likewise in *Hunter v. State*, 107 NH 365 (1966) an appeal of a decision of the Commissioner of Employment Security was due within ten days. The tenth day fell on Sunday February 28. The Supreme Court noted the State's admission that because the tenth day fell on a Sunday, "the time could be extended to the next day, March 1st". 107 NH at 366. However, because the Plaintiff did not file the appeal until March 2 and the Court held, citing *HIK*, that "[u]nder the circumstances here the Plaintiff's appeal were not timely taken". *Ibid*.

5. This principle was recognized again in *Ireland v. Town of Candia*, 151 NH 69 (2004) where the Plaintiff argued the rule that where a terminal day of a deadline falls on a weekend or legal holiday, a motion for rehearing is considered timely if filed on the following business day. The Court ultimately found the appeal to be untimely because the terminal day did not fall on a weekend or legal holiday. However, as in *Hunter* and *HIK*, the Court made clear the settled principle that if the final day of a time period appeal falls on a Sunday, a motion for rehearing filed on the following Monday is timely.

6. None of these relevant and controlling cases were disclosed by Pennichuck to the Commission. Moreover, the cases relied upon by Pennichuck are inapposite:

- a. *Appeal of Carreau*, ___ NH ___ (No. 207-595, April 8, 2008) simply holds that a one day delay under RSA 541:6 is fatal to an appealing party. In *Carreau*, however, the terminal day was not a Sunday and the Petitioner conceded the Appeal was late but sought to extend the date "for...good cause shown".

- b. *Lacroix v. Mountain*, 116 NH 545 (1976) is unlike *Carreau* in that the terminal day was a Saturday. In *Lacroix* the Public Utilities Commission denied Plaintiffs' Motion for Rehearing on July 24, 1975 and the appeal period expired on August 23, a Saturday. Under the rule, therefore, the Appeal was due on August 25, the next business day. It was not filed, however, until August 27. However, the citation of *Hunter v. State*, *supra*. by the Court shows that it was clearly aware of the rule although it was not applicable.
- c. *Phetteplace v. Town of Lyme*, 144 NH 621 (2005) involved a date certain filing period, unlike RSA 541:3. Under RSA 76:17, the petitioner's tax abatement appeal was due by statute "on or before September 1". The petitioner's was not received until September 2. The Court noted that the "on or before" language in RSA 76:17 (and not present in RSA 541:6) precluded application of the general rule that a legal holiday extends a time period appeal. *Id.*, at 624-625.
- d. Each of these cases is further distinguishable because they all involve appeals following the rehearing process which involve the jurisdiction of the court. RSA 541:6; RSA 76:17. Motions for rehearing to an administrative agency, under RSA 541:3, on the other hand, involve the jurisdiction of the agency; and the agency under RSA 541-A is empowered to adopt rules to govern practice before it. In this case, the Commission is bound by the statutory time limits contained in RSA 541:3 but may adopt rules such as Puc. 202.03 relating to how that time limit is

computed. It is within the jurisdiction of the Commission in the consideration of motions for rehearing before it under RSA 541:3 to compute the thirty day time period to include the next business day if it otherwise ends on a day the Commission is not open.

7. The Court has made a clear distinction in its decisions between “on or before” a date certain and “time period” appeals. In the former, it has noted that the intent of the legislature is clear. *Phetteplace v. Town of Lyme*, supra at 624. In the latter, it has unfailingly recognized that when the date for filing falls on a Sunday, that date is to be excluded from the computation. *HIK Corporation v. Manchester*, supra at 381; *State v. Hunter*, supra at 366.

8. Indeed, the Commission recognized this principle in its August 28, 2008 Secretarial Letter that noted that Nashua’s motion for rehearing was timely. The New Hampshire Legislature also recognized this principle in Chapter 11 of the Laws of 2007 (HB 1152-FN) which amended RSA 21:35 to state that documents are deemed timely when “filed ... on the next business day where a statute specifies a deadline that falls on a weekend or legal holiday.” In enacting this provision, the House Commerce Committee noted that “[t]his statutory interpretation not only makes common sense, but is also *consistent with existing filing rules with the courts of the State.*” House Record, Vol. 30, No. 18, February 29, 2008; House Record, Vol. 30, No. 22, March 5, 2008 (emphasis added).

WHEREFORE, Nashua respectfully requests that the Commission deny Pennichuck's Motion to Strike and grant such other relief as justice may require.

Respectfully submitted,

CITY OF NASHUA
By Its Attorneys
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Date: September 3, 2008

By: 


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent this day by electronic mail to all persons on the Commission's official service list in this proceeding.

Date: September 3, 2008



Justin C. Richardson, Esq.