

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

MOTION TO COMPEL

NOW COMES the City of Nashua and respectfully requests that the Commission compel disclosure of responses to deposition requests made by the City of Nashua pursuant to Puc Rule 203.04 and in support of this request states as follows:

1. On June 14 and 26, 2006, Nashua deposed Pennichuck witnesses Eileen Pennetier and R. Kelly Myers pursuant to the Commission's Order No. 24,486 in this proceeding.
2. On August 7, 2006, Nashua provided Pennichuck with written record requests reflecting document requests made during the depositions. *See* Exhibit A, record request.
3. Pennichuck did not object or respond to Nashua's record requests within 10 days under Puc Rule 203.09 (f). As a result, on September 13, 2006, Nashua requested that Pennichuck provide responses to the requests contained in its August 7, 2006 letter. *See* Exhibit B.
4. Nashua submits this motion because Pennichuck has not provided responses to the record request made during the deposition of R. Kelly Myers, and has not provided certain information requested during the deposition of Eileen Pennetier.

Record requests made to R. Kelly Meyers

5. As part of its January 12, 2006 testimony in this proceeding, Pennichuck submitted the testimony of R. Kelly Myers in support of its *theory* that voters in the City of Nashua no longer supported Nashua's petition.

6. Nashua disputes this theory of Pennichuck's case and its legal relevance to this proceeding. However, on May 22, 2006, Nashua submitted the testimony of Brendan C. Cooney to respond to Mr. Myers' testimony and deposed Mr. Myers on June 26, 2006.

7. In order to evaluate and compare the methods used by Mr. Myers' firm, RKM Research, to other research he may have prepared, Nashua requested a number of documents including other marketing research that had been conducted for other clients and a previously undisclosed marketing research study performed by Pennichuck that the company had not previously disclosed.

8. This information is relevant in this proceeding in order to demonstrate that had Pennichuck performed an objective study of public opinion, it would have concluded that voters continued to support Nashua's petition, and that the real purpose of Pennichuck's marketing research was to measure the effectiveness of its media strategy toward more favorable views of PWW's position. As noted in Nashua's Reply Testimony, "[w]hile objective public opinion surveys seek to minimize item bias by avoiding emotionally charged language, the RKM/PWW surveys actively identified language and messages that would have the most impact on public opinion." *See e.g.* May 22, 2006 Reply Testimony of Brendan C. Cooney, pages 3-4.

9. By failing to provide any response, Pennichuck has precluded Nashua from providing relevant information for the Commission's consideration on an issue that

Pennichuck has raised in its own testimony.

10. Nashua therefore requests that the Commission order Pennichuck to provide complete responses to the two data requests to R. Kelly Myers set forth in Exhibit A, or in the alternative, strike the January 12, 2006 testimony of R. Kelly Meyers.

Deposition of Eileen Pennetier

11. As set forth above, Nashua deposed Pennichuck's watershed management expert, Eileen Pennetier, on June 14 and 26, 2006. As set forth in Exhibit A, Nashua requested certain records referenced during her deposition, and, again on September 23, 2006 after Pennichuck had not responded or objected to Nashua's request.

12. By letter received on October 12, 2006 Pennichuck forwarded a letter provided from its consultant, but did not provide certain requested documents, including Nashua's request 4 (watershed management plans for the Sudbury reservoir) on the grounds that the documents were an inch thick, and Nashua's request 6 (watershed recommendations to the Manchester Water Works) on the grounds that the project is still ongoing.

13. Nashua moves to compel this information on the grounds that it is entitled to discover whether these recommendations concerning watershed protection are consistent with her January 12, 2006 testimony. Concerns relative to whether those recommendations are final or confidential, should have been addressed in an objection pursuant to Puc Rule 203.09.¹ It is simply too late to raise new objections months after the request.

17. Nashua therefore requests that the Commission compel disclosure of the

¹ Nashua does not object to confidential treatment of recommendations made to the City of Manchester Water Works. But see RSA 91-A.

watershed recommendations made by Ms. Pannetier to Manchester and Sudbury, as set forth herein. *See* Exhibit A.

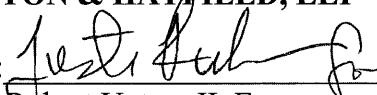
WHEREFORE, Nashua respectfully requests that the Commission:

- A. Grant this Motion to Compel, or in the alternative strike the testimony of R. Kelly Myers and Eileen Pannetier related to the matters set forth herein; and
- B. Grant such other relief as justice may require.

Respectfully submitted,

CITY OF NASHUA
By Its Attorneys
UPTON & HATFIELD, LLP

Date: November 1, 2006

By: 
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David R. Connell, Esq.
Corporation Counsel
229 Main Street
Nashua, NH 03061-2019

CERTIFICATION

I hereby certify that a copy of the foregoing was this day forwarded to all persons on the Commission's official service list in the above proceedings.

Date: November 1, 2006

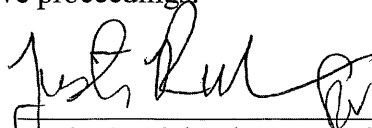

Justin C. Richardson, Esquire

EXHIBIT A

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**Upton
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ATTORNEYS AT LAW

Please respond to the Portsmouth office

August 9, 2006

Thomas J. Donovan, Esq.
McLane, Graf, Raulerson & Middleton, PA
900 Elm Street
PO Box 326
Manchester, NH 03105

Re: City of Nashua; Petition for Valuation

Dear Tom:

Please provide the following documents requested during the depositions of Eileen Pannetier on June 14 and 26, 2006, and R. Kelly Myers on June 26, 2006 and referenced in the deposition transcripts we received on July 7 & 28th and August 3, 2006.

Deposition of Eileen Pannetier, June 14 & 26, 2006:

1. The contract and scope of services for the TMDL project being completed by CEI.
2. The map showing the municipalities for which CEI has provided consulting services.
3. Any and all Master Plans for the Merrimack Village District in which Ms. Pannetier or CEI was involved, either as a commissioner or as a consultant or sub-consultant.
4. Any and all reports and recommendations prepared for City of Boston and/or the Metropolitan District Commission.
5. Any and all letters from CEI to local land use agencies in the Town of Merrimack concerning proposed developments within the Pennichuck Brook watershed, and in particular, the proposed development at Holts Pond.

EXHIBIT A

August 9, 2006

Page 2

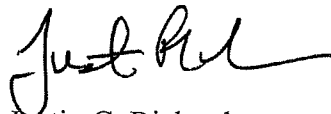
6. Any and all reports or recommendations prepared by CEI for the Manchester Water Works.
7. Any and all presentations made by CEI or Ms. Pannetier to the New Hampshire and/or New England Water Works Associations at a meeting near Lake Winnepesaukee in January 2005.

Deposition of R. Kelly Myers:

1. Any and all reports prepared for the New Hampshire Public Utilities Commission.
2. Any and all "top lines" or studies prepared for Pennichuck that were provided to R. Kelly Myers, referenced on pages 16 to 20 of his deposition transcript.

If you have any questions concerning this request, please contact me.

Very truly yours,



Justin C. Richardson
jrichardson@upton-hatfield.com

JCR/sem

cc: Robert Upton, II, Esq.

EXHIBIT B

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Please respond to the Portsmouth office

September 13, 2006

Via Electronic and U.S. Mail

Thomas J. Donovan, Esq.
McLane, Raulerson, Graf & Middleton, PA
900 Elm Street
PO Box 326
Manchester, NH 03105-0326

Re: City of Nashua; Petition for Valuation DW04-048

Dear Tom:

I have not heard back from you regarding the record requests related to the depositions of Eileen Pannetier and R. Kelly Myers as set forth in my letter of August 9, 2006. In addition, I understand that responses to the record requests from the depositions conducted by Rob Upton are also outstanding. We need to get responses to these record requests in order to prepare our updated testimony, briefs, and exhibits for trial. Please advise me at your earliest convenience as to when we can expect to receive these responses.

In addition, I also understand that Rob Upton has discussed with you dates for depositions of Msrs. Ware, Densberger, and Stala. If you could contact those witnesses and get dates for depositions, I would greatly appreciate it.

If you have any questions, please contact me.

Very truly yours,

Justin C. Richardson
jrichardson@upton-hatfield.com

JCR/sem

cc: Robert Upton, II, Esq.



COMPREHENSIVE
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September 22, 2006

Thomas J. Donovan, Esq.
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RE: PENNICHUCK

Dear Mr. Donovan:

In response to your letter of August 16, 2006, I have gone through CEI's files to develop the following information in response to the requests from Justin C. Richardson at Upton & Hatfield regarding my deposition of June 14th and 26th, 2006. Each item references the numbers identified in Mr. Richardson's letter of August 9, 2006.

1. The contract and scope of services for the TMDL project being completed by CEI for Pennichuck is attached as Attachment 1.
2. This item requests a map showing municipalities for which CEI has provided consulting services. Considering that the reviewers for the City of Nashua include engineering and consulting firms that are CEI's competitors, I consider this proprietary information and do not agree to its release.
3. This item requests Master Plans for the Merrimack Village District (MVD) in which Ms. Pannetier or CEI was involved. The updated 1991 Master Plan for MVD is attached herewith. This was done pro bono as I was a Commissioner for MVD at the time. CEI provided consulting services on a subsequent update, but did not receive a copy of the documents.
4. This item requests reports and recommendations prepared for City of Boston and/or the Metropolitan District Commission (MDC). I believe Mr. Richardson means the Massachusetts Water Resources Authority (MWRA) and the Metropolitan District Commission, who are the agencies involved. There are 3 documents related to watershed management, including a document on agricultural best management practices for what was the Metropolitan District Commission; a document on Emergency Response Planning, also for the Metropolitan District Commission; and a Watershed Management Plan for Sudbury Reservoir, an emergency water supply for the Massachusetts Water Resources Authority. These documents are approximately an inch thick each and can be provided if they are still needed based on the titles. I have not



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included them at this time, nor have I included any of the hazardous waste projects done for MWRA or MDC over the years as I do not believe these are relevant.

5. Letters from CEI to local land use agencies concerning Holts Pond. This letter is attached.
6. Any and all reports or recommendations prepared by CEI for the Manchester Water Works is requested. Since this project is still ongoing, and still in front of the Aldermen, I would prefer not to release any information. Once finalized and a public document, then we would be more comfortable in providing this information.
7. Any and all presentations made by CEI or Ms. Pannetier to the New Hampshire and/or New England Water Works Associations at a meeting near Lake Winnepesaukee in January 2005. My presentation files show one presentation given in Meredith, NH to the joint meeting of the New England Water Works and New Hampshire Water Works Association. This is attached.

If you have any questions regarding this information, please contact me.

Sincerely,

COMPREHENSIVE ENVIRONMENTAL INC.

Eileen Pannetier
President

Enclosures

- Water
- Wastewater
- Hazardous Waste
- Stormwater
- LID
- Industrial

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