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Please respond to the Portsmouth office

June 1, 2006

VIA HAND DELIVERY

Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429



Re: City of Nashua: Petition for Valuation Pursuant to RSA 38:9
Docket No. DW 04-048

Dear Ms. Howland:

Enclosed for filing please find an original and eight copies of the City of Nashua's *Motion for Protective Order* in the above captioned proceeding, as well as an electronic copy of the same on compact disc. A copy has been sent this day to all persons on the official service list in this proceeding.

This *Motion for Protective Order* is being filed as a result of the proposal to resolve Pennichuck Water Works Inc.'s *Motion to Compel*, as referenced in the April 28 and May 24, 2006 reports of hearings examiner Donald Kries, Esq., in this proceeding and my letter of May 5, 2006. Under the terms of that proposal, Nashua agreed to make certain documents sought available subject to a protective order as set forth in Nashua's motion filed today.

Nashua sought the concurrence of parties to this proceeding pursuant to Interim Rule Puc 203.04 (e). Pennichuck Water Works and Staff concur with the request, but not all of the representations made therein. The Towns of Merrimack, Litchfield and Hudson, as well as the Merrimack Valley Regional Water District concur with the request.

If you have any questions, please contact me.

Very truly yours,

Justin C. Richardson
jrichardson@upton-hatfield.com

Enclosure(s)

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

MOTION FOR PROTECTIVE ORDER

NOW COMES the City of Nashua (“Nashua”) and, respectfully requests that the Commission approve procedures for the protection of certain confidential information that Nashua expects to produce in discovery related to this proceeding. In support of this Motion, Nashua states as follows:

I. BACKGROUND

1. Nashua brought this Petition for Valuation of the assets of Pennichuck Water Works, Inc. (“Pennichuck”), pursuant to RSA 38:9. On March 16, 2006, Pennichuck filed a *Motion to Compel* seeking disclosure of certain information concerning Nashua’s operations contractor, Veolia Water North America – Northeast, LLC, (“Veolia”) to which Nashua objected on March 27, 2006.

2. On Friday April 28, 2006, a conference before the hearings examiner Donald Kries, Esq., resulted in a proposal to resolve four of the five areas sought by Pennichuck’s motion to compel. Nashua agreed to respond to the proposal on or before May 5, 2006.

3. In a May 5, 2006 letter to the Executive Director, Nashua set forth the terms under which the parties proposed to resolve four of the five areas sought by Pennichuck’s motion to compel and its agreement thereto. As related to this *Motion for Protective Order*, the Nashua stated that:

in order to resolve this matter, *subject to an appropriate protective order*, Veolia Water North America – Northeast, LLC has agreed to make the subpoenas issued in the Indianapolis matter available by May 31, 2006 (earlier if available). Insofar as the proposal included all non-confidential documents or information provided in response to those subpoenas, Nashua further agrees to provide relevant non-confidential documents available, subject to an appropriate protective order, upon reasonable request and within a reasonable time period, such as 10 days, following disclosure of the subpoenas.

May 5, 2006 Letter to Executive Director Debra Howland, Page Two (emphasis in original).

4. As a result of the foregoing, Nashua submits this *Motion for Protective Order* based on the terms and conditions of the protective orders previously issued in this proceeding.¹ Section II, below, sets forth Nashua's position that the information for which Nashua seeks protective treatment is confidential financial information within the meaning of the RSA 91-A:5, IV and Puc 204.06. Section III contains the terms and conditions for the protective treatment for the Commission's approval.

II. MOTION FOR PROTECTIVE ORDER

5. Nashua seeks a protective order from the Commission in order to make available certain company confidential information provided by Veolia Water Indianapolis, LLC related to the investigation. Nashua requests that the Commission impose the terms and conditions set forth in Section III, below, subject to the continuing right of any person to challenge such confidentiality before the Commission, after notice and an opportunity to be heard.

¹ See Order Nos. 24,495 & 24,605.

6. RSA 91-A:5, IV expressly exempts from the public disclosure requirements of Chapter 91-A any records pertaining to “confidential, commercial or financial information.” The terms “commercial or financial” encompass information revealing financial condition. Information is considered commercial if it relates to commerce. *Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

7. Pursuant to the proposal to resolve Pennichuck’s Motion to Compel, Pennichuck seeks information related to the operation of the City of Indianapolis water system, a commercial operation by Veolia’s Indianapolis affiliate, Veolia Water Indianapolis, LLC. Specifically, Pennichuck seeks information concerning “Veolia’s operational problems”² in Indianapolis, including an investigation into its operations. As set forth in Nashua’s *Objection to Pennichuck Water Works Motion to Compel*, Nashua and Veolia disagree that any problems or violations resulted of the Veolia’s operation of the Indianapolis water system.³

8. Veolia, through its regional operating companies, provides both water and wastewater operation services in the United States through competitive bid process to operate both public and privately owned utilities. While Veolia maintains that its operations were in full compliance with applicable drinking water standards and it has cooperated fully with all regulatory and/or law enforcement agencies, unrestricted disclosure of documents related to any investigation could harm the company’s competitive position by creating the appearance that the company violated drinking water standards, even where no violation occurred.

² Pennichuck’s Motion to Compel, beginning at Page 3.

³ See E.g., *Objection to Pennichuck Water Works Motion to Compel*, Pages 6 to 11 & Exhibits 1 to 4.

9. Although Veolia Water Indianapolis publicly confirmed that it received a subpoena in response to an investigation in Indianapolis and fully cooperated therewith, Veolia has not publicly circulated copies of the subpoena or the information provided to investigators. The subpoena and the company's response thereto are therefore confidential commercial and financial information related to its operations within the meaning of RSA 91-A.

10. Unrestricted disclosure of this information would cause competitive harm to Veolia Water North America by making documents related to a law enforcement investigation available to Veolia's competitors, or to the public, in a manner that could create an impression that the company violated drinking water standards even where as set forth in Nashua's objection, no violation occurred. To the extent that such information was introduced directly or indirectly into a competitive bidding process, the financial harm to the company could be substantial and irreparable.

11. As a result of the foregoing, documents related to the investigation into Veolia Water Indianapolis, LLC are confidential financial information entitled to protection under RSA 91-A:5, IV.

III. PROPOSED PROTECTIVE ORDER

12. The terms of the proposed protective order (the "Order") are substantially similar to the protective order previously approved by the Commission in this proceeding provided by Pennichuck, with minimal modification to reflect the party and nature of information provided by Nashua. Nashua proposes the following:

A. Definitions.

- i. "Confidential Information" means documents, tangible things, or information that is in good faith designated by Nashua as CONFIDENTIAL; provided, however,

that the Commission shall retain the authority to determine that such information is not exempt from public disclosure under RSA Ch. 91-A or any other applicable law or regulation or to expand or restrict the scope of what constitutes Confidential Information by further order consistent with this Order. Confidential Information may include, without limitation, trade secrets, security, financial or other commercial or proprietary information as well as all summaries, notes, extracts, compilations or any other direct or indirect reproduction from or of such Confidential Information. Information marked as CONFIDENTIAL – AUTHORIZED REPRESENTATIVES ONLY shall be limited to information relating to any EPA vulnerability assessments and material non-public information which if in a person's possession would make it unlawful to buy or sell securities, and other information but only upon prior approval of the Commission. Confidential Information does not include information that:

- (1) was in the public domain at the time it was communicated or disclosed by Nashua to recipient;
- (2) was in the recipient's possession prior to the disclosure to the recipient, unless such information was previously obtained subject to any other confidentiality agreement, protective order or similar restriction or in violation of any such agreement, order or similar restriction; or
- (3) lawfully enters the public domain through no violation of this Order after disclosure to recipient.

ii. "Authorized Representative" shall mean a person who is a member of the Staff of the Commission ("Staff") or the Office of Consumer Advocate ("OCA") or two retained experts and one designated senior staff member of a party, or is counsel of record for Staff, OCA or a party. Said Authorized Representatives must execute a Non-Disclosure Certificate in the form of Exhibit A to this Order and be approved by Nashua prior to the disclosure of information designated "Confidential- Authorized Representatives Only".

iii. "Qualified Persons" shall mean and refer to:

- (1) Counsel of record and persons in the regular secretarial, clerical, stenographical or paralegal employ of counsel of record, members of the Staff or the OCA or any Party;
- (2) Employees of a party who are involved in this proceeding, except that Confidential Information disclosed to such persons shall be limited to that which reasonably relates to their responsibility in this proceeding;
- (3) Expert witnesses or prospective expert witnesses retained or consulted by any party in this proceeding, except that the Confidential Information disclosed to such persons shall be limited to that reasonably necessary for them to form an opinion or prepare their testimony as to the matters about which counsel consulted or retained them;

(4) Such other persons as may hereafter be qualified to receive Confidential Information pursuant to this order or any other order of the Commission or a written agreement signed by Nashua.

- iv. "Party" shall mean, with respect to the definition of a Qualified Person in (iii) above, a party (including intervenors) in this proceeding (other than the Staff, OCA, Nashua and the Pennichuck Entities) who is, in the case of a natural person, only that individual, or in the case of a corporate entity, a single designated management employee of that entity.

B. Designation of Information as Either CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION-AUTHORIZED REPRESENTATIVES ONLY. Nashua shall note the designation of information as Confidential or Confidential -Authorized Representatives Only in the following manner depending on the nature of the information:

- i. With respect to documents, by marking the document or transcript containing such material as "Confidential" or "Confidential - Authorized Representatives Only" in such a manner as will not interfere with the legibility of the document; and
- ii. In the case of objects other than documents, by marking the surface of the object or the object's container, with the appropriate Confidential Information legend; and
- iii. In the case of any view, by executing a written document to be executed by all participants in such view identifying the specific portions of the view that are Confidential.

C. Disclosure Pursuant to this Order Only. Confidential Information shall only be disclosed to Qualified Persons and/or Authorized Representatives and only under the circumstances described herein.

D. Disclosure of Confidential Information. Copies of Confidential Information designated as Confidential shall only be made for the Commission, Staff, the OCA, and other Qualified Persons, and only after Staff, the OCA, and other Qualified Persons have individually signed a Non-Disclosure Certificate, attached to this Motion as Attachment A, and only under the circumstances described herein. All executed Non-Disclosure Certificates shall be provided to Nashua. Any persons in receipt of Confidential Information shall maintain such information in a secure, enclosed storage receptacle except when the information is in active, immediate use.

E. To the extent any Qualified Person makes any notes or summaries concerning Confidential Information, the same shall be deemed Confidential Information and

said Qualified Person shall be entitled to maintain said notes and summaries at their respective offices in a secure, enclosed storage receptacle except when the information is in active, immediate use.

- F. The substance or content of Confidential Information shall not be disclosed to anyone other than a Qualified Person and/or Authorized Representative, depending upon the designation of the information. Prior to disclosure, each such Qualified Person and/or Authorized Representative shall execute a Non-Disclosure Certificate in the form of Exhibit A to this Agreement and be pre-approved by Nashua. Nashua shall promptly (within 24 business hours) consider any Non-Disclosure Certificate submitted to them in accordance with this Order and shall not unreasonably withhold approval. Promptly after its execution, the original executed Non-Disclosure Certificate shall be provided to Nashua and a copy thereof shall be retained by or provided to the party who sought to have the disclosure made to such Qualified Person and/or Authorized Representative. No Confidential Information disclosed pursuant to the terms of this Order shall be disclosed or used by a recipient for any purpose other than what is reasonably necessary for the conduct of this proceeding and proceedings substantially similar to prior litigation commenced by the Pennichuck Entities in Hillsborough County Superior Court, Southern District, Nos. 04-E-062 and 04-C-169. Upon written request made to undersigned counsel, they will disclose the names and status of persons who have executed Non-Disclosure Certificates.
- G. **Disclosure to Competitors Prohibited.** Notwithstanding anything else to the contrary contained in this Order, no Confidential Information may be disclosed to any person affiliated with any entity in the water utility appraisal business ("Competitor"), even if such Competitor serves as counsel to or an expert for a Party. A person is "affiliated" with such an entity if that person is a shareholder of, director of, officer of, employee of, attorney for, or consultant to such an entity or any other entity that is under common control.
- H. **Disclosure to Unauthorized Persons.** If any Confidential Information is disclosed to a person not authorized herein to receive such information, such disclosure shall not affect the confidentiality of such disclosed information. The person and/or entity making such disclosure shall immediately notify Nashua of the substance and content of such disclosed information and the identity of the recipient of such information, shall seek the return of such disclosed information, and said person and/or entity shall be barred from further access to Confidential Information and may also be liable for damages in accordance with applicable law.
- I. **Depositions, Data Requests, and Other Discovery.** Each deposition transcript, answer to a data request, and document or thing produced constituting, comprising or containing Confidential Information shall be so identified and, where appropriate, marked prominently by the party seeking to use such information. Nashua may choose to make such marking of documents and things

at the time that copies are made and distributed to any party. In the case of deposition transcripts, counsel for Nashua shall promptly advise the other participants in this proceeding of the specific pages claimed to fall within the terms hereof either during the deposition or within thirty (30) days of receiving the transcript of the deposition. If not so designated during the deposition, the entire deposition transcript shall remain confidential during the thirty-day period for confidentiality designation.

- J. Failure to Identify or Mark Information.** If Nashua inadvertently produces a document or information constituting, comprising or containing Confidential Information without identifying and marking it as such, they may so identify and mark such document or information at any time thereafter without waiver or prejudice.
- K. Challenges to Designations of Confidentiality.** The Staff and any party to this proceeding or any member of the public may, at any time, give written notice to the undersigned counsel to Nashua that they challenge its assertion of confidentiality, including the designation of materials as Authorized Representatives Only and any decision by Nashua to not approve an individual as an Authorized Representative or a Qualified Person. If such dispute cannot be resolved amicably, then the requesting party may file a motion seeking an order of the Commission with respect to the material or individual in question. Nashua shall bear the burden of demonstrating that confidential treatment as asserted by it is appropriate or that an individual should be denied access. Such document or other information shall continue to be held as confidential under this Order until the Commission rules on the material in question.
- L. Filing Materials with the Commission.** All materials filed with the Commission or its Staff that have been designated by Nashua as comprising or containing Confidential Information, and any pleading or memorandum purporting to produce or paraphrase such information, shall be filed in a sealed envelope or other appropriate sealed container upon which shall include the name and docket number of this proceeding and the word "CONFIDENTIAL". Any documents submitted to the Commission, or any appellate court, as provided herein shall thereby become part of the record and subject to the provisions of this Order.
- M. Retention of Jurisdiction.** Jurisdiction of this proceeding shall be retained by the Commission after final determination for purposes of enabling any party or person affected by this order to apply to the Commission for such direction, order or further decree as may be appropriate for the construction, modification, enforcement or compliance herewith or for the punishment of any violation hereof, or for such additional relief as may become necessary to realize the intentions hereof.
- N. Disclosure of Confidential Information to Deponents.** Qualified Persons may be deposed regarding information marked as Confidential, and only Authorized

Representatives may be deposed concerning information marked as Confidential – Authorized Representatives Only. Only Qualified Persons or Authorized Representatives, as appropriate, as defined in this Order may be present during such depositions for portions relating to Confidential Information. A reporter recording any Confidential Information or incorporating into a transcript any document containing Confidential Information shall transmit such transcript only to counsel of record for the parties, who are Authorized Representatives. Any such transcript shall not be filed with the Commission, except under seal.

- O. Further Order of the Commission.** Maintenance of the confidential status of any information shall in all cases be subject to further order of the Commission and nothing herein shall preclude any party from applying to the Commission for any appropriate modification hereof; provided, however, that prior to such application, Nashua and any other party to such dispute shall certify in writing that they have endeavored unsuccessfully to resolve the matter.
- P. Return of Materials.** Upon termination or final conclusion of this proceeding, the Commission, to the extent that the Commission is not otherwise required to retain such materials, shall return all documents containing Confidential Information or Confidential -Authorized Representatives Only in the Commission's file to counsel for Nashua. Further, upon termination or final conclusion of this proceeding, all materials containing or comprising Confidential Information or Confidential –Authorized Representatives Only and any copies thereof in the possession of any other person shall be returned to counsel for Nashua; provided, however, that counsel of record may retain attorney work product that contains or comprises Confidential Information or Confidential Information-Authorized Representatives Only.
- Q. Storage of Information.** Any persons in receipt of Confidential Information shall maintain such information in a secure, enclosed storage receptacle except when the information is in active, immediate use.
- R. Availability to Others.** Nashua shall not be required to provide any Confidential Information to any person who is not designated as an Authorized Representative or a Qualified Person. Any other person seeking access to such information shall first file a motion with the Commission demonstrating good cause for its release to them.
- S. Other Proceedings.** If any party is requested to disclose information designated as "Confidential" or "Confidential - Authorized Representatives Only" pursuant to a subpoena, order of a court of competent jurisdiction, or otherwise, that party shall give notice of any such request to Nashua, as appropriate, at least ten (10) business days prior to any scheduled date for the disclosure of the information. In the event that period for the requested disclosure of this information is shorter than ten (10) business days, the party shall give the undersigned counsel to Nashua notice prior to the date for the requested disclosure.

WHEREFORE, Nashua respectfully requests this Honorable Commission:

- A. Grant this Motion for Protective Order;
- B. Issue a protective order incorporating the terms set forth herein; and
- C. Grant such other and further relief as just and reasonable.

Respectfully submitted,

CITY OF NASHUA
By Its Attorneys
UPTON & HATFIELD, LLP

Date: ~~May~~ ^{June 12} ____, 2006

By: 
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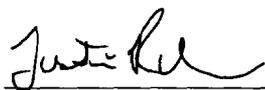
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Corporation Counsel
229 Main Street
Nashua, NH 03061-2019

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: ~~May~~ ^{June 1} ____, 2006


Justin C. Richardson, Esquire

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

City of Nashua: Petition for Valuation Pursuant to RSA 38:9
Docket No. DW 04-048

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

1. I confirm that I have read Order No. _____ issued by the New Hampshire Public Utilities Commission in Docket No. DW 04-048 on _____, 2006, ("Protective Order"), a copy of which is attached hereto. I understand that I am a Qualified Person/Authorized Representative (circle appropriate designation).
2. I hereby confirm and reiterate that:
 - A. I will maintain the confidentiality of the Confidential Information in accordance with the Protective Order, will use, store and maintain such information so as to safeguard against the disclosure of such Confidential Information to any unauthorized person.
 - B. I will use any Confidential Information imparted to me under the Protective Order only for the purpose of the above proceeding, and I will make no commercial or other use of any such Confidential Information, nor will I assist or permit any other person to do so.
 - C. At the conclusion of the proceedings in DW 04-048, I will comply with paragraph 9(P) of the Protective Order by returning all Confidential Information and Confidential Information designated as being for Authorized Representatives Only in my possession or control.
 - D. I agree to be subject to the continuing jurisdiction of the New Hampshire Public Utilities Commission in connection with the Protective Order and the enforcement thereof.

In witness whereof, I have caused this agreement to be executed this _____ day of _____, 2006.

Signature: _____
Name: _____
Home Address: _____
Employer: _____
Position: _____
Employer's Address: _____
Witness: _____
Date: _____