

# McLane

McLane, Graf,  
Raulerson &  
Middleton

*Professional Association*

STEVEN V. CAMERINO  
Internet: steven.camerino@mcclane.com

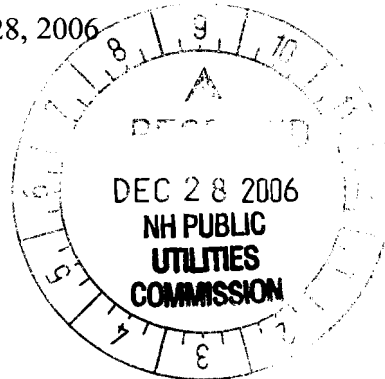
FIFTEEN NORTH MAIN STREET • CONCORD, NH 03301-4945  
TELEPHONE (603) 226-0400 • FACSIMILE (603) 230-4448

OFFICES IN:  
MANCHESTER  
CONCORD  
PORTSMOUTH

December 28, 2006

**Via Hand Delivery**

Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301



**Re: DW 04-048; City of Nashua—Taking of Pennichuck Water Works, Inc.**

Dear Ms. Howland:

On behalf of the Pennichuck Companies, I enclose for filing with the Commission an original and six copies of Pennichuck's Objection to Nashua's Motion to Postpone Hearing.

We have provided an electronic copy of the filing to the PUC librarian and the parties.

Very truly yours,

Steven V. Camerino

SVC:cb

Enclosure

cc: Service List (by electronic mail only)  
Duane C. Montopoli, CEO and President, Pennichuck Corporation  
Donald Ware, President, President, Pennichuck Water Works, Inc.

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

**City of Nashua – Taking of Pennichuck Water Works, Inc.**

**DW 04-048**

**PENNICHUCK’S OBJECTION TO NASHUA’S MOTION TO POSTPONE HEARING**

NOW COME Pennichuck Water Works, Inc. (“PWW”), Pennichuck East Utility, Inc. (“PEU”), Pittsfield Aqueduct Company, Inc. (“PAC”), Pennichuck Water Service Corporation and Pennichuck Corporation (collectively “Pennichuck”) by and through their attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, and object to the City of Nashua's Motion to Postpone Hearing Pursuant to Puc 203.13 and to Convene Settlement Conference (the “Motion”). In support of this Objection, Pennichuck states as follows:

1. Nashua began this eminent domain process in November 2002 when the City's aldermen passed a resolution seeking to acquire the assets of PWW, PEU and PAC. Four years later, after being forced to defend against Nashua’s actions, Pennichuck will finally have its day in court beginning on January 10, 2007, when the hearing on the merits is scheduled to begin. With that hearing less than three weeks away, Nashua has now requested a postponement so the City can try yet again to pressure Pennichuck into settlement on terms that Pennichuck finds unacceptable. The Commission should deny Nashua’s eleventh hour request because of the harm it will cause to Pennichuck, its employees, its customers, and its shareholders.

2. Nashua’s Motion is premised on the proposition that this case, like any other, should be capable of resolution through settlement. Yet this case is not like the typical case pending before the Commission or, for that matter, any case pending before any court in New Hampshire. This case involves a municipality's efforts to cut the heart out of a publicly traded

business, a business that happens also to be the largest investor owned water utility in the state. While it may be Nashua's desire to settle the case, Pennichuck's goal is to continue to exist and provide excellent service to its customers.

3. Nashua would have the Commission believe that it is *entitled* to settle this case – i.e. acquire Pennichuck - merely because RSA 38 exists. But that is not the case. RSA 38 does not grant Nashua the unequivocal right to take over Pennichuck, nor does the New Hampshire Constitution. Nashua must overcome the significant hurdle of demonstrating that the taking is in the public interest. For four years, Pennichuck has said that Nashua cannot meet this burden. Now that the day has come to reveal once and for all the failings of Nashua's claims, it wants to postpone that event.

4. In its Motion, Nashua makes much ado about its November 20, 2006 settlement proposal to Pennichuck, a proposal that the City also presented to the Commission Staff and which has been the subject of news reports. Because Nashua has been unsuccessful in bullying Pennichuck into a settlement on terms that Pennichuck finds unacceptable, the City has now resorted to baseless claims that Pennichuck has not had a CEO with the authority to resolve the matter since the departure of Donald Correll in April 2006. The reality is that Nashua simply does not like the response it has received and is now trying to enlist the Commission to pressure the Company to settle by putting off the hearing. It takes two parties to settle, and Pennichuck has made its position clear to Nashua regarding the November 20, 2006 proposal.

5. Contrary to what Nashua alleges in its Motion, a postponement will not “promote the orderly and efficient conduct of the hearing.” Rather, it will needlessly extend the pall that has been cast over Pennichuck for the past four years. As Pennichuck has noted since the outset of this controversy, a central theme of Nashua's tactics has been to put Pennichuck into a state of suspended animation in the hope that the Company will be forced to capitulate to the City's

demands. The Commission should not allow itself to be used as part of such a strategy. This case should proceed to trial, and be resolved once and for all.

6. For these reasons, the Commission should deny Nashua's Motion to Postpone Hearing Pursuant to Puc 203.13 and to Convene Settlement Conference.

WHEREFORE, Pennichuck respectfully requests that the Commission:

- A. Deny Nashua's Motion to Postpone Hearing; and
- B. Grant such other and further relief as the Commission deems necessary and just.

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 28, 2006

By:

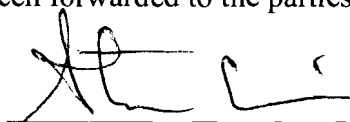


Thomas J. Donovan  
Steven V. Camerino  
Sarah B. Knowlton  
Bicentennial Square  
Fifteen North Main Street  
Concord, NH 03301  
Telephone (603) 226-0400

Joe A. Conner, Esquire  
Baker Donelson Bearman  
Caldwell & Berkowitz, P.C.  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450

Certificate of Service

I hereby certify that on this 28<sup>th</sup> day of December, 2006, a copy of this Objection to Nashua's Motion to Postpone Hearing has been forwarded to the parties listed on the Commission's service list in this docket.

A handwritten signature in black ink, appearing to read 'Steven V. Camerino', is written over a horizontal line.

Steven V. Camerino