

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

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

Docket No. DW 04-048

**REPLY TESTIMONY OF NASHUA MAYOR BERNARD STREETER,
ALDERMAN BRIAN McCARTHY AND GEORGE E. SANSOUCY, P.E.**

1 **Q. Please state your names and positions as they relate to this proceeding.**

2 A. Bernard Streeter. Mayor for the City of Nashua.

3 A. Brian S. McCarthy. I serve as a member of Nashua's Board of Alderman.

4 A. George E. Sansoucy, P.E. My firm, George E. Sansoucy, P.E., LLC, has been
5 engaged by the City of Nashua to advise it on matters concerning the City's
6 proceeding to acquire the water utility assets of Pennichuck Water Works, Inc.

7 **Q. Have you previously submitted testimony in this proceeding?**

8 A. Bernard Streeter. Yes. On May 22, 2006, I provided reply testimony in this
9 proceeding as a panel with David Rootovich, President of Nashua's Board of
10 Aldermen, and Alderman Brian S. McCarthy.

11 A. Brian S. McCarthy. Yes. On November 22, 2004, I provided testimony in
12 support of Nashua's petition. On May 22, 2006, I also provided Reply Testimony
13 as part of a panel with Mayor Streeter referenced above and as part of a second
14 panel with Katherine Hersh and John Henderson, P.E., discussing Nashua's
15 efforts to protect the Pennichuck Brook watershed.

16 A. George E. Sansoucy, P.E. Yes. I have previously submitted the following
17 testimony in this proceeding: On November 22, 2004, I provided testimony in
18 support of Nashua's petition; on January 12, 2006, I provided testimony related to

1 the valuation of the Pennichuck Water Works, Inc. assets as well as public interest
2 issues related to valuation including my analysis of customer savings that would
3 result from Nashua's acquisition of the Pennichuck Water Works assets; and on
4 May 22, 2006, I provided Reply Testimony responding to Pennichuck's valuation
5 and public interest testimonies.

6 **Q. What is the purpose of your testimony today?**

7 A. Our testimony today responds to the direct testimony of Mark A. Naylor, Randall
8 S. Knepper and Amanda O. Noonan, members of the New Hampshire Public
9 Utilities staff dated April 13, 2006. We believe that Staff's testimony unfairly
10 criticized Nashua's Petition by adopting many of the Pennichuck arguments
11 without conducting or presenting its own independent analysis. We further
12 believe that Staff fundamentally misunderstood Nashua's proposal and failed to
13 consider the benefits that the establishment of a municipally owned system would
14 bring to the public interest, as well as key commitments Nashua has made in order
15 to alleviate potential adverse impacts.

16

17 Because Staff adopted or relied heavily on Pennichuck's arguments, our May 22,
18 2006 Reply testimony responding to Pennichuck already addresses many of the
19 issues raised by staff. We urge the Commission to review our May 22, 2006
20 Reply Testimony with this Testimony in evaluating our response to Staff's
21 concerns.

22

23

1 **Q. What is your general reaction to Staff's April 13, 2006 testimony?**

2 A. Staff's April 13, 2006 testimony appears to be in part driven by the assumption
3 that acquisition by Nashua will harm the public interest because of the impact that
4 acquisition would have on existing customers outside of the Pennichuck Water
5 Works core system. In addition, Staff appears to be concerned that Nashua's
6 acquisition would cause Pennichuck to lose the ability to acquire small water
7 systems throughout the State of New Hampshire that have a relatively high cost of
8 operation per customer, and to operate those systems at either the Pennichuck
9 Water Works core rates, or the rates charged by PEU or PAC.

10

11 As set forth in our May 22, 2006 Reply Testimony and herein, we disagree with
12 this position. Pennichuck has pursued a strategy of acquiring small high cost of
13 service water systems that have resulted in the highest rates in the state for a
14 system of its size.¹ We understand that, in addition to the rate increase recently
15 approved in DW 04-056, the company now seeks an additional "effective increase
16 of 43.11% for general metered customers."² These rate increases demonstrate
17 that even in the absence of Nashua's petition, Pennichuck's ability to acquire and
18 provide service to scattered, high cost satellite systems is limited by the
19 inefficiencies it creates and its impact on rates.

20

21 Were the Commission to adopt Pennichuck's and Staff's position in this
22 proceeding, the net result would be to deny the Citizen of Nashua, Pennichuck's

¹ See SMS Exhibit 8 Nashua Responses to Pennichuck Data Requests 5-9 & 5-10.

² NHPUC Order No. 24,646 (revised July 18, 2006), Page Two.

1 existing customers outside of Nashua and the State of New Hampshire, the
2 opportunity to obtain local control of their water by establishing a municipally
3 owned system as intended by RSA 38. The fact that Pennichuck Corp., has
4 created a corporate structure that results in the subsidy of its regulated and
5 unregulated subsidiaries should not be allowed to trump the legislative policy of
6 local control established under RSA 38. This is particularly true in this case
7 where Nashua will have the ability to operate the system at a lower cost to
8 customers, focus on watershed protection and water conservation, and ultimately
9 promote the establishment of a regional water district capable of addressing the
10 region's water supply needs in an integrated manner.

11

12 **Q. In his testimony Mr. Naylor identifies as the most important reason for his**
13 **conclusion that the acquisition is not in the public interest the loss of PWW**
14 **as a true regional water utility with a track record of cooperation on water**
15 **supply and distribution issues. He argues that Pennichuck Water Work's,**
16 **rather than Nashua, is the vehicle to achieve regionalization. Do you agree?**

17 A. No. There is no question that a regional approach which provides for better
18 resource protection should be the future in New Hampshire; but the conclusion
19 that Pennichuck Water Works is better able to achieve regionalization than
20 Nashua makes no sense. The overwhelming majority of the water systems in
21 southern New Hampshire, where the vast majority of the assets Nashua seeks to
22 acquire are located, are owned by towns and cities with whom Nashua could join
23 or partner with through intermunicipal agreements to advance regionalization. As

1 municipalities these cities and towns have greater planning capabilities and access
2 to cheaper capital than Pennichuck Water Works.

3
4 Moreover, it is apparent from George E. Sansoucy, Exhibit 23, that beyond the
5 core system consisting of Nashua and those municipalities hydraulically
6 connected to the water treatment plant, Pennichuck's other systems are a series of
7 isolated small community systems that have nothing to do with regionalization.

8 George E. Sansoucy, Exhibit 23 also demonstrates how this hodge podge of small
9 community systems of Pennichuck and its sister companies interspersed among
10 the municipal and district systems in southern New Hampshire, rather than being
11 the vehicle for regionalization, are an impediment to it.

12
13 For example, consider PEU. According to Schedule S-2 to its 2005 Annual
14 Report to the Commission, PEU required 448,533 million gallons, to serve its
15 customers. Of this amount it produced itself 122,411 million gallons or about one-
16 quarter of its needs. The remainder of 326,122 million gallons, approximately
17 75% of its required water, PEU purchased from the surrounding **municipal**
18 systems, Manchester, Derry, Hudson Hooksett and Raymond. PEU would not
19 exist if it was unable to buy water from the from the municipal systems. These
20 community systems like those of PWW should be municipally owned.

21
22 Pennichuck Corporation has developed a business plan which creates pockets of
23 private ownership and private operation that stand in the way of the aggregation

1 of connected municipal water systems. Ultimately municipal entities are capable
2 of forming larger regional partnerships and better able to achieve regional goals
3 through tax exempt financing, resource conservation, sharing and development of
4 operating and maintenance synergies beneficial to all members.

5
6 For example, consider the formation of such authorities and districts as the
7 Springfield Water and Sewer Commission, the Providence Rhode Island Water
8 Supply Board, Massachusetts Metropolitan Water District, the Portland Water
9 District and the City of New York to see the long term benefits of regionalization
10 through a municipal entity.

11
12 It is not enough to argue, as Mr. Naylor does, that municipal water suppliers “are
13 not only not the answer to greater regional cooperation; many contribute to the
14 lack of cooperation.”³ Mr. Naylor ignores the fact that municipal enterprises that
15 provide a greater benefit to the public at large, including citizens outside their
16 political borders, are everywhere. In the area of municipal water utilities, the
17 Manchester Water Works is an example of a municipally owned water utility that
18 successfully serves some 167,000 customers in Auburn, Bedford, Derry,
19 Goffstown, Hooksett and Londonderry as well as Manchester itself. Manchester
20 Water Works uses 486 miles of water mains, owns and controls more than 8,000
21 acres for water supply protection and has done so recently without rate increases,
22 disruptions in service or water quality violations.⁴

³ Page 52 (emphasis in original).

⁴ See MBS Exhibit 2 to the reply testimony of Nashua Mayor Bernard Streeter, et al, dated May 22, 2006.

1 In addition to Manchester, the City of Portsmouth provides water service from
2 facilities located in Madbury using transmission mains that pass through
3 Madbury, Dover, Durham to supply customers that are located in Newington,
4 Portsmouth, Greenland, Rye and New Castle. Mr. Naylor's assertions also ignore
5 other examples of inter-municipal cooperation resulting in greater service to the
6 public in areas such as education, sewer services, solid waste management and
7 fire and police protection.

8
9 We also note that Pennichuck's efforts to portray itself as a regional utility acting
10 in the best interest of its customers and the public conflict with its continued
11 efforts to develop land within the watershed.⁵ It is hard to imagine how the
12 development of hundreds of acres of land within the watershed advances the
13 cause of regionalization, even as the NHDES and Pennichuck's own consultants
14 recommend that additional protections and conservation measures be provided.⁶

15
16 Because Nashua will not operate under the investor owned model where the
17 incentive is to maximize returns by maximizing the sale of water, Nashua will be
18 better able to adopt conservation measures and engage in resource management.
19 These practices will allow Nashua to achieve an optimum distribution and
20 utilization of resources unavailable to Pennichuck and which clearly benefit the
21 region.

22

⁵ See letter of Donald Ware urging the defeat of HB 1289. Exhibit 4 to Testimony of Katherine Hersh, et al.

⁶ See generally, the May 22, 2006 Testimony of Katherine Hersh et al., and Alan Fuller, Ph.D.

1 **Q. Mr. Naylor states that the second most important reason Nashua’s Petition is**
2 **not in the public interest is because “the evidence clearly shows that the**
3 **taking of PWW’s assets will adversely effect rates in the other regulated**
4 **water utilities owned by Pennichuck and will cause substantial harm to**
5 **Pennichuck Water System Corporation”.⁷ Do you agree?**

6 A. No. Mr. Naylor made no independent analysis of the potential rate impact on
7 PEU and PAC and no independent analysis of the impact on PWSC. Instead he
8 accepted, uncritically, PWW’s analysis contained in its supplemental response to
9 Nashua Data Request 3-11. Pennichuck’s claims adopted by Mr. Naylor are
10 fundamentally flawed. See Reply Testimony of George E. Sansoucy and Glen C.
11 Walker dated May 22, 2006 at page 25, et seq. Without performing any analysis
12 of Pennichuck’s claims, Mr. Naylor’s assertions of harm to the other Pennichuck
13 subsidiaries is merely an unsupported assumption or opinion and not entitled to
14 any weight.

15
16 Moreover, we believe PWW’s claims contained in the response to Nashua 3-11
17 suggest that Pennichuck’s allocation agreement is flawed and creates subsidies
18 that are not supportable. We are also troubled that PWSC has been included in
19 this discussion. PWSC is unregulated for-profit enterprise and should not be
20 supported by captive ratepayers served by regulated monopolies. Why should the
21 ratepayers of Nashua provide a benefit to PWSC which makes it more profitable
22 and in turn directly benefits the shareholders of Pennichuck Corp. Such a result is
23 not the purpose of regulation.

⁷ Page 41.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Q. Mr. Naylor has testified that his 3rd most important reason for reaching the conclusion that Nashua’s Petition is not in the public interest, is that Nashua’s proposal contains uncertainties and lacks evidence demonstrating that important functions such as customer service and billing and collections will be adequately addressed. Do you agree with this conclusion?

A. No. We particularly disagree with Mr. Naylor’s comments concerning the City’s use of Veolia Water as its contract operator and R.W. Beck as its oversight contractor. Public/private partnerships, such as this, are being increasingly utilized throughout the United States because of their ability to increase operating efficiencies, insure technical expertise and ensure water quality.⁸ Even Donald Correll, the former President and CEO of Pennichuck Corp., in his testimony on behalf of Pennichuck before the United States House of Representatives Committee on Energy and Commerce on July 22, 2004,⁹ recognized the benefits of public/private partnerships and their important role in reducing cost, freeing up capital for infrastructure replacement and avoiding significant rate adjustments while still meeting water quality standards. According to Mr. Correll, savings of as much as 40% can be achieved. And yet Staff still raises concerns that the benefits of these partnerships are uncertain.

In an effort to provide Staff with a better understanding of the public/private partnerships, Nashua and Veolia Water proposed that members of Staff travel to

⁸ SMS Exhibit 1, “An Evaluation of Public/private Partnerships for Water and Waste Water Systems” prepared by the Water Partnership Council, dated June, 2005.
⁹ SMS Exhibit 2

1 Indianapolis, Indiana to observe the largest public/private partnership in the
2 country in operation and to meet directly with both City and Veolia officials to
3 discuss its operation and management of the Indianapolis water system using the
4 public/private partnership. It is unfortunate that Staff did not pursue this
5 opportunity and instead appears to have relied on the unsubstantiated newspaper
6 articles produced by Pennichuck. As set forth in the January 12 and May 22
7 testimony of Philip Ashcroft et al,¹⁰ Veolia's operation of the Indianapolis Water
8 system has resulted in substantial benefits and improvements to the water system
9 that the prior investor-owned utility, NiSource, failed to provide. Veolia's
10 operation and management of the system has resulted in lower operating costs in
11 2006 than when it bought the investor-owned system from NiSource and
12 contracted operations to Veolia Water in 2002.¹¹ Furthermore, any concern about
13 uncertainties in the integration of operation and oversight could readily be cured
14 with a condition of approval adopted by the Commission. Staff, however, has not
15 articulated what its real concern is nor suggested what would satisfy it.
16
17 Finally, the testimony of Amanda Noonan concerning customer service and
18 billing is simply wrong as set forth in the May 22, Reply Testimony of Nashua's
19 Chief Financial Officer Carol Anderson et al., at Pages 4 (lines 21-23) and 5 (line
20 1-8). It was Ms. Noonan's testimony that Nashua would have only 4 full time
21 staff available for customer service, of which 2 were Veolia employees who

¹⁰ See, e.g., January 12, 2006 *Testimony of Philip Ashcroft et al*, Exhibit A containing Volume III, Appendix B, Part 1 of Veolia Water's technical proposal to the City of Nashua; May 22, 2006 *Reply Testimony of Philip Ashcroft et al.*, Pages 6-8 & Exhibits B through E.

¹¹ SMS Exhibit 3, Public Works Financing, June 2006, Volume 206, PP 1 and 2

1 would handle only water system operating issues. However, the 2 new City
2 employees would be added to the current 6 employees in the City Treasurer/Tax
3 Collection Department and all 8 employees would be cross-trained to deal with
4 water issues as well as property tax and sewer bills. Including the 2 Veolia
5 employees the total Nashua customer service personnel will actually exceed the 9
6 full time customer service staff of PWW.

7
8 Moreover, Ms. Noonan's testimony does not address the substantial meter reading
9 errors and billing problems discovered by the City described in the testimony of
10 Carol Anderson et al in their testimony at page 4, that resulted from data provided
11 by Pennichuck. These problems have resulted in wastewater fee refunds by
12 Nashua and additional employee expenses. The full extent of the current problem
13 has not yet been determined.

14

15 **Q. Mr. Naylor is also critical of what he asserts will be a reduction of the work**
16 **force under Nashua's ownership to approximately two-thirds of PWW's**
17 **current level. He asserts that because of the reduction there will be a**
18 **degradation of customer service. Do you agree?**

19 A. No. This criticism appears to be the result of a misunderstanding of the role of
20 Veolia Water will perform. In the first instance, Nashua and Veolia do not
21 propose that the number of line employees will be significantly reduced, if at all.
22 What will be eliminated is the relatively high management and administrative
23 costs resulting from PWW's ownership. These management and administrative

1 functions will be absorbed by Veolia Water. That is one of the reasons the public-
2 private partnership can reduce cost. There is no benefit in that model to creating a
3 large administrative staff as exists in the IOU model where the cost is simply
4 passed through to ratepayers.

5 **Q. Mr. Naylor says that the 4th most important reason for his determination**
6 **that Nashua's acquisition is not in the public interest is that acquisitions of**
7 **all troubled water systems by Pennichuck and its affiliates are not likely to**
8 **continue if PWW ceases to exist.¹² What is your reaction to Mr. Naylor's**
9 **testimony?**

10 A. Mr. Naylor's testimony ignores Nashua's intent to consider such acquisitions on a
11 case by case basis as set forth in its July 29, 2005 Response to Staff Data Request
12 2-6. (Exhibit MAN-17) This intent has been made clear and was again reiterated
13 in the Nashua's May 22, 2006 Reply Testimony. See *Testimony of Bernard*
14 *Streeter et al*, Pages 17-20 & 23; *Testimony of George E. Sansoucy, P.E. et al.*,
15 Pages 23-24.

16
17 Mr. Naylor's testimony also ignores the many municipal water systems that
18 provide water to surrounding communities, including Manchester Water Works
19 and the City of Portsmouth described above. There are many examples where
20 municipal systems have extended service beyond their municipal boundaries for
21 the common good and in the assertion that Nashua would approach the operation
22 of its water system and the potential acquisition of a troubled water system purely
23 in terms of its own bottom line and self interest is cynical and unsupported.

¹² Page 42.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Nashua’s Petition in this proceeding in which it sought to acquire the assets of PEU and PAC in addition to PWW, in itself is an example of a municipality looking beyond its own borders in order to provide a greater service to the public. We have already pointed out how municipalities collaborate, not only in providing water services but also in such other areas as education, sewer, solid waste and fire and police protection. In addition, the evidence is clear that municipalities can provide service at lower cost than investor owned utilities like Pennichuck. See New Hampshire Department of Environmental Services 2004 Water Rate Survey as analyzed in the New Hampshire Business Review, Volume 27, No. 9, April 29-May 12, 2005.¹³

We certainly understand that under the existing regulatory structure Pennichuck Water Works has an incentive to expand its franchise outside of Nashua by acquiring inefficient, troubled water systems regardless of their location and whether they contribute disproportionately to the overall cost of service. An investor owned regulated utility has an automatic right to recover its operating costs based on the system it owns, even if that system is a hodge podge of disconnected systems scattered throughout the State. Moreover, without growth and regardless of the quality of the growth, a regulated utility can not increase its revenues; and growth for the sake of growth, therefore becomes its goal regardless of cost.

¹³ SMS Exhibit 4

1 As a consequence, while Pennichuck’s focus is on profit from any region or area
2 of the State, Nashua’s focus will be in the areas it serves and its desire to protect
3 and serve the needs of the lower Merrimack River region. We think this approach
4 represents true regionalism.

5
6 The role of Veolia Water, in the discussion of troubled water systems should not
7 be overlooked. Veolia Water is one of the largest contract operators in the world
8 and operates systems as large as Indianapolis, Indiana and as small as any of the
9 Pennichuck satellite systems. Veolia Water would be an alternative to
10 Pennichuck available to Staff and the owners of the troubled systems. And even
11 if Veolia is not the answer, we believe other utilities will fill the role Staff
12 believes PWW provides. Even now PWW is not the only NH utility acquiring
13 troubled systems.¹⁴

14
15 Finally, we think it is important to point out that Mr. Naylor’s testimony
16 concerning the role of Pennichuck and troubled systems overstates Pennichuck’s
17 role. Pennichuck does not acquire every troubled system in the State of New
18 Hampshire. It did not acquire, for example, Gunstock Glen, as noted in the
19 Rebuttal Testimony of Bonalyn J. Hartley dated February 23, 2005 filed in
20 Pennichuck Water Works recent rate case (DW 04-056), nor has it acquired a
21 system in East Conway from Fryeburg Water.

¹⁴ SMS Exhibit 5, Staff Response to Nashua 6-46

1 In her recent deposition (not yet been transcribed) Ms. Hartley testified that the
2 company had not completed the acquisition of other troubled systems after
3 reviewing their costs of operation and other factors. Apparently Pennichuck
4 applies a similar case by case analysis to that which the City proposes. While it is
5 probably unlikely that the City would pursue acquiring systems such as those in
6 Gilford or Conway, it would do so in and adjacent to its existing franchises.

7

8 **Q. Mr. Naylor’s testimony states that Nashua’s projection that it will have a**
9 **lower cost of service is speculative considering that Nashua’s rate projections**
10 **are based on the City’s estimate of value. In support of this conclusion, Mr.**
11 **Naylor states that Nashua has underestimated certain costs and as a result**
12 **“based solely on Nashua’s estimate of the value of PWW’s assets it appears**
13 **that Nashua would have a slightly reduced costs of service.”¹⁵ What is your**
14 **reaction to this testimony?**

15 A. We are troubled that the Staff has given any weight to Pennichuck’s valuation
16 testimony. We hoped that Staff would take into account not only that Pennichuck
17 Water Works proposed value substantially exceeds what it can return to investors
18 but also more than doubles the market based enterprise value of its parent,
19 Pennichuck Corporation.¹⁶

20

21 Mr. Naylor simply notes the truism that the question of actual savings will remain
22 uncertain until such time as a value is set by the Commission. It is unfortunate

¹⁵ Page 42.

¹⁶ SMS Exhibit 6 Smart Money.com

1 because we firmly believe that any reasonable determination of value in this
2 proceeding would demonstrate Nashua's ability to provide service to customers at
3 lower cost than Pennichuck and demonstrate that Nashua's petition is in the
4 public interest.

5
6 **Q. Do you accept Mr. Naylor's conclusion that Nashua understated its costs?**

7 A. No. Mr. Naylor has accepted Donald Ware's February 27, 2006 testimony in
8 which he asserts that Nashua has understated unplanned maintenance, the cost of
9 purchased water, the cost of fuel and electricity and cost related to the dig safe
10 program. Mr. Naylor's concerns, however, reflect a misunderstanding of how
11 unplanned maintenance will be addressed in Nashua's Operations Maintenance
12 and Management Agreement (OM&M) with Veolia Water.¹⁷

13
14 Many of the items which Pennichuck Water Works refers to as unplanned
15 maintenance are included in the category OM&M Services set forth in Appendix
16 D to the Agreement. OM&M Services are included in the Annual Fee Nashua
17 will pay to Veolia Water. To the extent that there are planned or unplanned
18 maintenance items not included in the Annual Fee, they are included in Appendix
19 H as Renewal, Repair and Replacement Maintenance. Nashua has budgeted
20 \$185,000.00 for these services plus a contingency of \$500,000.00 for unplanned
21 repairs. In the event unplanned maintenance exceeds this amount Nashua is
22 funding a reserve account annually in excess of \$700,000.00. See GES Exhibits
23 4,5 and 6.

¹⁷ See January 12, 2006 Testimony of Philip Ashcroft et al.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

As a result, Pennichuck’s and Staff’s analysis is based on the incorrect assumption that items such as “unplanned maintenance” has not been accounted for under Nashua’ projections when in fact those items have been included in the Annual Fee for OM&M Services, RRRM services, and in reserve accounts as set forth in GES Exhibits 4, 5 & 6.

The suggestion that Nashua understated the cost of purchased water and fuel and electricity for the pumping plant is more troubling. In Schedule F-48 to Pennichuck Water Works Annual Report to the Commission for the year ended December 31, 2004, the most recent report available to Nashua at the time its valuation and revenue requirements analysis were performed, there is no entry for purchased water (Account 602) and the cost for fuel or power purchased (Account 623) was \$556,441.00. Nashua was aware that Pennichuck purchased water and therefore budgeted \$100,000.00 for that cost and 550,000.00 for power and fuel. In Schedule F-48 for the Annual Report for the year ended December 31, 2005, which was relied upon by Staff although not available to Nashua or the public at the time of Nashua’s testimony, the cost of purchased water (Line 602) was \$182,125.00, a totally new entry and a 100% increase from 2004. Fuel or power purchased for pumping (Line 623) increased \$413,737.00 from 2004 to a total of \$970,178.00.

1 These costs, which Nashua is criticized for understating were improperly
2 accounted for in the 2004 annual report which was the most recent report
3 available to Nashua and on which it assumed it could rely. Pennichuck, in 2005,
4 changed its accounting, criticized Nashua for understating its costs and then
5 provided only Staff a copy of the new schedule so that Staff could adopt its
6 criticism of Nashua.

7
8 Nashua has always anticipated that adjustments to its revenue requirements
9 analysis would be necessary and these adjustments will be made for its final
10 presentation to the Commission. We note, however, that these adjustments in the
11 overall revenue requirements analysis are minor and will have a limited impact on
12 the savings that will be achieved by ratepayers if Nashua is permitted to acquire
13 the assets of Pennichuck Water Works. They are well within the contingency and
14 reserves established in Nashua's pro forma budget. See GES Exhibits 4,5 and 6.

15
16 **Q. The final reason given by Mr. Naylor for his conclusion that Nashua's**
17 **acquisition was not in the public interest was that he was concerned that**
18 **Nashua's attitude toward Pennichuck Water Work's acquisition of its**
19 **satellite systems would compromise the level of service and capital**
20 **improvements those systems would receive under Nashua's ownership.¹⁸**
21 **Should he be concerned?**

¹⁸ Page 44.

1 A. Absolutely not. Nashua has consistently indicated that it will provide service to
2 the satellite systems at the same core rates as it charges rate-payers of Nashua.¹⁹
3 Nashua's commitment is unequivocal. We are disappointed that Staff does not
4 fully understand or recognize that commitment.

5
6 There is no doubt that Nashua believes that its ratepayers have in the past and
7 continue to subsidize acquisitions by not only by PWW, but also by PEU and
8 PAC, in addition to PWSC's service operations. Nashua cannot, however, turn
9 back time. The satellite systems exist and Nashua stands behind the principle of
10 providing the same level of service at the same rates regardless of location.
11 Nashua does not believe, however, that its ratepayers, because of Pennichuck's
12 corporate structure, should be required to subsidize, **ad infinitum**, Pennichuck's
13 growth regardless of where it occurs. Mr. Naylor fails to recognize this
14 distinction.

15
16 Nashua has made a number of commitments that will benefit the public interest
17 and ensure that the interest of customers located outside of Nashua are protected
18 and treated fairly in all respects which have been ignored by Mr. Naylor. For
19 example, Nashua has committed to operate its water system according to the
20 terms of its Water Ordinance in a manner that treats all customers equally. In
21 addition, to the extent that Nashua serves customers outside of its borders it has
22 agreed and committed to the principle that the terms and conditions of its service,

¹⁹ See e.g. May 22, 2006 Reply Testimony of Mayor Streeter et al, Exhibits 4 & 5; Nashua's March 20, 2006 Response to Staff Data Request 4-33

1 i.e., its Water Ordinance will be continue to subject to the jurisdiction of the
2 Commission under RSA 362:4 and RSA 374. See MBS Exhibit 3.

3
4 Finally, Nashua has committed, as we stated above, to provide service to all
5 satellite customers at core rates, notwithstanding its authority to charge satellite
6 customers higher rates. Nashua fully expects that the Commission, in its
7 discretion, will make these commitments into appropriate binding conditions upon
8 its acquisition of the water system. We note that as recently as December 9, 2005,
9 the Commission stated in Order No. 24,562 that pursuant to RSA 362:4, III-a
10 (a)(1), a municipal corporation providing water service “must provide the same
11 quantity and quality of water or level of water service to customers outside” its
12 borders.

13
14 We are troubled that Mr. Naylor, in light of the many commitments made by
15 Nashua, would express such concerns. He has either misunderstood the level of
16 Nashua’s commitment to the customers of the satellite systems or he has chosen
17 to ignore them because they do not support his conclusion. In either case,
18 however, any concern he has with respect to rates, customer service, maintenance
19 and future capital improvements in the satellite systems is misplaced.

20
21 **Q. In his testimony Mr. Naylor discusses the assertion by Nashua that**
22 **Pennichuck has not been a good steward of the watershed and concludes that**
23 **there is not any “objective evidence” which identifies instances of harm or**

1 **mismanagement by Pennichuck resulting in degradation of water quality or**
2 **increased treatment costs? What is your reaction to this testimony?**

3 A. The Reply Testimony of Katherine Hersh, Brian McCarthy and John Henderson,
4 P.E. and the Reply Testimony of Allan Fuller, PHD is replete with objective
5 evidence of mismanagement of the watershed by Pennichuck, which has resulted
6 in degradation of water quality or increased cost. We hope this testimony will
7 change Mr. Naylor's opinion.

8
9 For example, in the 1998 Draft Watershed Management Plan, prepared by Eileen
10 Pannetier of Comprehensive Environmental, Inc., it was noted that sampling data
11 showed excess levels of phosphorus in most of the ponds. The report continued:
12 "These excess levels were identified considering the detention the chain ponds
13 provide to one another in series. **This is the result of the overwhelming**
14 **detriment of development which has increased nutrient loadings into the**
15 **ponds reducing both their capacity and detention benefit.** Based on the
16 identified phosphorus levels in the ponds, actions need to be taken to reduce the
17 existing loadings into the system and to minimize additional loadings from future
18 development."²⁰

19
20 To deal with the problems she identified Ms. Pannetier recommended that
21 Pennichuck require a 300' setback/buffer from all tributaries to the chain pond
22 system, including the pond systems themselves and work with local planning
23 departments and conservation commissions to incorporate a 300' buffer in local

²⁰ Exhibit 6 to Reply Testimony of Katherine Hersh, et al, page 8-1 (emphasis added).

1 subdivision and planning regulations. Although Pennichuck could have
2 petitioned NHDES to under RSA 485:23, 24 to adopt the setbacks recommended
3 by its consultant, it did not do so and instead publicly opposed the Water Supply
4 District adopted by the Nashua Board of Alderman and more recently opposed
5 House Bill 1289 before the New Hampshire Senate in April, 2006. House Bill
6 1289 would have implemented, on a permanent statutory basis, the 1998 final
7 recommendation for setbacks and buffers of 400' and 200' for the surface waters
8 and tributaries. House Bill 1289 had strong support from NHDES. In his April
9 18, 2006 letter of support, Commissioner Michael Nolan noted that DES
10 considers any development in a water supply watershed to represent a potential
11 threat to the quality of the water supply source and went on to state that DES, the
12 United States Environmental Protection Agency and the Water Supply Profession
13 “do not consider treatment alone to be the preferred approach to insuring safe
14 drinking water. The preferred approach, the so-called multiple-barrier approach,
15 includes source protection as a key component. . . . Source Protection consists of
16 maintaining a water supply/watershed in its natural state.”²¹ By contrast, PWW
17 opposed HB 1289 because of the impact on its ability to develop the rest of its
18 watershed land , calling the legislation “a regulatory taking”.

19
20 **Q. Are there other examples of objective evidence of the harm to the watershed**
21 **caused by Pennichuck?**

22 A. Yes. The final 1998 Watershed Management Plan, prepared by CEI, concluded
23 that “the existing Pennichuck owned land should be conserved to minimize the

²¹ Exhibit 4 to Reply Testimony of Katherine Hersh, et al.

1 impacts of urbanization and to provide adequate buffer to the chain ponds and
2 their tributaries.”²² The Report further stated that a more significant reduction in
3 pollutant loading to the supply pond chain can be achieved “if the amount of
4 conservation land owned by Pennichuck Water Works or others were larger”.²³
5 The plan further noted that the number of regulated drinking water contaminants
6 in the ponds had increased from less than 20 to more than 100 in the 10 years
7 between 1988 and 1998 and concluded that “Raw water, bacteria and nutrients are
8 troublesome and may lead to increased [treatment] cost in the future. Even more
9 critical is the increasing inability to store water in the watershed. Urbanization
10 will continue to reduce the available water supply.”²⁴

11
12 As noted in the Reply Testimony of Katherine Hersh, et al, by 2003 the conditions
13 noted by CEI in the supply pond system had become so bad that Pennichuck
14 undertook a new study to address water quality problems which were adversely
15 impacting their ability to treat and produce high quality potable water. The water
16 quality problems identified by Pennichuck were classic conditions resulting from
17 development of the watershed resulting from development of the watershed and
18 resulted in a significant investment in baffles, weirs and aeration equipment to
19 control the flow of pollutants through the ponds system to minimize their adverse
20 impacts on water quality.

21

²² Exhibit EP-3, Section 6.4, page 6-15

²³ Exhibit EP-3, Section 2.6, pages 2-5

²⁴ Exhibit EP-3, Section 2.6, pages 3-5

1 To illustrate the importance of this issue, as referenced in the Reply Testimony of
2 Katherine Hersh et al., Nashua has prepared two maps showing the land held by
3 the Pennichuck Water Works in 1980 compared to what it holds today. See SMS
4 Exhibit 8. Most troubling is the fact that substantial sales and development of the
5 Pennichuck Corporation's water supply protection land continued to take place
6 even after the Pennichuck officials, including its CEO, had fully reviewed and
7 prepared in the 1998 draft and final Watershed Management Plans. The fact that
8 Pennichuck is apparently unwilling to give up on its real estate development
9 activities even when its own consultants recommend that do so.

10

11 Also included in SMS Exhibit 8 is a map documenting the location of the
12 properties acquired by the City of Nashua for protection of the Pennichuck Brook
13 watershed, also referenced in the May 22, 2006 *Reply Testimony of Katherine*
14 *Hersh et al.* This second map shows Nashua commitment to protect the
15 Pennichuck Brook water supply through land conservation and has even
16 purchased Pennichuck lands in order to protect the watershed from development.

17

18 **Q. What concerns do you have for the future of the watershed?**

19 A. As noted in the *Reply Testimony of Katherine Hersh, et al.*, because of the increase
20 in development in the watershed there has been an increase in storm water flows
21 and intensity and a reduction in the amount rainfall that is recharged to the ground
22 water. The increase in storm water flows has lead to greater deposition of silts
23 and contaminants in the chain pond system which has decreased its storage

1 capacity and contamination simulation capacity. The reduction in the amount of
2 rainfall that is recharged to the ground water has reduced the yield capacity of the
3 chain pond system. A loss of capacity or safe yield is potentially more
4 problematic than the deterioration in raw water quality.

5
6 Ultimately, water can be treated at additional cost to address deteriorating raw
7 water quality. On the other hand, a loss of capacity or safe yield due development
8 may be impossible to reverse. We worry that Pennichuck's stated goal to develop
9 the remaining 500 acres in the watershed held by Southwood Corporation may be
10 the straw that breaks the camel's back.