

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 04-048

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

Reply Testimony

Of

Nashua Mayor Bernard Streeter
Board of Aldermen President David Rootovich
Alderman Brian McCarthy

May 22, 2006

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

City Of Nashua: Petition For Valuation Pursuant To RSA 38:9

Docket No. DW04-048

**REPLY TESTIMONY OF NASHUA MAYOR BERNARD STREETER,
BOARD OF ALDERMEN PRESIDENT DAVID ROOTOVICH
AND ALDERMAN BRIAN McCARTHY**

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

2 A. Bernard Streeter. I serve as Mayor for the City of Nashua. As Mayor I am
3 responsible for the operation and administration of the City of Nashua, New
4 Hampshire.

5 A. David Rootovich. I serve as President of Nashua's Board of Aldermen, Nashua's
6 elected legislative body responsible to establish laws and policy for the City of
7 Nashua.

8 A. Brian S. McCarthy. I serve as a member of Nashua's Board of Aldermen, as well
9 as the Pennichuck Water Works Special Water Committee and other committees
10 of the Board Aldermen that have played a significant role in matters related to this
11 proceeding. I also serve as a delegate for the City of Nashua to the Merrimack
12 Valley Regional Water District.

13

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

15 A. Since Nashua's vote to acquire the assets of Pennichuck Corporation on January
16 14, 2003, Pennichuck Corporation has waged an unprecedented battle of
17 misinformation related to all aspects of the City's efforts to establish a

1 municipally owned water system, culminating in Pennichuck's January 12 and
2 February 27, 2006 testimonies. We would like to take this opportunity to set the
3 record straight and correct the errors and misconceptions that Pennichuck has
4 created concerning Nashua's proposal.

5

6 **Q. How does Nashua's testimony today respond to that of Staff's April 13, 2006**
7 **testimony?**

8 A. We understand that, under the procedural schedule, Nashua's reply testimony to
9 respond to Staff's April 13, 2006 testimony is not due until July 20, 2006.
10 However, we believe that Staff's testimony unfairly criticized Nashua's petition
11 by adopting many of the Pennichuck's arguments without conducting or
12 presenting its own, independent analysis. We further believe that Staff
13 fundamentally misunderstood Nashua's proposal and either ignored or failed to
14 consider the benefits that the establishment of a municipally owned system would
15 bring to the public interest as well as key commitments Nashua made in order to
16 alleviate impacts to the public interest.

17

18 As a result, in addition to responding and correcting the errors, misconceptions
19 put forth by Pennichuck Water Works, Inc., Nashua's testimony today responds in
20 part to Staff's April 13, 2006 testimony. It is our hope that Nashua's testimony
21 today will provide Staff with a basis for further discussions and to re-evaluate its
22 initial opposition to Nashua's petition to establish its own, locally controlled and

1 municipal water utility consistent with the public interest principles set forth in
2 RSA 38.

3

4 **Q. Why have you submitted your testimony today as a panel?**

5 A. The administrative and policy roles played by Nashua’s Mayor and the Board of
6 Aldermen are important to this proceeding. We have prepared this testimony as a
7 panel in order to present a complete picture of how these two roles will be
8 integrated under Nashua’s ownership. Our testimony as a panel will provide the
9 Commission the opportunity to evaluate how Nashua will make and implement
10 policy decisions as a municipal owner of its water system that serves both
11 customers within the City of Nashua and beyond its borders.

12

13 **Q. What exactly are those roles?**

14 A. The Board of Aldermen, as the body responsible for legislative policy expects to
15 play a significant role in cooperation with its oversight and operations contractors
16 with respect to policy matters such as rate design, capital and operating budgets
17 and other matters. These are not, however, arbitrary policy decisions. Nashua
18 proposed and provided a Draft Water Ordinance at the outset of this proceeding
19 that is intended to serve as a starting point to illustrate the context in which those
20 policy decisions will be made.¹ As a legislatively enacted legal document,
21 Nashua’s Water Ordinance will control the terms under which service is offered
22 to all customers on a non-discriminatory basis consistent with the law, including,
23 but not limited to, all State and Federal laws related to water quality and the

¹ MBS Exhibit 1, Draft Nashua Water Ordinance.

1 operation of public water systems as well as conditions imposed by the
2 Commission in this proceeding. The Nashua Board of Aldermen expects to
3 continuously improve the way service provided to all customers under its Water
4 Ordinance following acquisition of the system, working closely with its oversight
5 and operations contractors, as new opportunities arise to improve or expand upon
6 service, encourage conservation and watershed protection and in many other
7 areas.

8
9 The Mayor, as the chief executive officer for the City of Nashua, will be primarily
10 responsible for implementation and administration of the policies established by
11 the Board of Alderman, and, equally importantly to ensure that decisions are
12 made in a timely and appropriate manner. Nashua's oversight contractor, R.W.
13 Beck shall provide independent oversight and monitoring of the day to day
14 operation and management of the water system under the Professional Services
15 Agreement provided in Nashua's January 12, 2006 testimony of R.W. Beck. In
16 addition, R.W. Beck and appropriate Nashua officials will report directly to the
17 Mayor or the Mayor's designee to ensure that timely and appropriate decisions are
18 made with the involvement of key staff and/or technical personnel.

19

20 **Q. What testimony is Nashua submitting today in support of its petition?**

21 A. Nashua's reply testimony being filed today addresses the following:

22 **1. First**, our testimony is intended to reaffirm Nashua's commitment to acquire and
23 operate its water system consistent with the public interest principles set forth in

1 RSA 38. In particular, this testimony in our capacity as Mayor of the City of
2 Nashua and President of the Board of Aldermen responds to statements in Mr.
3 Donald Correll's January 12, 2006 testimony that both implied and expressed
4 outright the view that municipalities serve only their own self-interest, and not the
5 greater public interest. Mr. Correll's view is a cynical one that may reflect his
6 unique position as CEO of a regulated monopoly that answers primarily to its
7 shareholders. Our testimony today, however, explains why the interests of
8 Nashua, as a municipal owner, will be more closely aligned with: (a) the long
9 term best interests of protecting the water system and surrounding communities;
10 (b) the development of an efficient regional water system focused on the needs of
11 the lower Merrimack River watershed and surrounding communities, as opposed
12 to a scattered unconnected network of systems that operates less and less
13 efficiently as it expands to locations farther away from its core assets; and (c) the
14 public interest.

15

16 **2. Second**, Nashua is providing the reply testimony of Nashua Alderman Brian
17 McCarthy, Nashua Planning and Development Director Katherine Hersh, and
18 Jack Henderson, P.E. to respond to the testimony related to Pennichuck's failure
19 to protect the Pennichuck Brook watershed. This testimony sets forth Nashua's
20 position that:

21 (a) Pennichuck's sale of land formerly held to protect the watershed in order to
22 improve shareholder bottom line has jeopardized its future supply and contributed
23 to the deterioration of water quality;

- 1 (b) That Nashua has, of its own accord, taken significant steps to protect the
2 Pennichuck Brook watershed, including the enactment of stringent storm water
3 management ordinances and wetlands setbacks, the acquisition of key land
4 parcels in order to maintain buffers around the water supply (often as a result of
5 Pennichuck’s proposals to develop land); and
- 6 (c) That Pennichuck has opposed and continues to oppose watershed protection
7 measures whenever it would impact its ability to maximize development of
8 property held by its real estate development affiliate, the Southwood Corporation.
9 This testimony will demonstrate that Nashua, as a municipal owner of the system
10 would act in the best interest of long-term protection of the region’s water supply.

11

12 **3. Third**, George E. Sansoucy, P.E. and Glenn Walker respond to the testimony of
13 the Pennichuck witnesses related to valuation and rates. Mr. Sansoucy and
14 Walker will explain that:

15 (a) The valuation theories espoused by Pennichuck’s appraiser, Mr. Reilly, depart
16 wildly from sound economic and appraisal in order to arrive at a value of \$248
17 million as of December 31, 2004; and

18 (b) Pennichuck’s rate comparison analysis contains significant errors that, when
19 corrected, demonstrate that significant customer savings will be realized as a
20 result of Nashua’s acquisition of the assets of Pennichuck Water Works, Inc.

21

22 **4. Fourth**, Nashua submits the testimony of Veolia Water North America –
23 Northeast LLC (Veolia Water) to respond to Pennichuck’s unfounded criticisms

1 of Veolia’s technical and managerial qualifications and operations of other water
2 systems. Mr. Philip Ashcroft, President of Veolia Water, David Ford, P.E.,
3 Veolia Water’s Project Manager for the Nashua project and Paul Noran, P.E.,
4 manager of field services have prepared testimony responding to the January 12,
5 2006 and February 27, 2006 testimony submitted by Pennichuck Water Works,
6 Inc., concerning its operations under the Operations, Maintenance and
7 Management Agreement (OM&M) with the City of Nashua. Mr. Paul Noran,
8 P.E., will further respond to issues related to how the company will provide
9 superior service in the areas including: customer service; operations and
10 maintenance; asset management; environmental compliance; fuel and energy
11 efficiency; capital program management; and the performance of satellite
12 systems.

13
14 **5.** **Fifth**, Nashua submits the testimony of Nashua’s Chief Financial Officer Carol
15 Anderson and Deputy Treasurer and Tax Collector Ruth Raswyck concerning
16 customer service and billing and collection services to be performed by the City
17 of Nashua. Ms. Anderson and Raswyck will respond to significant errors in the
18 analysis presented in Pennichuck’s January 12, 2006 testimony and that that were
19 adopted by staff in its April 13, 2006 testimony.

20
21 **6.** **Sixth**, Nashua submits the testimony of Steven Paul, Esq. from the firm of Palmer
22 & Dodge, LLP related to tax implications raised in Pennichuck’s January 12,
23 2006 testimony of Donald Correll. Mr. Paul explains that a number of investment

1 options will be available to Pennichuck that will allow the company to avoid
2 capital gains taxation following Nashua's acquisition of the assets of Pennichuck
3 Water Works.

4

5 **7.** **Seventh**, Nashua submits the testimony Brendan Cooney to respond to
6 Pennichuck's testimony of January 12, 2006 that the citizens of Nashua no longer
7 support Nashua's petition. Mr. Cooney will explain that the purportedly
8 independent survey studies referenced by Pennichuck were intended to develop
9 ways for Pennichuck's media strategists and political consultants to influence
10 public opinion, rather than to independently measure public opinion in an
11 objective manner.

12

13 **8.** **Eighth**, Nashua submits the testimony of Dr. Allan Fuller to respond to the
14 assertion of Eileen Pannetier in her January 12, 2006 testimony and Mark Naylor
15 in his April 13, 2006 testimony that Pennichuck has been a good steward of the
16 watershed. Dr. Fuller points in detail the many ways Pennichuck's actions have
17 harmed the watershed and how it has allowed profits from its real estate operations
18 to stand in the way of real protection of the watershed.

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**I. MUNICIPAL OWNERSHIP OF THE PENNICHUCK WATER SYSTEM
WILL PROMOTE THE PUBLIC INTEREST**

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Q. Before responding to specific issues raised in Pennichuck’s testimony, how would you compare the role of a municipal owner of a public water system relative to that of an investor owned utility?

A. Both a municipal and an investor-owned utility are subject to the same sets of water quality laws and regulations. The primary differences between a local, municipally-owned water utility and an investor owned water utility reside motives and accountability:

Conflicts Between the Investor Owned Utility and the Public Interest

An investor owned utility is a regulatory monopoly that answers primarily to the shareholder. In the absence of any direct accountability to its customers, an investor owned utility will position itself to the benefit its investors within the limits of allowed by regulatory authorities. While we do not dispute that Pennichuck has operated the system largely in compliance with applicable water quality standards and regulatory limits, the short-comings of the investor-owned model become apparent when the interests of shareholder investors conflict with the long-term best interest of the public and/or customers of the water utility.

Examples where Pennichuck, as an investor owned utility has placed the interests of the shareholder above the long-term best interest of the public and customers are set forth in Nashua’s testimony today. Nashua Community Development Director Katherine Hersh, Alderman McCarthy and Jack Henderson, P.E. explain in their testimony today that Pennichuck has sold land needed today for the protection and recharge of its water supply at enormous profit in order to

1 maximize shareholder return on investment. The Company has further failed to
2 acquire additional land for protection when the opportunity has arisen, and that
3 even today, the Company continues to oppose efforts to protect its water supply
4 when those protections may conflicted with the Company's potential to further its
5 real estate development operations.

6
7 The problems with Pennichuck's role as an investor owned utility are not limited
8 to the company's sale of the watershed for real estate development, however. The
9 bottom line culture in an investor owned model also has a profound influence on
10 policy and economic decisions in ways that conflict with the long-term best
11 interest of public. Despite numerous studies by the Commission and the
12 Department of Environmental Services,² and even the water industry itself on the
13 need for water conservation, investor owned utilities such as Pennichuck have
14 failed to implement measures such as conservation rates which provide a financial
15 incentive to conserve water for the simple reason that, once a regulated rate is
16 approved by the Commission, the shareholder earnings increase for every gallon
17 of water that is sold.

18
19 In economic terms, an investor-owned utility has every incentive to increase its
20 rate base by adding small, troubled systems to increase its investment in utility
21 plant (rate base) even though other more efficient alternatives may be available.

22 A perfect example of this is illustrated in Pennichuck's acquisition of small,

² See "Investigation into Water Conservation", prepared by the NHPUC Staff in Docket 01-253, dated March 31, 2003 and the August 14, 2001 Report of the NHPUC and NHDES entitled "Regulatory Barriers to Water Supply Cooperation and Conservation in New Hampshire".

1 scattered, unrelated systems with a high cost of service throughout the State that
2 have no bearing on its core operations in Nashua in the Merrimack Valley region.
3 Rather than development into an efficient, centrally located regional water
4 authority, the Pennichuck Corporation has used the Pennichuck Water Works
5 assets to operate small, disconnected, high cost of service systems in unrelated
6 watersheds such as Newmarket, Epping and Gilford in the case of Pennichuck
7 Water Works, Barnstead and Pittsfield in the case of Pittsfield Aqueduct
8 Company, and areas of Lee, Atkinson and Exeter, New Hampshire that have little
9 geographic connection to the Merrimack Valley watershed.

10

11 As a holding company of regulated monopolies, Pennichuck Corporation has the
12 ability to pass through to its customers the increased cost of operating scattered
13 systems directly to customers. In fact, because it earns a return on its investment
14 in these systems, it has every incentive to continue to expand in a scattered,
15 piecemeal manner even though smaller systems in other watersheds such
16 Newmarket, Lee or Exeter could more efficiently be served from a core system
17 within their own watersheds or region and more directly focused on the needs of
18 that region.

19

20 Both Pennichuck and Staff have praised the benefits of the scattered system or
21 investment approach because it provides a mechanism to absorb inefficient,
22 poorly operated systems into a larger utility that can effectively sweep the higher
23 cost of service under the carpet. Unfortunately, there is an economic limit to the

1 amount of dirt that can be swept under the carpet before the costs to operate
2 hundreds of disconnected systems creates such an inefficient system that core rate
3 payers can no longer afford acquire additional systems. In order to continue its
4 growth through acquisitions, the company will have to defer its pipe replacements
5 or other capital improvements, raise rates. The end result is a system that costs
6 more to operate and establishes roadblocks to regional integration.

7
8 As set forth in the testimony of George E. Sansoucy, P.E. and Glenn C. Walker,
9 the impacts of Pennichuck's investor based approach and lack of a regional focus
10 are indeed already reflected in the rates paid by customers of its system. The
11 Pennichuck Companies have relatively high rates when compared to comparably
12 sized water system, and especially compared to a municipally owned and
13 regionally focused system such as the water utilities owned and operated by the
14 Manchester Water Works, the City of Portsmouth and similar systems. By
15 putting together small pieces of several disconnected water supply regions,
16 Pennichuck ultimately leaves the State of New Hampshire without the ability to
17 integrate and develop a truly regional water supply solution to its needs.

18
19 In presenting our case to the Commission, we do not imply or intend to disregard
20 the needs of any existing customer or system. The customers of Newmarket, Lee
21 and Exeter have just as much of a right to high quality, reasonably priced water
22 service as do the customers in Nashua, Merrimack, Milford, Amherst and every
23 other citizen in this State. We simply bring to the Commission's attention that the

1 model espoused by Pennichuck of a single regulated monopoly that acquires
2 disconnected, small or troubled systems using throughout the State of New
3 Hampshire without a regional focus and using only Nashua’s core system to
4 provide economies of scale is one that is doomed to fail.

5

6 **The Municipally or Regionally Owned Water Utility**

7 A municipal utility, by contrast, is first accountable by virtue of the fact that its
8 officials are elected by the public. Political accountability has a profound impact
9 on the operation of any government enterprise. It is, first and foremost, the
10 foundation of our democratic form of government. The culture of serving the
11 public arises out of a desire to provide service to the public.

12

13 The fact that the interest of different municipalities may at times conflict because
14 each municipality is accountable to its own constituents is not necessarily a bad
15 thing. In contrast to a regulated monopoly, the net result of several communities
16 each striving to benefit its respective citizens, is invariably a larger community
17 that strives to provide a greater public good.

18

19 Pennichuck has criticized this feature of a municipal water system in order to
20 imply that a municipally-owned water utility would be subject to “the usual inter-
21 municipal jealousies”. Pennichuck asks this Commission to believe, or to at least
22 speculate, that municipalities would balkanize New Hampshire’s limited water

1 resources into communities that have an abundance of water and those that have
2 none.

3
4 We do not agree that one should draw a negative inference from the fact that a
5 municipal water utility is politically accountable to the customers that it serves.
6 The citizens of Nashua are not automatons that consider only their own-self
7 interest. Indeed, the very basis for Nashua's referendum to pursue the
8 establishment of its own water utility which led to this proceeding was a desire of
9 the citizens of Nashua to ensure that the entire Pennichuck Corporation's water
10 system assets could be transferred to the Merrimack Valley Regional Water
11 District. If Nashua's electorate were motivated only by its own self-interest to the
12 detriment of the public interest, it would make absolutely no sense to pursue this
13 proceeding as it has.

14
15 In fact, experience shows that municipal enterprises that provide a greater benefit
16 to the public at large, including citizens located outside of their political borders,
17 are everywhere. In the area of municipal water utilities, the Manchester Water
18 Works is an example of a municipally owned water utility that successfully serves
19 some 167,000 customers in Auburn, Bedford, Derry, Goffstown, Hooksett, and
20 Londonderry as well as in Manchester itself using 486 miles of water mains, owns
21 and controls more than 8,000 acres for water supply protection and according to

1 reports attached hereto, has done so through without rate increases (12 years
2 according to a 2002 report), disruptions in service or water quality violations.³

3
4 Similarly, the City of Portsmouth's water utility provides water service from the
5 Bellamy Reservoir and well system and treatment facility located in Madbury and
6 Dover to consumers in Madbury, Dover, Durham, Newington, Portsmouth,
7 Greenland, Rye, New Castle. Portsmouth further provides water from additional
8 groundwater sources in Portsmouth and the Greenland, and also serves the Pease
9 International Tradeport.

10
11 Manchester and Portsmouth's water utilities are just two or many examples of
12 municipal enterprises that successfully provide service outside of the political
13 borders. Other examples of inter-municipal cooperation resulting in greater
14 service to the public can be found in areas such as inter-municipal school districts,
15 police and fire protection and other areas are too numerous to list here.

16

17 **Nashua's Commitment to Protect Customers Outside its Borders**

18 We also would like to highlight that Nashua has made significant commitments
19 that will benefit the public interest and ensure that the interests of customer
20 located outside the City of Nashua are protected and treated fairly in all respects.
21 Nashua fully expects that the Public Utilities Commission, in its discretion, will
22 make these commitments into appropriate binding conditions on its acquisition of
23 its water system. The following are examples of Nashua commitment to treat

³ See MBS Exhibit 2.

1 customers outside the City fairly. This list of commitments is by no means
2 exhaustive. Nashua remains open to proposals that will further its goal of
3 establishing its own water utility to benefit the public interest:

- 4 1. First, Nashua has committed to operate its water system according to the terms of
5 its Water Ordinance in a manner that treats all customers equally.⁴
- 6 2. Second, to the extent that Nashua serves customers outside of its borders, Nashua
7 has agreed and committed to the principle that the terms and conditions of its
8 service, i.e. its Water Ordinance, will continue to be subject to the jurisdiction of
9 the Public Utilities Commission under RSA 362:4 and RSA 374.⁵
- 10 3. Third, Nashua has committed to provide service to all satellite customers at core
11 rates, notwithstanding its authority to charge satellite customers higher rates.⁶

12
13 Pennichuck’s January 12, 2006 testimony asks this Commission to make a choice.
14 Pennichuck and Mr. Correll assert that a municipally-owned water utility would
15 consider only its own self interest and the “usual inter-municipal jealousies”. Our
16 testimony today presents an alternative based not on fear and speculation, but
17 rather Nashua’s commitment to establish a municipally owned and locally
18 controlled in order to protect that system for the benefit of the public, the future of
19 the region’s water supply and the greater public good.

20 **II. RESPONSE TO JANUARY 12, 2006 TESTIMONY**

21 **Q. Pennichuck severely criticized the goals of a municipal owner of a public**
22 **water system, and in particular, Pennichuck alleged that a municipal owner**

⁴ See MBS Exhibit 3.

⁵ See MBS Exhibits 3 & 4.

⁶ See MBS Exhibit 5.

1 **of Pennichuck Water Works would not have any desire to acquire troubled**
2 **water systems. For example, Donald Correll compared the incentives a**
3 **private investor-owned utility has acquire troubled water systems relative to**
4 **a municipally-owned water utility which, according to Mr. Correll, does not**
5 **have similar incentives. For example, Mr. Correll states on Page 12 of his**
6 **January 12, 2006 testimony that:**

7 **It is hard to imagine a municipal utility regularly taking on the challenge of**
8 **troubled water systems outside of its municipal boundaries (whether that be**
9 **a single city or a group of municipalities operating in the form of a district)**
10 **if that expansion required a commitment of additional capital. Obviously, a**
11 **governmentally owned utility has no profit motive to pursue such an**
12 **expansion, and it is inconceivable that a political body would take on such a**
13 **burden and the associated risks in order to help people outside of their**
14 **political boundaries.**

15 **What is your reaction to Mr. Correll's testimony?**

16 A. Mr. Correll's asks the Commission to believe that New Hampshire municipalities,
17 and in particular Nashua, would approach the operation of water systems purely
18 in terms of their own bottom line and self-interest.

19
20 The view of municipal government acting in its own bureaucratic self interest has
21 some initial appeal. Indeed it is simply a variant on the themes echoed in the
22 highly expensive marketing research purchased by Pennichuck to evaluate ways
23 to undermine public support for Nashua's efforts to acquire Pennichuck's assets
24 by portraying municipal operations as expensive and fraught with legal
25 uncertainty. However, the facts do not do not support the myth.

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- Many municipal water systems provide water to surrounding communities “in order to help people outside of their political boundaries.” For example, as discussed above, the Manchester Water Works provides retail water service to the Towns of Bedford, Londonderry, Hooksett, Bedford, Goffstown and Auburn, as well as wholesale service to both municipally and investor owned water systems, including Pennichuck Water Works and Pennichuck East Utilities.⁷ The City of Portsmouth also provides service in a number of different municipalities including Madbury, Dover, Durham, Newington, Greenland, Newcastle and Rye.⁸ These are examples of municipally owned water systems serving the public interest outside their own boundaries.
- The City of Nashua’s petition in this proceeding is itself an excellent example of a municipality looking beyond its own self interest in order to provide a greater service to the public interest.
- Municipalities frequently collaborate in other areas such as education, sewer services, solid waste management and fire and police protection, to name a few.
- Municipalities can provide service at lower cost than investor owned utilities. For example, an April 2006 study by Weston & Sampson Engineers, Inc., for the City of Portsmouth examined water rates for 15 New Hampshire municipalities and *found that Nashua’s rates were the highest of those considered.* A similar study completed by the New Hampshire Department of Environmental Services dated 2005, shows that Pennichuck’s rates are the highest of any system serving more

⁷ See August 14, 2001 report of the NHPUC and NHDES entitled “Regulatory Barriers to Water Supply Regional Cooperation and Conservation in New Hampshire”, Page 7, Figure 4.

⁸ Regulatory Barriers Study, Figure 6.

1 than 25,000 people and increased in the period from 2002 to 2005 by 53.8 %.

2 According to the survey, Manchester's rates were 40 % lower and Concord's 22%
3 lower and had increased by only 28.7 % and 7.6 % respectively over the same
4 period.

5 • The overwhelming majority of customers are served by municipally owned water
6 systems. According to an August 14, 2001 by the New Hampshire Department of
7 Environmental Services and the Public Utilities Commission, only 109 of 684
8 (16%) public water systems in the State of New Hampshire are owned by
9 investors. The remaining 84% are owned by municipalities, village districts or
10 other local government agencies.

11

12 We certainly understand that under the existing regulatory structure Pennichuck
13 Water Works, Inc., has an incentive to expand its franchise outside of Nashua by
14 acquiring inefficient, troubled water systems, regardless of their location and
15 whether they contribute disproportionately to the overall cost of service. The
16 reason for this is simple: the investor owned regulated utility has an automatic
17 right to recover its operating costs based on the system it owns. If that water
18 system is a hodge-podge of disconnected systems scattered throughout the state,
19 Pennichuck Water Works is still allowed to pass through its costs to operate the
20 system even though the economic model is inefficient. Moreover, without
21 growth, a regulated utility can not increase its revenues and growth for the sake of
22 growth becomes its goal, regardless of the quality or cost of that growth.

23

1 A municipal system, by contrast, must take into account principles of fairness and
2 political accountability.

3 **Q. Mr. Correll makes some fairly aggressive statements concerning Nashua’s**
4 **willingness to continue to honor Pennichuck’s existing water supply**
5 **agreements. For example, on Page 14, Lines 1 to 10, he states that:**

6 renewal of [existing] wholesale supply relationships (and the terms on
7 which such relationships would exist) would be more at risk if Hudson,
8 Milford and Merrimack were reliant on the City of Nashua for such
9 arrangements. In that case, the usual inter-municipal jealousies would
10 likely interfere with the relationship. Moreover, the communities to which
11 PWW sells water would also lose the protection of PUC oversight of those
12 relationships. There have been many cases in New Hampshire, as well as
13 elsewhere in the region and throughout the country, where municipalities
14 with available water resources have been unwilling to share those resources
15 with other communities because of concerns about supporting development
16 in those other towns and other competitive reasons.

17 **What is your reaction to Mr. Correll’s statement?**

18 A. This is yet another example of Pennichuck trying to use fear and uncertainty
19 about the future in order to scare the public and this Commission as a regulatory
20 body into denying Nashua’s petition. There are several problems with Mr.
21 Correll’s statement. In particular, we note that:

- 22 • Nashua has committed to honoring the terms of the existing supply arrangements.
- 23 • Mr. Correll’s reference to the “usual inter-municipal jealousies” is nothing but a
24 naked and unsupported allegation. Successful municipal collaborations far
25 outnumber those few instances that have failed. New Hampshire’s many inter-

1 municipal school districts, water and sewer districts, and other enterprises are a
2 case in point.

3 • Nashua has in fact done more to protect those supply arrangements than
4 Pennichuck has. As set forth in Nashua’s testimony filed today, Pennichuck has
5 in fact shown its willingness to jeopardize the entire water supply by developing
6 the watershed land and failing to acquire buffers or land necessary to protect its
7 supply from stormwater and non-point pollution sources. While Pennichuck’s
8 profit-driven selling off of watershed land for development has continued, Nashua
9 has acquired land necessary to protect the water quality and supply (even as
10 Pennichuck proposed to develop it), enacted stringent stormwater management
11 regulations, wetlands setbacks and other measures to protect the watershed (which
12 Pennichuck opposed). Pennichuck’s recent development of “raingardens” to
13 manage stormwater runoff is little more than a proverbial drop in the bucket. It
14 would have been far more effective and economical in the long-term to have
15 protected the watershed in the first instance.

16 • Pennichuck has jeopardized the future of its ability to supply water to surrounding
17 communities by failing to enact measures such as water conservation rates.

18 • Pennichuck’s statement that the supply relationships would not be subject to the
19 Commission’s jurisdiction is misleading. I understand that as recently as
20 December 9, 2005, the Commission stated in Order No. 24,562 that pursuant to
21 RSA 362:4, III-a (a)(1), a municipal corporation providing water service “must
22 provide the same quantity and quality of water or level of water service to
23 customers outside” its borders. Nashua has clearly stated throughout this

1 proceeding it will stand by the terms of the existing supply agreements and
2 continue those relationships into the future.

3 • Nashua stands behind its commitment to service both wholesale and retail
4 customers outside the City on an equal basis and is fully willing to accept
5 appropriate conditions to that effect as a condition on the Commission’s approval
6 in this proceeding. Even without such a condition, however, Nashua would be
7 subject to the Commission’s franchise authority. While wholesale agreements
8 outside Nashua’s franchise might not technically fall within the Commission’s
9 authority under the statutory analysis in Order No. 24,562, Nashua’s commitment
10 to operate its system consistent with the public interest is based on its
11 commitment to serve all customers equally under the same uniform policies.

12 **Q. What about the comment during the Mayor Streeter’s deposition cited by**
13 **Pennichuck⁹ that you were “not concerned about Epping or Newmarket”**
14 **and Pennichuck’s statement that Nashua would not be interested in**
15 **“potential water system acquisitions in communities like Gilford or Tilton”?**

16 A. Those comments certainly make attractive sound-bites. However, what
17 Pennichuck simply ignores is the logic that a regional water system should be
18 focused on a particular region. While Pennichuck’s focus is on profit from any
19 region (and even at the expense of the region it serves as documented in Nashua’s
20 testimony submitted today), Nashua’s focus is its desire to protect and serve the
21 needs of the lower Merrimack river watershed.

22

⁹ January 12, 2006 Public Interest Testimony of Donald Correll, Page 13, Lines 1 to 6.

1 However, as Nashua indicated clearly and unequivocally in its responses to staff
2 data requests, Nashua will provide the same level of service at the same rates to
3 all customers, both within and outside the City of Nashua, and to consider all
4 requests for service, main extensions, capital improvements and other issues
5 without regard to location. Nashua's contracts for operation and oversight make
6 absolutely no distinction between customers in the City of Nashua and those
7 located in other municipalities.

8
9 As Mayor of Nashua, I regret that my comment concerning Newmarket has been
10 used as it has by Pennichuck and I want all Pennichuck's customers to know that
11 Nashua, its contract operator, and those of us who have worked diligently against
12 enormous opposition to establish the Merrimack Valley Regional Water District,
13 stand behind the principle of providing the same level of service at the same rates
14 regardless of location. Indeed, I am particular grateful to the citizen of
15 Newmarket because, despite Pennichuck's efforts to lobby the Town Council to
16 oppose Nashua's petition, the Town Council refused to do so.

17 **Q. What about Mr. Correll's comment concerning Gilford and Tilton?**

18 A. Mr. Correll's reference to Tilton is particularly ironic. As I understand matters,
19 on December 9, 2005, the Public Utilities Commission issued Order No. 24,562
20 approving the sale of the Tilton-Northfield Aqueduct Company, Inc., to the Tilton
21 Northfield Water District, *a municipal corporation incorporated as a village*
22 *district under RSA 52.*

1 If any conclusions can be drawn from the Commission’s Order in the Tilton case,
2 it is that municipalities can and in fact do cooperate to provide the public services
3 that, according to Mr. Correll would not occur because of “the usual inter-
4 municipal jealousies.” In fact, when given the opportunity to do so, municipal
5 governments provide an effective basis for the operation and management of
6 public water systems.

7 **III. PENNICHUCK’S MEDIA CAMPAIGN**

8 **Q. Why is Pennichuck’s media campaign relevant to this proceeding?**

9 A. Pennichuck’s media campaign is relevant to this case for several reasons:

10 First, it is relevant in terms of credibility. Pennichuck has gone to extreme
11 lengths, based on recommendations of its “independent” marketing research firm,
12 to portray the City’s case as expensive and uncertain. It has claimed that the City
13 has spent millions of dollars pursuing eminent domain while ignoring the fact that
14 it had vastly outspent the City.

15
16 Second, Pennichuck’s media efforts highlight a fundamental difference in the
17 management of a municipally owned utility and that of an investor owned utility.
18 Unlike a municipal governing body that is accountable to the public through the
19 electoral process, Pennichuck has used its media, political and legal consultants to
20 manipulate government to serve its interest. Nashua has learned through
21 discovery and other information that Pennichuck and its legal counsel met early in
22 this proceeding to consider a number of strategic options to defeat Nashua’s
23 efforts to establish a locally owned and controlled water utility. According to

1 Pennichuck’s own consultant, Jack Heath, one of the first items discussed was
2 how to use the media coverage in order to influence members of the Public Utility
3 Commission and its staff. In the words of Mr. Heath discussing Pennichuck’s
4 media strategy:

5 I’ve been at meetings where we calibrate, we take into account
6 with the attorneys how will this ... if we do this news release, if we
7 do this advertorial in the paper on our message ... *what will the*
8 *impact be on the PUC? Are they insulated enough as regulators to*
9 *not watch public opinion?*

10 (emphasis added). Pennichuck has further hired lobbyists and other consultants to
11 attempt to remove elected officials from office, disrupt local politics and replace
12 members of the Board of Aldermen. These actions show dramatically the
13 differences between a municipally owned utility that would serve the public, and
14 an investor owned utility that manipulate the public to its advantage.

15 **Q. Pennichuck has accused the City of spending millions of dollars on this**
16 **proceeding. Is that a fair statement?**

17 A. No. Pennichuck and “Smartwater” its front-organization have spent sums vastly
18 exceeding the City. According to Pennichuck’s own financial statements, the
19 Company spent \$235,000 on defending on legal and consultant fees on its efforts
20 to defeat Nashua’s efforts to establish a regional water district. This does not
21 include an additional \$650,000 responding to Federal and State securities
22 investigations and \$230,000 in costs associated with the termination of the
23 Philadelphia Suburban Transaction.

1 **\$ 235,000** 2003 Eminent domain related legal and consultant fees.
2 **\$1,200,000** 2004 Eminent domain related legal and consultant fees.
3 **\$2,332,000** 2005 Eminent domain related legal and consultant fees.
4 **\$2,000,000** 2006 Estimated eminent domain related legal and consultant fees.
5 **\$5,767,000** TOTAL Pennichuck eminent domain related legal and consultant
6 fees.

7
8 Recently, we learned from reviewing Pennichuck’s financial statements that the
9 Company spent \$1 million in consultant and legal fees opposing Nashua’s petition
10 in this proceeding during the first quarter of 2006. This represents spending at a
11 rate of over \$11,000 per day (including weekends) during the first quarter alone.
12 If Pennichuck continues to spend at its current rate, it will spend \$4 million in
13 legal and consultant costs in this year alone. The company’s projection that it will
14 have spent over \$5.7 million in legal and consultant fees related to this proceeding
15 seems conservative.

16 **Q. What conclusions can you draw from the amounts Pennichuck has spent on**
17 **legal and consultant fees and costs related to this proceeding?**

18 A. Pennichuck conducted a well rehearsed public and media relations campaign
19 calculated into fooling the public that the City of Nashua’s spending on its efforts
20 to acquire Pennichuck’s assets to establish its own water system was out of
21 control. In fact, at the end of calendar year 2005, when the City had spent
22 approximately \$1.2 million, Pennichuck had already spent \$3.77 million. In
23 other words, while organizing a media campaign to convince the public that the

1 City's spending was out of control, Pennichuck was outspending the City by a
2 margin of over 3 to 1!

3
4 The reasons for Pennichuck making such outrageous statements concerning
5 Nashua's spending, while in fact outspending the City *conservatively* by a 3 to 1
6 margin should be apparent upon reviewing the testimony of Brendan Cooney,
7 filed today. As Mr. Cooney has discovered, Pennichuck learned through its
8 media research that the more it could focus its message on Nashua's spending, the
9 better its chances of swaying public opinion in its favor. The problem with this
10 approach, is that it is based on a false premise: that Nashua is spending
11 outrageously when in fact it is Pennichuck that is outspending the City 3 to 1.

12
13 We recognize that the New Hampshire Public Utilities Commission is not the
14 court of public opinion, nor should it become entangled in political or social
15 questions that are unrelated to the valuation and public interest issues to be
16 decided in this proceeding. However, at some point Pennichuck's aggressive
17 spending must be taken into account when evaluating the case it has presented to
18 the Commission.

19 **Q. Does this conclude your rebuttal testimony.**

20 A. Yes.

