

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

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

**Docket No. DW 04-048**

**REPLY TESTIMONY OF DONALD L. WARE**

**May 22, 2006**

1 **Q. Mr. Ware, have you previously provided testimony in this proceeding?**

2 A. Yes. I submitted testimony on January 12, 2006 and February 27, 2006.

3 **Q. What is the purpose of this additional testimony?**

4 A. I have obtained additional material with respect to Veolia, the proposed contractor for the  
5 City of Nashua. As set forth in the February 27, 2006 testimony of Donald L. Correll, it  
6 has been a challenge to obtain information concerning Veolia because Veolia has resisted  
7 providing information regarding its litigation and other water systems it operates.

8 PWW's counsel is still engaged in discussions with Nashua's counsel in an effort to  
9 obtain additional Veolia material. For example, we are awaiting information from  
10 Nashua about any legal actions pending in state courts around the country in which  
11 Veolia is a party. Therefore, although this testimony will provide information that PWW  
12 has obtained since Mr. Correll's February 27, 2006 testimony, the discovery process still  
13 is not complete and may need to be supplemented.

14 I also provide information in this testimony to correct Mr. Sansoucy's testimony  
15 concerning Nashua's likely total operational expense, should it enter into the contract  
16 with Veolia. I provide this as support for Mr. Guastella's rate analysis testimony.

17 **Q. What information has PWW uncovered about Veolia, beyond that set forth in the**  
18 **February 27, 2006 testimony of Donald L. Correll?**

19 A. We have been able to collect information about Veolia's track record in the United  
20 States, primarily based on cases filed either by Veolia in federal court or against Veolia in  
21 federal court. That information may be grouped into categories: operations, employee  
22 relations and owner relations.

1 **Q. What did your investigation reveal about Veolia's track record with respect to**  
2 **operating water systems in the United States?**

3 A. We have identified a number of incidents in which Veolia, as the operator of some  
4 portion of a water distribution system, has not carried out its contractual obligations.  
5 Were those failures to be repeated in Nashua, it would result in a real degradation of  
6 service to the current PWW customers. While Veolia is a much larger company than  
7 PWW, the volume of disputes and litigation in which Veolia engages is disturbing. At  
8 least since 1990, PWW has not been engaged in any litigation with respect to its contract  
9 operations.

10 As will be seen, below, a number of the problems that Veolia has encountered with its  
11 contract operations arise from the use of unqualified or unlicensed or inexperienced staff.  
12 The Hale County, Alabama, example concerning revolving door managers discussed  
13 below is particularly relevant, since we have learned that the Veolia managers that  
14 Nashua so highly touts to operate PWW are really only "transition managers".

15 **Problems in Indianapolis**

16 The documents supporting Veolia's testimony and data requests show that Nashua would  
17 be Veolia's second largest water treatment and distribution contract operation, after  
18 Indianapolis. But Veolia has experienced a number of problems there. For instance, on  
19 January 6, 2005, thousands of gallons of untreated water slipped into the Indianapolis  
20 distribution system, prompting a boil advisory that shut down some businesses and sent  
21 home 40,000 public school children. According to Veolia, this occurred because of a  
22 data entry error which the computer system did not catch. Rather than own up to the  
23 larger maintenance and operational problems leading to the incident, Veolia chose to fire

1 a 24-year operator at the water plant, Roger Edlin, who spoke out publicly about the  
2 cause of the incident. As a result, Mr. Edlin filed suit for retaliatory firing and violations  
3 of his free speech rights. That case is pending in the United States District Court in  
4 Indianapolis, Edlin v. Veolia Water Indianapolis, LLC (Docket Number 2005-cv-01063).  
5 The suit alleges that the contamination occurred as a result of inadequate water treatment  
6 because Veolia had cut a number of corners with respect to operations and maintenance,  
7 including: 1) foregoing maintenance on filters at a treatment plant; 2) taking off line a 5  
8 million and a 10 million gallon finished water reservoir; 3) reducing the number of  
9 maintenance workers available to assist plant operators; and 4) ignoring equipment  
10 maintenance on peristaltic pumps (which provide hypochlorite during the treatment  
11 process), on sodium permanganate pumps, on numerous valves throughout the plant, on  
12 large and small filters, and on other equipment. A copy of the complaint is attached as  
13 Attachment DLW-6. The incident resulted in a city counselor in Indianapolis requesting  
14 an operational audit of Veolia. See documents also attached as DLW-6.

15 Also in Indianapolis, on June 30, 2005 the Indiana Utility Regulatory Commission began  
16 an investigation into whether Veolia could provide enough water to meet customer  
17 demand. This occurred after water supply shortages in June, 2005 forced Veolia to ask  
18 customers to limit their water use during periods of peak demand. Veolia also has fallen  
19 behind with its program to replace water meters. It has drastically reduced overtime,  
20 including overtime on Sunday to repair water main breaks. See documents in Attachment  
21 DLW-7.

1           **Problems in Massachusetts**

2           The operational problems which Veolia has encountered are not limited to Indianapolis.  
3           For instance, Veolia operates a waste water treatment plant in Lynn, Massachusetts under  
4           a contract with the City of Lynn. The Inspector General of Massachusetts conducted an  
5           investigation of the relationship between Lynn and Veolia's predecessor, U.S. Filter. In  
6           its June 2001 report, the Inspector General determined that the true cost of the U.S. Filter  
7           design-build-operate contract was twice the cost it should have been and that the bidding  
8           process was not competitive. One of the managers involved with the Lynn plant is David  
9           Ford, who is slated to become the project manager in Nashua. See Attachment DLW-8.  
10          The Town of Lee, Massachusetts voted in September of 2004 to reject a proposal from  
11          Veolia to take control of their water and waste water system. They did so after close  
12          scrutiny of Veolia's contract proposal, which was offered only days before the vote.  
13          News reports indicate that the contract left many costs as the responsibility of the Town.  
14          The contract also limited access to documents relating to Veolia's system operations  
15          similar to the closed door attitude that Veolia has had with respect to its planned  
16          operations in Nashua. Documents relating to this issue are attached as Attachment  
17          DLW-9.

18          **Problems in Texas**

19          In Angleton, Texas, the city terminated Veolia's contract operation of its waste water  
20          system for lack of performance. It sued Veolia's predecessor, U.S. Filter, for breach of  
21          contract, claiming that Veolia failed to maintain adequate staffing levels, did not submit  
22          annual capital budget reports as required, and improperly charged expenses to the  
23          maintenance and repair budget funded by the City of Angleton. Veolia made claims

1 against the city with respect to a termination of fee plus ownership of certain property  
2 involved with the Angleton operation. See documents attached as Attachment DLW-10.

### 3 **Problems in Alabama**

4 In June of 2005, the Hale County (Alabama) Water Authority terminated its operations  
5 contract with Veolia claiming that Veolia breached its agreement in a number of ways.

6 According to the County, Veolia failed to provide employees who had the required  
7 certifications (e.g. state licenses) for the project, failed to employ sufficient staff and/or  
8 sufficiently train staff to perform its obligations under the agreement, failed to replace

9 water meters in accordance with the contractual schedule, failed to provide a leak

10 detection crew or a leak detection audit of the system, and failed to provide a project

11 manager 24 hours a day, 7 days a week as required by the contract. As a result of these

12 performance failures by Veolia, the integrity of the system was placed in jeopardy and

13 customer complaints escalated. In addition, the County claimed that Veolia wrongfully

14 passed on certain expenses to the Water Authority, billed for services never provided,

15 charged additional fees for services covered by the agreement, never implemented any

16 community education or outreach programs as promised, never provided any

17 management software failed to achieve water savings, and misappropriated minutes of

18 Hale County Water Authority meetings containing comments critical of Veolia.

19 Apparently, Veolia also let go of its original project manager, a local person in Hale

20 County and replaced him with another Veolia employee who was not certified for

21 drinking water systems (only wastewater) and who lived hours away, making him

22 unreachable. As with the proposed Nashua contract, the Hale County contract called for

23 a termination fee. Veolia has sued the County for payment of the \$625,000 termination

1 fee. A copy of the County's Answer and Counterclaim in the United States District Court  
2 in Alabama is attached as Attachment DLW-11.

3 If Nashua were to terminate its contract with Veolia, it could be liable for a termination  
4 fee of more than \$ 1.5 million pursuant to a binding Memorandum of Understanding,  
5 which Nashua signed only recently. In fact, even if Nashua never instructs Veolia to  
6 begin preparations to operate the water system, it could still be liable for a significant  
7 termination fee. A copy is attached as Attachment DLW-12.

8 Much has occurred in Hale County, a similar scenario of rotating managers seems to be  
9 unfolding for Nashua. None of the three top managers that Veolia has named lives within  
10 fifty miles of Nashua. One lives in Indianapolis, another in Falmouth, Maine. Note that  
11 a version of a Veolia presentation to Nashua only recently disclosed showed that these  
12 three proposed managers are labeled "Transition Manager – To be replaced by a long  
13 term Manager". See Attachment DLW-13. None has an employment contract for this  
14 assignment. Thus Nashua cannot assume that the individuals Veolia has named will be  
15 the individuals who actually manage the PWW system.

### 16 **Problems in Florida**

17 Another case in which Veolia sued the city seeking a termination fee is taking place in  
18 Mulberry, Florida, near Tampa. Veolia seeks \$156,000 as a termination fee plus a  
19 payment for other services performed. Mulberry has counterclaimed, stating that for an  
20 8-month period of time, Veolia did not have a license to operate as required by Florida  
21 law, failed to return to the city a pump valued at over \$15,000, billed the city for certain  
22 expenses not covered by the agreement, and failed to perform maintenance and repairs in  
23 rights-of-way that were causing soil erosion. Copies of documents relating to this dispute

1 are set forth in Attachment DLW-14. Note again Veolia's Nashua termination fee of up  
2 to \$1.5 million set forth in Attachment DLW-12. PWW has always employed properly  
3 licensed operators of its treatment plant and such a problem would be unfathomable  
4 under PWW operation of the system.

### 5 **Problems in California**

6 Veolia has also been sued by a citizens group in federal court in San Francisco with  
7 respect to its operation of the Richmond, California wastewater collection system and  
8 treatment plant. Under its contract with Richmond, Veolia is responsible for adherence  
9 to environmental standards. The suit alleges mismanagement, deteriorating sewage  
10 infrastructure, and improper operation of the collection system and plant, According to  
11 the suit, raw sewage has overflowed within the city from the collection system, even in  
12 dry periods, and has also overflowed into San Francisco Bay in violation of the Clean  
13 Water Act, all causing beach closures and numerous health risks. See documents  
14 attached in Attachment DLW-15.

15 **Q. What conclusions do you draw from all this litigation relating to Veolia's operation**  
16 **of public water and wastewater systems?**

17 A. PWW provides the staff to manage the contract operations of the Pennichuck companies.  
18 We apply the same dedication to those customers as we do to the direct customers of  
19 PWW. Our operations staff is local, and many have long years of experience with the  
20 PWW system. We make sure that staff are properly certified and that environmental  
21 rules are followed. We have never engaged in litigation with our contract customers.  
22 The record shows that Veolia gets involved in contract disputes with municipalities, that

1 it seeks to collect termination fees, and that its managers often are not local and  
2 sometimes are not properly licensed.

3 **Q. What employment issues have you discovered with respect to Veolia's operations?**

4 A. Veolia is certainly a much bigger company than PWW. Still, the number of employment  
5 problems it has stands in contrast with PWW's excellent relationship with its employees.

6 As I discussed, in the Indianapolis boil advisory case, Veolia blamed a 24-year water  
7 plant operator for causing a boil advisory and fired him. This resulted in a federal court  
8 lawsuit alleging retaliatory discharge and violation of First Amendment rights.

9 Also in Indianapolis, a local union sued Veolia for its failure to arbitrate 8 grievances in  
10 breach of the parties' collective bargaining agreement. The matter was only resolved  
11 recently. Again in Indianapolis, Local 131 of the National Conference of Firemen &  
12 Oilers came within hours of a May 7, 2004 strike because of a dispute over the reduction  
13 in pension and health benefits involving 200 union members. News reports state that  
14 Veolia has reduced benefits to both union and non-union employees as well as conducted  
15 dramatic reductions-in-force. Local 131 has reported a loss of 50% of its union positions  
16 since Veolia assumed the collective bargaining agreement. Veteran managers have also  
17 left. According to news reports, replacement managers and staff often lack state operator  
18 licenses, and have little water supply experience. Non-union participants in the pension  
19 plan sued Veolia over reductions in plan benefits upon Veolia's takeover of the water  
20 plant. See documents attached in Attachment DLW-16.

21 I also understand that the National Labor Relations Board has issued 16 unfair labor  
22 practice complaints against U.S. Filter/Veolia. Five of them relate to Indianapolis. They

1 all relate to allegations of refusal to bargain collectively with representatives of  
2 employees. See documents attached as Attachment DLW-17.

3 We have located two other individual employee lawsuits involving Indianapolis. One  
4 claims gender discrimination and the other claims failure to pay overtime in accordance  
5 with the Fair Labor Standards Act. Copies of each of those lawsuits are attached as  
6 Attachment DLW-18.

7 Moving on to other parts of the country, an employee sued Veolia with respect to its  
8 Massachusetts operations for failure to comply with the Family Medical Leave Act and  
9 the Massachusetts Wage Statute. See complaint attached as part of Attachment DLW-8.

10 Also in Massachusetts, in New Bedford, Veolia unilaterally reduced the level of  
11 employee benefits in a contractual dental plan without giving any notice for bargaining  
12 with the union. Documents are attached as Attachment DLW-19.

13 Finally, there are cases pending in other states. In 2005, a case was brought in federal  
14 court in Illinois by a terminated employee who sued for a violation of the Family Medical  
15 Leave Act, sexual discrimination, retaliatory discharge, and other claims. A Florida  
16 employee sued Veolia for violation of the Americans with Disabilities Act and the  
17 Florida Civil Rights Act and related retaliation claims. In Texas, three Veolia employees  
18 claimed they were entitled to overtime pay under the Fair Labor Standards Act. Copies  
19 of documents about these cases are attached as Attachment DLW-20.

20 By contrast, Pennichuck has an excellent record with its employees. I am aware of no  
21 employee lawsuits, at least since 1990. During that period of time, there have been only  
22 three grievances filed by union members, all of which were resolved internally. There  
23 have been no unfair labor practice charges filed with the National Labor Relations Board.

1 I know that Veolia is a much larger company, but the difference in the quality of  
2 employee relationships between the two companies is remarkable and is plainly not just a  
3 result of the difference in size. In my opinion, the difference is reflective of significant  
4 problems at Veolia between management and employees. Such problems can have a  
5 negative effect on service to the public, and that certainly appears to be true in Veolia's  
6 case.

7 **Q. Have specific issues with respect to Veolia's relationship with owners of the system**  
8 **created some unique problems?**

9 **A.** Yes, I will give some examples of what we have found thus far.

10 **Grand Jury Investigation**

11 In October of 2005, four Indianapolis employees were subpoenaed by the United States  
12 Attorney's Office to testify in a federal grand jury investigation into the possible  
13 falsification of water quality reports. Among those subpoenaed were Alison Willan, the  
14 Director of Production, and her second in charge, David Hill. That investigation is  
15 ongoing. Pennichuck has requested documents related to this investigation, but they have  
16 not yet been provided. The documents obtained to date from sources other than Veolia  
17 are attached as Attachment DLW-21.

18 **Conviction for Payment of Kickbacks**

19 As has been set forth in Mr. Correll's prior testimony, the Town of Rockland,  
20 Massachusetts terminated its wastewater treatment plant contract with Veolia's  
21 predecessor, Professional Services Group, following the revelation that a town sewer  
22 commissioner, in consort with a PSG district manager, Michael Sause, was diverting  
23 \$167,000 in a kickback arrangement. Rockland terminated the contract on the advice of

1 the Massachusetts Office of the Inspector General, which determined that the contract  
2 was overpriced, the initial bid documents were tailored so that PSG would win the  
3 contract, and the kickbacks criminally tainted the whole relationship. That did not stop  
4 PSG from suing Rockland and Rockland has counterclaimed for \$1.6 million against  
5 Veolia based upon the fraudulent activities of the PSG employee and the underlying  
6 contract. The former commissioner admitted to stealing thousands of dollars on accounts  
7 set aside in Rockland for sewer improvements. See Attachment DLW-22.

### 8 **Political Influence**

9 Veolia's predecessor U.S. Filter obtained the no-bid, very expensive design-build-operate  
10 contract for the Lynn, Massachusetts sewer treatment plant, by hiring a number of  
11 Massachusetts politicians and engaging in questionable practices to solidify its  
12 relationships with Lynn officials. See Attachment DLW-8.

13 Mr. Correll previously provided testimony regarding other Veolia kickback or bribery  
14 arrangements in Bridgeport, Massachusetts and New Orleans, Louisiana.

### 15 **Q. Do you have any concerns about this information?**

16 A. Yes. The issues raised by all of these lawsuits are not insignificant. As I stated  
17 previously, this information is just what PWW could find on its own accord and does not  
18 include any information about legal actions pending in any state courts across the  
19 country. In my opinion, this level of litigation in federal court alone reflects problems in  
20 how Veolia is managed and how it practices business, particularly given the wide range  
21 in types of suits that have been filed in the past three years. I do not think it would be in  
22 the public interest to allow an entity with such significant problems to operate the PWW  
23 water system.

1 **Q. What information do you have concerning Nashua's total operational costs for the**  
2 **PWW system assuming it enters into the proposed contract with Veolia?**

3 A. I have reviewed the Veolia draft contract with Nashua, and have noted the many  
4 operational items which PWW performs, and which are either not dealt with in the Veolia  
5 contract or which are considered to be supplemental services for which Nashua would  
6 have to pay an additional fee to Veolia. I have also compared those amounts to the  
7 amounts which Mr. Sansoucy used in his testimony as an estimate in building his rate  
8 model. My comparison is set forth in Attachment DLW-23, and shows that Nashua  
9 would pay an additional \$2,764,000 annually in comparison to what Mr. Sansoucy  
10 estimates. I do not attribute those expenses to be a portion of \$500,000 of an unidentified  
11 "operational contingency" in Mr. Sansoucy's estimate. The left hand column of numbers  
12 shows proposed Nashua costs under the Veolia contract, drawn from Mr. Sansoucy's  
13 GES Exhibit 4 to his January 12, 2006 testimony. The right hand column shows  
14 adjustments I have made, based upon PWW's experience.

15 I will now explain the specific entries in Attachment DLW-23; I accepted some of Mr.  
16 Sansoucy's estimates, I added categories of operating expenses which Mr. Sansoucy  
17 failed to consider, and I adjusted other operating expense categories based upon PWW  
18 experience. I made no adjustments to the stated amount of the Veolia contract base fee of  
19 \$4.96 million, the Beck base fee of \$315,000, Mr. Sansoucy's estimates of Nashua's cost  
20 for purchased water and property insurance at \$200,000 each, and his property tax  
21 estimate of \$1.4 million. I added several new annual expense categories which Mr.  
22 Sansoucy failed to include at all in his Exhibit 4. They are amortization of the upfront  
23 Veolia transition fee (\$1.38 million) over the six year life of the contract, \$138,000;

1 amortization of Beck's up front payment (\$228,000) over the six year life of the contract,  
2 \$38,000; amortization over five years of what I estimate to be Nashua's \$1 million cost to  
3 purchase a GIS system required by Veolia (PWW currently has no GIS system),  
4 \$200,000; \$192,000 for four additional Nashua billing and collection staffers, which  
5 PWW believes is the minimum staffing level required; the \$100,000 which Mr. Sansoucy  
6 allocated would be more than used up for billing envelopes, postage, etc.; \$12,000 for  
7 Nashua's cost for hydrant maintenance and painting above the minimal hydrant services  
8 included in Veolia's contract; \$15,000 for permitting and police detail costs, based on  
9 PWW 2005 expense; base engineering services which is based on PWW's cost and which  
10 is a supplemental service in the Veolia contract, \$215,000; capital program management  
11 which is based on PWW's contract and is a supplemental service in the Veolia contract,  
12 \$30,000; and information services support which is not included within the Veolia base  
13 fee and which PWW estimates at \$135,000. Then I adjusted upward several of Mr.  
14 Sansoucy's operating expense estimates, as follows: I added \$30,000 to Mr. Sansoucy's  
15 \$100,000 Nashua customer billing budget to reflect PWW's 2005 customer mailings  
16 costs; with respect to sludge disposal, I added \$67,000 to Mr. Sansoucy's \$100,000  
17 estimate to reflect PWW's 2005 expense; and I added \$600,000 to Mr. Sansoucy's  
18 \$500,000 estimate to reflect PWW's 2005 expense for heat and electricity. The total  
19 upward adjustments that I made to the total Nashua operating expenses come to \$2.764  
20 million, with the resulting Nashua annual operating costs rising to \$10.76 million.

21 **Q. Does this conclude your testimony?**

22 A. Yes.