

1 STATE OF NEW HAMPSHIRE
2 PUBLIC UTILITIES COMMISSION

3

4 May 16, 2007 - 1:09 p.m.
5 Concord, New Hampshire

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RE: DW 04-048
7 CITY OF NASHUA, NEW HAMPSHIRE:
Petition for valuation pursuant to RSA 38:9.
8 (Re: Status conference and Joint Motion
for a Continuance and Extension of Stay
9 of Proceedings)

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PRESENT: Chairman Thomas B. Getz, Presiding
11 Commissioner Graham J. Morrison
12 Commissioner Clifton C. Below

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Diane Bateman, Clerk

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APPEARANCES: Reptg. the City of Nashua, NH:
15 Robert Upton, II, Esq.
Justin C. Richardson, Esq.

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Reptg. Pennichuck Water Works, Pennichuck
17 East Utilities & Pittsfield Aqueduct Co.:
Steven V. Camerino, Esq.
18 Thomas J. Donovan, Esq.

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Reptg. Anheuser-Busch:
20 Dom S. D'Ambruoso, Esq.
John T. Alexander, Esq.

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23 COURT REPORTER: Steven E. Patnaude, CCR

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2 APPEARANCES: (C o n t i n u e d)

3 Reptg. the Town of Milford:
4 Bryan K. Gould, Esq.5 Reptg. the Town of Merrimack:
6 Edmund Boutin, Esq.7 Reptg. Merrimack Valley Regional
8 Water District:
9 Stephen J. Judge, Esq.10 Reptg. Residential Ratepayers:
11 Kenneth E. Traum, Asst. Consumer Advocate
12 Office of Consumer Advocate13 Reptg. PUC Staff:
14 Marcia A. B. Thunberg, Esq.

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4 STATEMENTS BY:

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Mr. Upton

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Mr. Camerino

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Mr. Judge

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Mr. Gould

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Mr. Boutin

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Mr. Alexander

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Mr. Traum

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Ms. Thunberg

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good afternoon.

3 We'll open the hearing in docket DW 04-048, concerning the
4 City of Nashua's petition pursuant to RSA Chapter 38. On
5 January 16, 2007, we suspended the proceedings in this
6 case and granted a stay of 120 days to allow the parties
7 to make efforts towards settlement. And, subsequently, we
8 scheduled this status conference to hear from the parties
9 on progress that may have been made in settlement. On May
10 15th, the parties filed with us a joint motion for a
11 continuance and extension of stay of proceedings. So, I'd
12 like to, at this time, give counsel for the City and for
13 Pennichuck an opportunity to speak to these issues. I
14 understand that, by the filing, that concurrence hasn't
15 been indicated. It appears that there are other parties
16 to the proceeding here today. Once we hear from
17 Pennichuck and the City, we'll give the other parties a
18 chance to weigh in.

19 So, who would like to proceed,
20 gentlemen? The Petitioner perhaps?

21 MR. UPTON: I think we were both hoping
22 that the other one would. I don't know that there's much
23 more that I can say that isn't in the motion,
24 Commissioners. The parties believe it's in their best

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1 interest to continue the negotiations. And, we had
2 provided for a 60 day extension in the original motion,
3 and we hope that you will grant us the additional time to
4 conduct these negotiations.

5 CHAIRMAN GETZ: Thank you.

6 Mr. Camerino, you have an opportunity.

7 MR. CAMERINO: I don't have anything to
8 add substantively. I would indicate that I think it might
9 be appropriate to at least have a brief discussion before
10 we close today about scheduling, if the Commission is
11 inclined to grant the motion.

12 CHAIRMAN GETZ: Okay. Thank you. Well,
13 let's then go around the room and hear the positions of
14 other parties with respect to this motion. Mr. Judge?

15 MR. JUDGE: Stephen Judge, representing
16 the Merrimack Valley Regional Water District, and the
17 District supports the request of the parties for a
18 continuance and extension of stay of the proceedings.

19 CHAIRMAN GETZ: Thank you.

20 MR. GOULD: Bryan Gould, for the Town of
21 Milford. The Town has no objection to the motion.

22 CHAIRMAN GETZ: Thank you.

23 MR. BOUTIN: Ed Boutin, for the Town of
24 Merrimack. We have no objection to the motion, but we

1 want to be sure that our assent is not interpreted as to
2 preclude our continuing our intervention at such time as
3 the settlement is proposed to the Commission, and that
4 that settlement be heard in this docket and not in a new
5 docket.

6 CHAIRMAN GETZ: Thank you.

7 MR. ALEXANDER: John Alexander and Dom
8 D'Ambruoso, on behalf of Anheuser-Busch Companies. We
9 consent to the motion.

10 CHAIRMAN GETZ: Thank you. Anyone else?
11 Mr. Traum.

12 MR. TRAUM: Thank you, Mr. Commissioner.
13 On behalf of the Office of Consumer Advocate, we also
14 consent.

15 MS. THUNBERG: Thank you, Commissioners.
16 Staff concurs with the request to extend another 60 days.
17 Staff has not been privy to any of the negotiations that
18 have been happening between the City of Nashua and
19 Pennichuck Water Works, but believe that continued
20 discussions between those two parties would be beneficial
21 to the orderly progress of this docket. Thank you.

22 CHAIRMAN GETZ: Thank you. Well,
23 correct me if I'm wrong, not all of the parties are here,
24 and I think, technically, under our procedural rules,

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1 there's ten days for objection. My recollection is that
2 we --

3 MR. UPTON: We filed a letter. We did
4 talk to the two individual intervenors, Barbara Pressley
5 and Claire McHugh, and filed a letter indicating that they
6 do concur.

7 CHAIRMAN GETZ: Okay.

8 MR. UPTON: And, I think that's -- I
9 think that's it.

10 CHAIRMAN GETZ: Okay. All right.

11 MR. UPTON: At least that's my memory
12 that that's it.

13 CHAIRMAN GETZ: I haven't seen that
14 letter. Okay. All right. Then, let's move to I guess
15 Mr. Camerino's -- you wanted to raise the question of what
16 possible procedures we would apply, assuming the motion is
17 granted?

18 MR. CAMERINO: Please. I'd start by
19 saying that the Pennichuck companies appreciated the fact
20 that, when we entered into the original stay, the
21 Commission scheduled hearing dates and the timing of those
22 hearing dates, because what that did was essentially
23 accepted the length of stay that the parties had agreed to
24 and didn't indirectly extend that by making the

1 continuation of the hearing be many months beyond the end
2 of the stay. And, we'd like to suggest a similar process
3 here.

4 The stay extension will be going through
5 July 16th. And, at that point, if there weren't agreement
6 or a further extension, we would be back into a litigation
7 mode. It's my understanding that the Commission may have,
8 and I know this won't make me the most popular person in
9 the room, but may have time available in August, that it
10 may have time available in October, that the Commission's
11 calendar is relatively full in September. And, so, our
12 reason for mentioning this today is that, if the
13 Commission were to wait until the end of the stay and then
14 look at scheduling, we could be in a situation where the
15 hearing wouldn't be until the end of the year, with an
16 order in 2008. I think delaying setting new hearing dates
17 is problematic in a number of ways. Not only will it
18 unnecessarily extend the proceeding, but it -- the longer
19 we go on hold with this, the more issues get raised about
20 "can we simply go back to continuing the trial or do
21 numbers need to be updated?" And, "what happens to
22 intervening facts that have occurred or been learned in
23 that time, can those be utilized?" The procedural hurdles
24 become much greater. So, our request is that, if the

1 Commission, in fact, has the time available in August,
2 that the Commission set down the continuation of the
3 hearing for August, and not wait until July to pick
4 hearing dates.

5 The stay agreement, as I noted, expires
6 July 16, and that would give the parties three to four
7 weeks to ramp up the litigation again before continuing.
8 Regardless of what dates the Commission picks, we think
9 it's important to set the hearings dates now, as soon
10 after this conference as possible, rather than waiting
11 until two or three months down the line, when the
12 Commission's calendar will fill up. Thank you.

13 CHAIRMAN GETZ: Mr. Upton, would you
14 like to respond?

15 MR. UPTON: Well, Nashua doesn't have
16 any real objection to whenever the Commission sets the
17 hearing dates. I think we -- I would say, we think August
18 is probably an unrealistic time to set dates for hearings.
19 August, as Steve alluded to, is the month that America
20 goes on vacation. One of the problems with August I think
21 is that we don't know what the availability of witnesses
22 is going to be. And, if witnesses have scheduled
23 vacations, or even parties in this instance, because we
24 haven't been able to confer with parties about the timing

1 for all of this, or even the Staff or the OCA, about the
2 trial date, what I'm really worried about is the
3 availability of witnesses. And, I'm worried about having
4 a date set today, leaving, and then being confronted with
5 motions to continue because parties or witnesses are not
6 available. And, as the person that's ultimately going to
7 try this for the City, one of the things that worries me
8 is the order in which the case goes in. If witnesses are
9 unavailable at various times, it means that the order of
10 presentation is going to get all mucked up, and that just
11 confuses everybody. And, what I don't want to do is
12 particularly have any confusion at the Commission level.

13 So, I understand the desire to get the
14 case over and decided, I really do, and that's why I'm not
15 objecting to an August date, if that's what the Board --
16 or, the Commission decides. But I just think we're asking
17 for trouble by scheduling it in August. And, in the
18 scheme of this case, the difference of doing it in August
19 or doing it in October is not very great. And, I just
20 think October probably, and there's not going to be these
21 kinds of issues, but I think we're going to run into real
22 trouble in August.

23 CHAIRMAN GETZ: Thank you. Anyone else
24 want to weigh in? Any takers?

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1 MS. THUNBERG: Staff does -- It's more
2 of a request for clarification of Pennichuck. On the
3 issue of resuming hearings in August or October, is that
4 to just pick up where we left off with the litigation or
5 to reconsider a -- or would it potentially open the
6 hearing dates up for considering a new proposal?

7 MR. CAMERINO: I assume, by "proposal",
8 Ms. Thunberg means "settlement proposal". And, I'd have
9 to say, I don't think Nashua [Pennichuck?] and the City
10 have had any discussion about the latter at this point.
11 And, I guess I would assume, just being realistic, that if
12 we're talking about hearings on the merits, we would not
13 be talking about hearings on the merits in August about a
14 settlement.

15 CHAIRMAN GETZ: Thank you.

16 MR. BOUTIN: Commissioner?

17 CHAIRMAN GETZ: Mr. Boutin.

18 MR. BOUTIN: I'm sorry, Bryan Gould and
19 I are scheduled for a two-week trial in the month of
20 October in Grafton County, which could impact scheduling
21 of that trial. I also, in the month of September, am
22 looking at trying a case in the State of New York. So,
23 I'm not sure that August is optimum. And, October is a
24 problem. But I'm just pointing those out to you so you

1 know in advance.

2 CHAIRMAN GETZ: Okay. One vehicle we
3 may adopt, I don't anticipate that we're going to rule on
4 this today, is we may suggest a prehearing conference for
5 all the parties to at least get some understanding among
6 themselves on availability of attorneys and witnesses, so
7 we can be realistic about a new schedule that's adopted.

8 CMSR. BELOW: Yes, I didn't quite
9 understand Mr. Boutin's comment. You said you're
10 scheduled for two weeks in October.

11 MR. BOUTIN: Yes.

12 CMSR. BELOW: As well as sometime in
13 September?

14 MR. BOUTIN: I'm scheduled for two weeks
15 in October with Mr. Gould is the other side, in Grafton
16 County. That's firm. I also expect that there is going
17 to be a month long trial scheduled in September in the
18 State of New York that I am participating in. That is not
19 yet scheduled, but we know that it's been moved from June,
20 and that's the next available month.

21 CMSR. BELOW: So, August, for you, per
22 se, is not --

23 MR. BOUTIN: Would be a very
24 inconvenient time.

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1 CMSR. BELOW: Would be an inconvenience,
2 but not necessarily impossible?

3 MR. BOUTIN: That's correct.

4 CMSR. BELOW: Okay.

5 CHAIRMAN GETZ: Okay. I think, for
6 purposes of today, I'd like to verify that we -- that all
7 the parties have weighed in. I think, based on the
8 written submission, I think it would be fair to conclude
9 that the parties are in the midst of good faith
10 negotiations, with a prospect for agreement if you're
11 allowed additional time. But, rather than make a motion
12 or suggest that we make a related finding today, I'd like
13 to take the time to go through the list of the parties to
14 make sure everyone's had the opportunity to weigh in.
15 And, assuming that everyone has had the opportunity, and
16 we don't need to wait the ten days, then I would suggest
17 that we address this motion at the Commission meeting on
18 Friday afternoon.

19 Is there anything else that the parties
20 would like to have us consider this afternoon?

21 MR. UPTON: I just want to make sure
22 that I'm clear with all of you. The parties that have
23 attended the hearings I think have all weighed in. There
24 may be other parties that have filed interventions that

1 have not participated that haven't.

2 CHAIRMAN GETZ: Okay. All right. Well,
3 we'll take the time to try and verify that information.
4 And, perhaps, if there's other formal parties who we can
5 get something in writing from, then, you know, that can
6 accelerate the time for us to rule on it, that would
7 probably be helpful.

8 Anything else this afternoon?

9 (No verbal response)

10 CHAIRMAN GETZ: Okay. Hearing nothing,
11 then we'll close this hearing. Thank you, everyone.

12 (Whereupon the status conference ended
13 at 1:23 p.m.)

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