

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

RE: PENNICHUCK WATER WORKS, INC.

DOCKET NO. DW 10-091

**CONSUMER ADVOCATE'S MOTION TO LIMIT SCOPE OF PROCEEDING**

The New Hampshire Office of the Consumer Advocate (OCA) hereby moves the New Hampshire Public Utilities Commission (Commission) to limit the scope of the proceeding to exclude consideration of the recovery by Pennichuck Water Works, Inc. (PWW) of costs related to its defense of the City of Nashua's eminent domain action. In support of this motion, the OCA states as follows:

1. On May 7, 2010, PWW filed schedules, pursuant to N.H. Code Admin. R. Chapter Puc 1600, as well as materials supporting a proposed permanent rate increase. PWW's filing also requested the recovery of approximately \$5.3 million in costs related to its defense of the City of Nashua's eminent domain action.
2. The schedule in DW 10-091 currently requires PWW to "submit testimony and schedules on recovery of DW 04-048 expenses" on November 8, 2010. Letter from Debra A. Howland, Executive Director and Secretary (July 20, 2010).
3. In a prior PWW rate case, DW 04-056, the Commission authorized PWW to create a deferred account to track the costs of its eminent domain defense. Re Pennichuck Water Works, Inc., 90 NH PUC 188 (2005). In granting this authorization, the Commission specifically stated "[a]t the conclusion of Docket No. 04-048, Pennichuck shall submit all expenses booked in the deferred account to the Commission for audit and review. At

**that time**, we will then consider, among other things, the types of expenses that may be recovered...” Re Pennichuck Water Works, Inc., 90 NH PUC at 194 (emphasis added).

4. DW 04-048 remains an open and active adjudicatory docket and, presumably, PWW continues to incur costs related to this docket. For example,
  - a. On June 30, 2010, after the Commission issued its Order of Notice in DW 10-091, PWW and Nashua asked the Commission, in DW 04-048, to establish a schedule for further proceedings on valuation. *See* Joint Motion to Establish Schedule to Update Valuation and Make Final Determination of Price dated June 30, 2010 (DW 04-048 Joint Motion to Establish). The DW 04-048 Joint Motion to Establish stated, among other things, that Nashua and PWW remain interested in reaching a negotiated resolution of DW 04-048. *See Id.* at p. 3.
  - b. On August 31, 2010, also in DW 04-048, the Commission issued a secretarial letter, requesting briefs covering a number of “questions of law.” Letter from Debra A. Howland, Executive Director and Secretary, to the parties, dated August 31, 2010, at pp. 2-3.
  - c. Most recently, on September 21, 2010, PWW and Nashua filed motions to extend the deadline for filing briefs and making other compliance filings in DW 04-048. *See* Joint Motion for Extension of Time to File Briefs and For Expedited Ruling dated September 21, 2010 (DW 04-048 Joint Motion for Expansion); and Assented to Motion to Extend Deadline for Filing Contract dated September 21, 2010 (DW 04-048 Motion to Extend). Nashua reiterated in the Motion to Extend that the City and PWW “remain hopeful that [an amicable] resolution [to DW 04-048] can be

reached.” Assented to Motion to Extend Deadline for Filing Contract dated September 21, 2010, at p. 1.

- d. On September 27, 2010, citing Nashua’s and PWW’s efforts to reach, and optimism about, an amicable resolution, the Commission granted the extension for filing legal briefs in DW 04-048 to November 30, 2010. Letter from Debra A. Howland, Executive Director and Secretary, to the parties, dated September 27, 2010.
5. Because DW 04-048 is not at or near its conclusion, the Commission should not yet review, in DW 10-091, the recovery of PWW’s DW 04-048 costs.
6. In addition, because of the possibility of an amicable resolution of DW 04-048, the Commission should not yet review the recovery of PWW’s DW 04-048 costs. PWW has stated in DW 10-091 that it will not seek recovery of eminent domain costs from ratepayers if an amicable resolution to DW 04-048 is reached. *See, e.g.*, Transcript of Prehearing Conference (DW 10-091, July 14, 2010), at p. 8, lines 19-24 (on behalf of PWW, Attorney Knowlton stated, “the Company would only be seeking recovery of its eminent domain costs in the event that the City decides not to pursue the taking of the Company’s assets. So, if the City were to walk away from the taking, then the Company would be seeking approximately \$5.3 million then in its defense costs”). If PWW and Nashua reach an amicable resolution in DW 04-048, there would be no need – at any time – for the Commission to review and rule on the recovery of PWW’s eminent domain costs from ratepayers. Therefore, it is not appropriate to consider including those costs in rates at this time. Pursuant to the approved procedural schedule in DW 10-091, dated July 20, 2010, PWW has until November 8, 2010 to file specific information to support its proposed recovery of eminent domain costs. When the DW 10-091 procedural

schedule was developed, proposals by Nashua and PWW in DW 04-048 to file a report by October 1, 2010 “concerning the status of any discussions concerning their efforts to reach a consensual resolution” as well as meet for a procedural conference on October 28, 2010 remained pending at the Commission. Since then, more activity has occurred in DW 04-048, and the conclusion of that docket continues to be pushed out into the future.

7. Based upon the foregoing, the issue of PWW’s recovery of its DW 04-048 costs is not yet ripe, and may not ever be if PWW and Nashua amicably resolve the eminent domain dispute. Furthermore, the legal pre-requisite for the Commission’s consideration of this issue – *i.e.*, the conclusion of DW 04-048 – has not occurred.
8. The OCA distributed a copy of this motion to the service list by electronic mail before filing. The positions received from the parties are provided below:
  - a. PWW does not assent to the motion;
  - b. Staff does not concur with the motion; and
  - c. Anheuser-Busch concurs with the motion.

Wherefore, the OCA respectfully requests that the Commission limit the scope of DW 10-091 to exclude the review of PWW’s DW 04-048 eminent domain costs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the service list by electronic mail.

October 5, 2010

Rorie E.P. Hollenberg  
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