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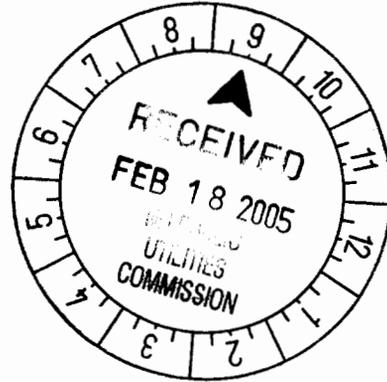
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February 18, 2005

By Hand Delivery

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301



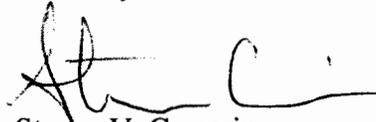
Re: DW 04-048; City of Nashua – Pennichuck Water Works, Inc.

Dear Ms. Howland:

Enclosed for filing with the Commission in the above-captioned docket are an original and eight copies, along with an electronic copy on a computer disk in Word format, of Pennichuck Water Works, Inc.'s Motion for Reconsideration and/or Rehearing of Order No. 24,425.

Please let me know if you have any questions about this matter.

Sincerely,



Steven V. Camerino

Enclosure
cc: Service List

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Docket #: 04-048-1 Printed: February 17, 2005

FILING INSTRUCTIONS:

WITH THE EXCEPTION OF DISCOVERY (SEE NEXT PAGE) FILE 1 ORIGINAL & COVER LETTER, PLUS 8 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

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

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

Docket No. DW 04-048

Motion for Reconsideration and/or Rehearing of Order No. 24,425

Pursuant to RSA 541:3, Pennichuck Water Works, Inc. ("PWW") hereby moves the Public Utilities Commission to reconsider or grant a rehearing regarding its Order No. 24,425.

In support of its motion, PWW state as follows:

1. In its Order No. 24,425 issued January 21, 2005, the Commission determined, among other things, that under RSA Ch. 38 "Nashua is entitled to pursue all of PWW, regardless of which customers those assets serve and where the assets are located." Order at 18. In addition, the Commission determined that the January 14, 2003 vote by the City of Nashua was valid and sufficient to authorize the City to attempt to take such assets. For the reasons set forth below and as more particularly set forth in PWW's Memorandum of Law dated October 25, 2004, the Commission's order was in error. PWW, therefore, respectfully requests that the Commission reconsider its order or grant PWW a rehearing with regard to both issues.

2. In Part b of its analysis in Order No. 24,425, the Commission ruled that a municipality's authority to take the assets of a public utility is limited only by its ability to persuade the Commission that such a taking is in the "public interest," a standard that is wholly undefined by the statute. The effect of the Commission's ruling is to expand RSA Ch. 38 in such a way that it would potentially allow a single municipality to take assets throughout the state

merely because the people within that one town or city had decided to municipalize utility service.

3. In its order, the Commission incorrectly concluded that the scope of Nashua's authority to take assets of PWW can be determined merely by reference to the plain meaning of the words in RSA Ch. 38. In fact, the words of the statute are not clear and unambiguous on this issue, and the Commission's interpretation of the relevant provisions runs counter to the rule that statutes regarding the power of eminent domain should be narrowly construed. See 4 Tiffany, The Law of Real Property, § 1252 (3rd ed. 1975); see also Orono-Veazie W. Dist. v. Penobscot Cty. Water Co., 348 A.2d 249 (Me. 1975); Ronci Mfg. Co., Inc. v. State, 403 A.2d 903 (R.I. 1979).

4. As is demonstrated by the analysis in Part a of the Commission's order, the legislative history of RSA Ch. 38 makes abundantly clear that the legislature did not intend that a municipality should have as broad a takings power as Nashua seeks here with regard to PWW. In its analysis, the Commission itself recognized that the legislature, when re-enacting RSA Chapter 38, explained that the purpose of the language authorizing a municipality to take property outside its bounds was to prevent the stranding of customers who would otherwise be disconnected from the utility's system. Yet, the Commission completely ignored this legislative history in Part b of its analysis. The practical impact of the Commission's order, if allowed to stand, would be to establish a legal precedent under which any municipality served by Public Service Company of New Hampshire, KeySpan Energy Delivery New England and other electric, gas and water utilities with multiple or extensive service territories could take assets located throughout the State, rather than just those assets necessary to provide municipal utility

service and any additional assets necessary to ensure that remaining customers would not be cut off from service.

5. The Commission also erred when it determined that the January 14, 2003 vote by the City of Nashua was valid and sufficient to authorize City officials to attempt to take any assets of PWW regardless of whether they are part of the same water system that served Nashua, regardless of whether the assets are necessary to provide service within the City, and regardless of whether the assets would be physically stranded by a taking of the assets that are part of the system that serves the City.

6. In Balke v. City of Manchester, 150 N.H. 69 (2003), the New Hampshire Supreme Court held that Manchester Water Works, a municipal utility that *already had* the necessary authority to provide service to residents of towns outside Manchester, had violated RSA 485:14 by fluoridating its water supply without the approval of the voters of *all* of the towns where it provided service. In that case, although Manchester voters had approved fluoridation, the Court noted that “if only the municipality owning the water system were required to approve fluoridation, one small municipality owning a water system could hold a referendum on fluoridation among its voters, and then provide fluoridated water to numerous large municipalities without the residents of the large municipalities having a vote.” Balke, 150 N.H. at 73. Similarly, in the present case, if the vote by Nashua residents were sufficient for that city to take not just the assets necessary to provide municipal water service within Nashua, but also unconnected water systems in places as far flung as Bedford, East Derry, Epping, Milford, Newmarket, Plaistow and Salem, then, contrary to the Supreme Court's holding in Balke, the vote of a single municipality could result in that city being permitted to provide water service

throughout a major portion of the state, despite the fact that the residents of the outlying towns had never voted on the matter.

7. Because PWW set forth its position on both of the foregoing issues in detail in both its Memorandum of Law dated October 25, 2004 and at oral argument before the Commission on July 28, 2004, it will not repeat those arguments here, but rather incorporates them by reference.

8. Counsel for PWW has made a good faith effort to obtain consent to the relief requested in this motion from the Staff and intervenors in this proceeding. The Town of Hudson and the Town of Pittsfield have indicated that they take no position at this time. The Merrimack Valley Regional Water District, Town of Litchfield and Town of Merrimack indicate that they do not concur in the relief requested in this motion. All other parties contacted were unable to respond prior to the filing of this motion.

WHEREFORE, PWW respectfully requests that the Commission reconsider or grant a rehearing regarding the foregoing issues and grant such other and further relief as may be just and reasonable.

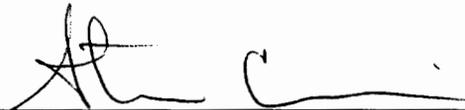
Respectfully submitted,

Pennichuck Water Works, Inc.

By Its Attorneys

MCLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

February 18, 2005

By: 

Thomas J. Donovan
Steven V. Camerino
Sarah B. Knowlton
15 North Main Street
Concord, NH 03301

Certificate of Service

I hereby certify that a copy of this Motion for Reconsideration and/or Rehearing of Order No. 24,425 has been forwarded to the parties listed on the Commission's service list in this docket.

Dated: February 18, 2005



Steven V. Camerino