

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

AFFIDAVIT OF BRIAN S. MCCARTHY

NOW COMES, Brian S. McCarthy and states as follows:

I. INTRODUCTION

1. I am the President of the Board of Alderman for the City of Nashua, and also serve as Nashua's representative to the Merrimack Valley Regional Water District ("MVRWD").
2. Pennichuck Water Works, Inc. (Pennichuck), has filed a *Motion for Summary Judgment* alleging that Nashua does not have the technical or managerial capability to operate the water system that is the subject of this proceeding. I strongly disagree with this allegation. I have therefore prepared this affidavit to: (a) document the information concerning Nashua's technical and managerial qualifications that has already been made available to all parties in this proceeding; (b) explain the steps Nashua has taken to ensure that Nashua has the best technical and managerial qualifications for the operation of its water system in New Hampshire and the region; and (c) further explain how Nashua's operation of its water system will ultimately benefit consumers and the public interest.

- II. NASHUA HAS MADE ITS TECHNICAL AND MANAGERIAL QUALIFICATIONS AVAILABLE TO ALL PARTIES SINCE ITS JULY 29, 2005 DATA RESPONSES
3. Nashua's intention to rely on the technical and managerial qualifications of its qualified contract operator was set forth in my direct testimony filed on November 19, 2004 in this proceeding. Nashua believes that using contract operators to operate, maintain and manage the assets acquired in this proceeding will allow Nashua to use competitive forces to obtain the highest quality of service at the best price for consumers.
4. As I stated in my direct testimony, Nashua had already received 11 statements of interest and qualifications from potential operators at that time and "intends to have contracts in place when ownership transfers." See pages 10-11. As set forth in this affidavit, Nashua has not been idle since its direct testimony was submitted. Nashua has already selected, subject to successful contract negotiations, its contractors for both the operation and oversight of its water system. It is my expectation that these negotiations will be complete prior to January 12, 2006, at which time Nashua will offer direct testimony from its operations and oversight contractors as part of its valuation and public interest testimony.
5. Nashua has kept the Commission's staff, Pennichuck and all parties fully aware of its steps to select a contract operator. On July 29, 2005, in response to Staff Data Request No. 2-14, Nashua made available to all parties in this proceeding the Technical Proposals submitted on July 14,

2005 by Veolia Water, N.A. (“Veolia Water”) and Earth Tech, for the operation of its water system. See Exhibit 1.1.

6. On August 5, 2005, copies of the Technical Proposals for operation and maintenance were forwarded to Pennichuck’s legal counsel, Tom Donovan, Esq., as shown in Exhibit 1.2. In addition, on August 10, 2005, the Technical Proposals were hand-delivered to Mark Naylor of the Commission’s staff, as shown in Exhibit 1.3.
7. The Technical Proposals referenced in Exhibits 1.1, 1.2 & 1.3 included detailed descriptions of each company’s proposal for the operation of Nashua’s water system as well as extensive documentation of their technical and managerial qualifications.
8. As shown in Exhibit 1.4, on September 16, 2005, Nashua provided updated copies to Pennichuck, Staff and the Office of Consumer Advocate of the revised Technical Proposals for Veolia Water (Exhibit 1.5) and R.W. Beck (Exhibit 1.6) that were recommended by Nashua’s Special Water Committee following its review of the Proposals on September 6th and 7th. These revised Technical Proposals reflected changes made to the July 14, 2005 documents previously made available on July 29, 2005. In addition to the revised Technical Proposals provided with Exhibit 1.4, Nashua also included Veolia Water’s and R.W. Beck’s formal Price Proposals included in Exhibits 1.5 and 1.6 respectively.
9. As a result, I fundamentally disagree with Pennichuck’s argument on page four of its *Motion for Summary Judgment* that “Nashua’s direct case on

file with the Commission is completely devoid of any information regarding the entity, experience, capabilities, cost, integrity, local presence or other qualifications of the unknown third parties”. To the contrary, Nashua has provided extensive information concerning the technical and managerial qualifications of its proposed contract operators, and has made that information available to all of the parties in this proceeding.

III. REQUEST FOR STATEMENTS OF QUALIFICATION AND INTEREST

10. From the outset, the Nashua Board of Alderman committed to operate the assets acquired in this proceeding through contracts negotiated using competitive forces to obtain the highest quality of service at the best price. In order to ensure that Nashua provide the highest level of service from its contract operator, Nashua elected to seek proposals from qualified firms to (a) operate and maintain the water system acquired in this proceeding; and (b) to provide management oversight and engineering services for the supervision of the operations and maintenance contractor selected by the Nashua Board of Aldermen. This decision was in lieu of establishing a group of City employees to perform the same function.
11. Nashua officially began the process for soliciting bids to operate on May 24, 2004 with the issuance of *Request For Qualifications For Operation And Maintenance Of A Water System In South Central New Hampshire*. This has been referred to as Nashua’s RFQ, and is identified as RFQ1305-062404 on Nashua’s web site and in the files of the Purchasing Department.

12. The RFQ and other documents referenced, but not attached, to this affidavit, are currently available on the City's web site, under Bid Opportunities at www.ci.nashua.nh.us/purchasing/currentbids.asp.
13. The RFQ provided background information on Nashua's Petition before the New Hampshire Public Utilities Commission, and sought "expressions of interest and qualifications for the operation and maintenance" of the assets to be acquired. The RFQ indicated Nashua's intention to develop "a formal request for proposals for operation and maintenance to be issued within the next six to nine months".
14. In tandem with the RFQ, Nashua's consultant, the firm of George E. Sansoucy, PE, LLC, independently contacted potential respondents to the RFQ in the water industry to provide further information and encourage a broad range of potential bidders to submit responses to the RFQ.
15. On July 29, 2004, Nashua received 11 responses to the RFQ.
16. The 11 respondents included Pennichuck Water Service Co. While Pennichuck ultimately decided not to submit a proposal in response to Nashua's formal requests for proposals, Nashua allowed and indeed encouraged Pennichuck to participate in the competitive process. On one hand, Pennichuck's failure to submit a bid may be due to strategic considerations. On the other, it seems likely that Pennichuck was unwilling to compete against larger, more qualified firms that would likely propose to operate its system at a lower cost. Regardless of the reasons, Nashua fully allowed Pennichuck to participate in the process.

17. The 11 responses to the RFQ were reviewed by Nashua's Special Water Committee, and Nashua's consultant George E. Sansoucy, P.E., LLC. Nashua sought input from the respondents and other interested parties such as the MVRWD concerning Nashua's proposal. During this period, Nashua's consultant George E. Sansoucy, P.E., LLC, prepared a draft water ordinance which provided additional guidelines on Nashua's proposal for operation of the system.
18. Nashua did not immediately issue a formal RFP for the operation of its water system for several reasons. Nashua believed that the proceedings before the Commission would help refine the nature and scope of the formal RFPs. In particular, on April 6, 2004 Pennichuck filed a motion to dismiss Nashua's Petition with respect to property owned by Pennichuck East and Pittsfield Aqueduct. In addition, on February 4, 2004, Pennichuck brought the first of several legal actions seeking damages and/or to enjoin consideration of Nashua's Petition.
19. However, on September 1, 2004, Pennichuck's case seeking to enjoin these proceedings was dismissed by the Hillsborough County Superior Court. On September 14, 2004, the United States District Court for the District of New Hampshire dismissed or remanded Pennichuck's claims for damages to the Superior Court, which were ultimately dismissed on December 1, 2004. Finally, on January 21, 2005, the Commission issued Order No. 24,425 which dismissed Nashua's Petition with respect to property owned by Pennichuck East and Pittsfield Aqueduct.

IV. OPERATION AND MAINTENANCE PROPOSALS

20. On March 25, 2005, Nashua issued a formal *Request For Proposals For Operation And Maintenance Of A Water Utility*. This has been referred to as the O&M RFP, and is identified as RFP1305-061505 on Nashua's web site and in the files of the Purchasing Department.
21. Nashua's O&M RFP provided further information regarding proceedings before the New Hampshire Public Utilities Commission, Nashua's intention to transfer ownership of the system to the MVRWD, and described in detail the information to be submitted with proposals. The O&M RFP also included the Draft Water Ordinance prepared by George E. Sansoucy, PE, LLC subsequent to the RFQ that had been reviewed by the City and the District.
22. The O&M RFP required that responses include proposals to address all aspects of the operation of the water system, including a specific list of plans related to technical and managerial aspects of the operation of the system identified by Nashua, including preparation of a Vulnerability Assessment & Emergency Response Plan, Inventories, a Conservation Plan, a Condition Study, Maintenance Plan, and Conversion Plan for automated meter reading. Nashua further required that the proposals address issues such as backflow prevention, the performance of planned and unplanned maintenance activities, billing and customer relations, engineering, record keeping, security, responsibility for capital improvements, staffing, and other issues.

23. Following the issuance of the O&M RFP, Nashua held a series of informational meetings with prospective respondents to the RFP in order to ensure that proposals were consistent with additional information concerning the system, the regulatory process, best interests of customers of the system and other matters. On April 15, 2005, a pre-bid meeting was held to answer questions regarding the detailed O&M RFP. On April 20, 2005, Nashua provided an Appendix B to its O&M RFP entitled *Answers to Questions about Operation & Maintenance RFP* in response to questions raised by bidders. The Appendix addressed concerns and questions raised by bidders, including the status of proceedings before the Commission, the scope and nature of the assets to be acquired by Nashua, the role of the MVRWD, and other matters.
24. On May 12, 2005 an additional Appendix entitled *Answers to Questions about Operations & Maintenance RFP1305-061505* was prepared and provided to bidders addressing issues including billing procedures, customer service locations, customer payment options, collection, backflow prevention, meter reading capabilities, and other matters.
25. On May 17, 2005, based on requests from bidders, Nashua revised the schedule for submission of proposals in response to the O&M RFP in response to requests from bidders.
26. On July 14, 2005, Nashua received responses to its O&M RFP from two companies, Veolia Water, and Earth Tech. By request, the responses to the O&M RFP were divided into Technical Proposals and Price Proposals.

The Technical Proposals were opened for review by Nashua's Special Water Committee and George E. Sansoucy, PE, LLC, and made available for review by third-parties, including the MVRWD, Pennichuck (Exhibits 1.1 & 1.2), and the Commission's staff (Exhibit 1.1 & 1.3).

27. The Price Proposals were received but not reviewed pending evaluation of the Technical Proposals by George E. Sansoucy, P.E., LLC, and Nashua's Special Water Committee. Based on discussions with Nashua's consultants, revisions to the proposals were submitted on or about August 31, 2005.
28. The Special Water Committee, with participation from members of the Board of Aldermen and the MVRWD held public hearings to review the proposal of Veolia Water on September 6, 2005, and the proposal of Earth Tech on September 7, 2005.
29. At the conclusion of the interviews and with the receipt of the consultant's recommendation, the Special Water Committee voted to recommend that the formal negotiations be undertaken to enter into a contract with Veolia Water based on its proposal. Those negotiations have already commenced. It is my expectation that these negotiations will be complete prior to January 12, 2006, at which time Nashua will offer additional direct testimony concerning its operations and maintenance proposal as part of its valuations and public interest testimony.
30. Veolia Water's proposal is attached to this affidavit as Exhibit 1.5. Veolia Water's proposal demonstrates that it is the largest contract operator of

water and wastewater utility systems in the United States and one of the largest in the world. Nashua's consultants have contacted several of the communities in which Veolia operates who have highly recommended the company's operations and have entered into successive contract renewals based on the success of Veolia Water's operations.

31. Volumes I & III of Veolia Water's Technical Proposal (Exhibit 1.5) presents a comprehensive description of its proposal to operate Nashua's water system including its technical and managerial qualifications. For example, Volume I, Section I includes a detailed description of the company's plan for operation of the system. Other sections describe the company's proposal for project management and staffing (Section III), its transition plan (Section IV) and examples of its experience successfully operating similar systems throughout the United States (Section V). Volume III of the proposal includes several appendixes which provide resumes and experience of its management team (Appendix A) and other information.
32. In addition to the detailed technical and managerial qualifications set forth in Volumes I and III of Veolia Water's proposals, it is my expectation that, upon successful contract negotiations, the company's price proposal, set forth in Volume II will result in significant rate reductions to customers which will further benefit the public interest.
33. For example, on September 7, 2005, Nashua's consultant George E. Sansoucy, P.E., presented a preliminary estimate of cost savings that he

expects Nashua will realize under Veolia Water's proposal, which I have included as Exhibit 1.7 to this affidavit. On page 40 of Exhibit 1.7, Nashua's consultants anticipate that operation of the water system under Veolia Water's proposal will result in annual savings of \$2 million relative to Pennichuck. These savings will further benefit the consumer and the public interest.

IV. OVERSIGHT PROPOSALS

34. On March 28, 2005, in tandem with the O&M RFP, Nashua issued a *Request For Proposals For Water Utility Oversight Services*. This has been referred to as the Oversight RFP and is identified as RFP1306-061505 on Nashua's web site and in the files of the Purchasing Department.
35. The Oversight RFP included detailed specifications for the submission of proposals to oversee the operation and maintenance contractor to be selected by Nashua. These specifications included detailed reviews of plans prepared by the operations and maintenance contractor, including the contractor's maintenance plan, inventory, staffing, condition plan, billing procedures, hydraulic models, long range planning, and other matters.
36. In addition, the Oversight RFP requires the proposals to perform a number of recurring tasks including representing Nashua during technical or other negotiations with the O&M Contractor, audit planned maintenance activities performed by the O&M Contractor, and review and evaluate the

operation and maintenance of the system including requests for unplanned maintenance, operational data, security plans, reports submitted to regulatory bodies such as the N.H. Department of Environmental Services and U.S. Environmental Protection Agency, capital improvement plans, and nearly all aspects of the operation and maintenance of the system.

37. As with the O&M RFP process, Nashua provided a series of meetings and informational updates in order to ensure that proposal received were consistent with the best interests of customers of the system.
38. On July 14, 2005, Nashua received 5 responses to the Oversight RFP. At the direction of the Special Water Committee, George E. Sansoucy, P.E., LLC, reviewed the written materials submitted and conducted informal discussions with the respondents. Based on these discussions, George E. Sansoucy, PE, LLC selected R.W. Beck and Camp Dresser & McKee (CDM) to make formal presentations to Nashua's Special Water Committee.
39. The Special Water Committee interviewed R.W. Beck on September 6, 2005, and with CDM on September 7, 2005, following the presentations of the O&M contractors.
40. At the conclusion of the interviews and with the receipt of the consultant's recommendation, the Special Water Committee voted to recommend that the formal negotiations be undertaken to enter into a contract with R.W. Beck based on its proposal. Those negotiations have already commenced. It is my expectation that these negotiations will be complete prior to

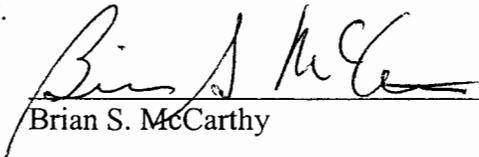
January 12, 2006, at which time Nashua will offer direct testimony concerning its oversight proposal as part of its valuation and public interest testimony.

41. R.W. Beck's Oversight proposal is attached to this affidavit as Exhibit 1.6. R.W. Beck is an internationally known firm that limits its practice to representing owners of projects with project designers, builders and operators and with studies related to financing such projects. R.W. Beck is particularly known for its independence from the design, build and operation side of projects. R.W. Beck's staff includes individuals with almost 20 years of experience overseeing water utility operations, including a major successful relationship with Veolia Water overseeing the operation of a complex water treatment facility serving Tampa Bay, FL.
42. R.W. Beck's technical and managerial qualifications are set forth throughout its proposal. Section 1 describes the company's experience throughout the United States overseeing the operation municipally owned water systems. Section 2 and Appendix B of its proposal document the qualifications and experience of its staff. Section 3 describes the technical approach the company will use to ensure successful operation of Nashua's water system.

VI. CONCLUSIONS REGARDING NASHUA'S TECHNICAL AND MANAGERIAL QUALIFICATIONS

43. Public-private partnerships for the operation and maintenance of water utilities are an established practice in the United States and New Hampshire. Even Pennichuck recognizes that such partnerships can result in significant savings from the traditional utility model employed by it. As recently as August 19, 2005, Stephen Densberger, Executive Vice President of Pennichuck Corp., the parent of PWW, referred to a similar arrangement that Pennichuck Water Service Corp. has with the Town of Hudson as "the perfect example of a successful public-private partnership" that will mean annual savings of 10 to 40 percent for the Town. See Exhibit 1.8. Nashua's decision to utilize a contract operator, rather than City employees, will allow the City of Nashua to use market forces to obtain the highest level of service from the best qualified operators available at the lowest cost to consumers. The benefits of this approach will result in superior service and significant rate reductions.

FURTHER, the Affiant sayeth not.



Brian S. McCarthy

THE STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH, SS.

Subscribed and sworn to before me this 5TH day of OCTOBER,
2005, by Brian S. McCarthy.



Justice of the Peace/~~Notary Public~~
My Commission expires: 8-31-10

Seal: