

THE STATE OF NEW HAMPSHIRE



CONSUMER ADVOCATE  
F. ANNE ROSS

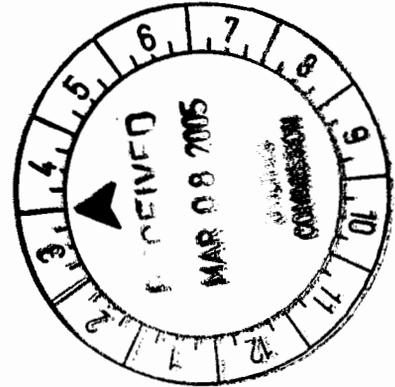
ASSISTANT CONSUMER ADVOCATE  
KENNETH E. TRAUM

OFFICE OF THE CONSUMER ADVOCATE  
21 S. FRUIT ST., SUITE 18  
CONCORD, NEW HAMPSHIRE 03301-2441

TEL: (603) 271-1172  
FAX: (603) 271-1177  
TDD ACCESS: RELAY NH 1-800-735-2964

March 8, 2005

Debra Howland  
Executive Director & Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, New Hampshire 03301-7319



**RE: DW 04-048 Pennichuck Water Works, Inc.**

Dear Ms. Howland:

Enclosed for filing with the Commission, please find an original and eight copies of The Office of Consumer Advocate's Memorandum of Law Concerning Bifurcation.

Pursuant to the Puc rules copies of the within objection have been served on all parties in this docket by first class mail as well as electronically.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "F. Anne Ross".

F. Anne Ross  
Consumer Advocate



THE STATE OF NEW HAMPSHIRE  
Before the  
PUBLIC UTILITIES COMMISSION

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

DW 04-048

**MEMORANDUM OF LAW CONCERNING BIFURCATION**  
**BY OFFICE OF CONSUMER ADVOCATE**

The Office of Consumer Advocate (“OCA”) files this Memorandum of Law in opposition to bifurcating the public interest inquiry from the valuation inquiry in this eminent domain proceeding. The OCA believes that it is necessary to consider rate impacts upon water customers, both of those customers to be served by the City of Nashua as well as those customers who will continue to be served by Pennichuck Water Works, Inc., in order to make a “public interest” determination under RSA 38:9, I. It is necessary to know the value of the assets to be acquired by Nashua in order to determine the rate impact of the taking. As a result, it is not possible to separate the valuation from the public interest determination in this case. As the Commission noted when it refused to bifurcate these two issues in a similar case involving a water company in the Town of Hudson:

“While we understand the basis for the request to separate the issues for adjudication, we believe that such an approach would ultimately be unworkable. The public good analysis will involve details of the proposed taking, including the engineering necessary to separate the system, expense and revenue changes and the rate impact due to loss of Hudson customers as well as reduction in costs associated with no longer providing service to Hudson, and the rate impact associated with a transfer of the property. We do not believe the public interest can be evaluated without all other issues, including valuation, being fully developed on the record. The motion to bifurcate, therefore, is denied.” Town of Hudson v. Consumers New Hampshire Water Company, 81 N.H. P.U.C. 673 (1996)

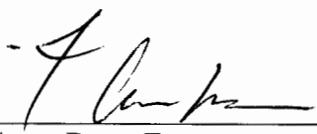
Although the Commission did allow bifurcation in the Public Service Company of New Hampshire case involving the City of Berlin’s petition to take the J. Brodie Smith Hydro-Electric Station pursuant to RSA 378:9; that case did not involve utility plant to be used to supply retail customers. Instead, the PSNH case involved the City of Berlin’s attempted purchase of a wholesale generating asset in a deregulated electric market. Ratepayers in Berlin would not have been forced to purchase the output of the purchased hydro plant in that case, whereas customers will be forced to purchase the output of the assets to be acquired by Nashua. For this reason OCA believes that the Town of Hudson case suggests that bifurcation is not appropriate in this case. The PSNH case is distinguished on its facts.

WHEREFORE, OCA requests that the Commission consider both public interest and valuation together in this proceeding and deny any requests for bifurcation.

Respectfully submitted,

Office of Consumer Advocate

Dated: March 8, 2005

By   
F. Anne Ross, Esq  
Consumer Advocate  
21 South Fruit Street

Suite 18  
Concord, NH 03301  
(603) 271-1172

CERTIFICATE OF SERVICE

The undersigned certifies that the attached Memo of Law has been forwarded by first class mail this 5<sup>th</sup> day of March 2005, to all parties on the service list.

  
\_\_\_\_\_  
F. Anne Ross, Esq.