

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

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

DW 04-048

**MOTION IN LIMINE TO EXCLUDE LIMITED UPDATE  
TESTIMONY OF DONALD WARE AND JOHN GUASTELLA**

Nashua files this *Motion in Limine* to exclude the November 14, 2006 Limited Update Testimony of Donald Ware and John Guastella. In support of this Motion, Nashua says as follows:

**I. INTRODUCTION**

1. By *Joint Motion to Eliminate Filing of Capstone Testimony and to Make Related Adjustments to Procedural Schedule* dated September 11, 2006, the parties sought to eliminate the need to file capstone testimony but recognized the need for update testimony for their experts on the issues of valuation and rates to reflect changes since the filing of their January 12, 2006 Testimony. The parties, therefore, stated in the Motion:

To address the need for updates the parties propose that they submit, on or before November 14, 2006, limited update testimony related to: (a) preexisting expert opinions of value and rates (including financial information relied upon to generate those opinions); and (b) post-deposition analysis of opposing experts' opinions of value and rates. Limited update testimony may only be submitted by witnesses who have already supplied testimony in this case.

2. On September 14, 2006 a Secretarial Letter was issued approving the changes to the Procedural Schedule sought in the Joint Motion.

3. On November 14, 2006, pursuant to the Joint Motion and Secretarial Letter, Nashua filed the Limited Update Testimony of its experts, George E. Sansoucy and Glenn C. Walker. Likewise, PWW filed Limited Update Testimony from its experts

Robert Reilly and John Guastella. PWW also filed the Testimony of Donald Ware, the president of PWW.

**II. PWW EXCEEDED THE SCOPE OF THE UPDATE TESTIMONY CONTEMPLATED BY THE JOINT MOTIN AND SECRETARIAL LETTER AND THE TESTIMONY OF DONALD WARE AND JOHN GUASTELLA SHOULD BE EXCLUDED**

4. The Limited Update Testimony of Donald Ware was filed for the stated purpose of “detailing corrections to George Sansoucy’s estimates of the cost for Nashua to operate the utility under its proposed arrangement with Veolia and four other contractors.” Page 2, Line 10-12. Noting that he had outlined some of what he believed were errors in Sansoucy’s analysis in his May 22, 2006 Rebuttal Testimony. (Page 3, Lines 2-3) Mr. Ware testified that since that time he had made a “more through analysis” of the contracts and “refined his analysis”. Page 2, Lines 3-5.

5. The obvious purpose of Mr. Ware’s testimony was to further rebut Mr. Sansoucy’s January 12, 2006 testimony with additional “errors” he had developed since the filing of his May 22, 2006 Rebutted Testimony. All of his “more thorough analysis” could have been performed prior to and been made a part of his May 22, 2006 Rebuttal Testimony. It did not rely on any information that was not available on May 22, 2006 or that became apparent as a result of a post-deposition analysis of Mr. Sansoucy's deposition.

6. In short, Mr. Ware’s November 14, 2006 testimony was not “Limited Update Testimony”. Rather it was additional “Rebuttal Testimony” that he had missed on May 22, 2006. Under any reading of the Procedural Schedule, additional Rebuttal Testimony was not contemplated or permitted. It should be excluded.

7. The Limited Update Testimony of John Guastella purports to make new adjustments and corrections to the Sansoucy revenue and rate increase analysis. The adjustments and corrections, however, are not based on information that was not available when he filed his May 22, 2006 Rebuttal Testimony or developed as a result of post-deposition analysis of Sansoucy's revenue requirements as required by the Joint Motion and Secretarial Letter. Rather the adjustments made by Mr. Guastella are based solely on "the differences in operating expenses as provided to me by Mr. Ware of PWW." Page 2, Lines 12-14. Mr. Guastella's entire November 14, 2006 Limited Update Testimony and the attached exhibits are built on and totally rely on the Ware testimony, which is nothing more than an attempt to bolster his prior Rebuttal Testimony with information he missed or overlooked by calling it Limited Update Testimony.

8. Because Mr. Guastella's Update Testimony relies on the Ware Testimony, it is built on a house of cards and like the Ware Testimony must be excluded. Moreover, because it is not Limited Update Testimony as set forth in September 11, 2006 Joint Motion approved by the Commission, it should be excluded from this proceeding.

WHEREFORE, Nashua respectfully requests that the Commission:

- A. Grant this *Motion in Limine*;
- B. Exclude the November 14, 2006 testimony and exhibits of Donald Ware;
- C. Exclude the November 14, 2006 testimony and exhibits of John Guastella; and
- D. Grant such other and further relief as justice may require.

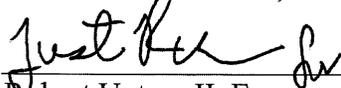
Respectfully submitted,

**CITY OF NASHUA**

By Its Attorneys

**UPTON & HATFIELD, LLP**

Date: December 8, 2006

By:   
Robert Upton, II, Esq.  
23 Seavey St., P.O. Box 2242  
North Conway, NH 03860  
(603) 356-3332

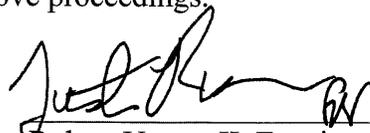
Justin C. Richardson, Esq.  
159 Middle Street  
Portsmouth, NH 03801  
(603) 436-7046

David R. Connell, Esq.  
Corporation Counsel  
229 Main Street  
Nashua, NH 03061-2019

**CERTIFICATION**

I hereby certify that a copy of the foregoing was this day forwarded to all persons on the Commission's official service list in the above proceedings.

Date: December 8, 2006

  
Robert Upton, II, Esquire