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Please respond to the Portsmouth office

November 27, 2006

Via Electronic and U.S. Mail

Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: City of Nashua: *Petition for Valuation Pursuant to RSA 38:9*
Docket No. DW 04-048

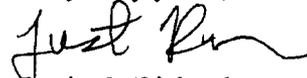
Dear Ms. Howland:

Enclosed please find an original and seven copies of the City of Nashua's *Compliance Filing and Motion for Confidential Treatment Pursuant to Commission Order No. 24,699* for filing in this proceeding, as well as an electronic copy on compact disc.

Exhibit D to this filing has been designated as confidential pursuant to Nashua's motion for confidential treatment, consistent with Order No. 24,699 and Puc 203.08, and is contained in a separate envelope marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER". Nashua requests that any party wishing to obtain a copy of Exhibit D return a duly executed *Agreement to Comply with Protective Order* submitted with the filing.

A copy of the foregoing, with the exception of Exhibit D, is being provided to all parties on the service list by electronic mail, and to Ms. Claire McHugh by first class mail. If you have any questions concerning this filing, please contact me.

Very truly yours,



Justin C. Richardson

jrichardson@upton-hatfield.com

JCR/sem

Enclosures

cc: Official Service List DW-04-048



STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

**CITY OF NASHUA'S COMPLIANCE FILING AND
MOTION FOR CONFIDENTIAL TREATMENT
PURSUANT TO COMMISSION ORDER No. 24,699**

NOW COMES the City of Nashua ("Nashua") and moves for a Confidential Treatment pursuant to Commission Rule 203.08 and the Commission's Order No. 24,699, and in support hereof, states as follows:

I. SUMMARY.

1. Nashua moves for a protective order pursuant to the Commission's procedural rules, Puc 203.08 concerning certain documents that were the subject of Order No. 24,699. Nashua believes that, as set forth herein, the Commission's Order No. 24,699 erred in several important respects.¹ However, the Commission expressly limited its ruling to whether Nashua was entitled to a protective order *prior to filing of the documents*, and stated that, upon filing, Nashua could renew its request for confidential treatment pursuant to "Puc 203.08(c) or (d), which protects documents actually produced in discovery from public disclosure on a provisional basis in certain circumstances."²

¹ For example, in denying Nashua's *Motion for Protective Order*, Order No. 24,699 failed to recognize both the substantial privacy interest for which Nashua sought protective treatment against the limited public interest in disclosure of documents that shed no light on the Commission's activities within the meaning of RSA 91-A. Furthermore, in ruling on Pennichuck's *Motion to Compel*, Order No. 24,699 stated that Nashua overlooked both the settlement agreement resolving Pennichuck's request for documents and Nashua's objections to those requests.

² *Order No. 24,699*, Page 7.

2. In light of the foregoing, Nashua submits the documents required by Order No. 24,699 and requests confidential treatment pursuant to the terms of RSA 91-A:5 and Puc 203.08.

3. Nashua further explains its position that the Commission's Order No. 24,699 contains significant legal and factual errors that favor and indeed require a protective order with respect to the documents filed today.

II. PROCEDURAL HISTORY.

4. On November 8, 2006, the Commission issued Order No. 24,699 concerning Nashua's June 1, 2006 *Motion for Protective Order* that was filed pursuant to the terms of a settlement proposal resolving a disputed *Motion to Compel* previously filed by Pennichuck Water Works, Inc. (Pennichuck). Order No. 24,699 further ruled on a subsequent *Motion to Compel* filed by Pennichuck on July 21, 2006.

5. Pennichuck's first and second *Motion to Compel* sought information related to a investigation involving Veolia Water Indianapolis, LLC, an affiliate of Nashua's proposed operator of the water system to be acquired in this proceeding, Veolia Water North America – Northeast LLC. No charges were ever filed as a result of the Indianapolis investigation, and several days later the Indiana Department of Environmental Management, an independent state regulatory agency, reported that its own investigation did not “indicate a violation of state or federal drinking water quality standards.”³

6. From the outset Pennichuck has mischaracterized the Indianapolis matter as involving misdeeds and/or malfeasance. For example, on January 17, 2006, Pennichuck's first data request related to this matter asked for “all information in

³ See Exhibit A, attached.

the possession or control of Nashua or its agents or consultants or of Veolia with regard to problems or complaints or claims of malfeasance encountered in operating the Indianapolis, Indiana water system.”⁴

7. Nashua objected on two grounds. First, because the request is “vague and fails to identify the information sought with specificity as required by Puc 204.04 (b)”⁵ and, as noted above, because “no problems or malfeasance took place with respect to Veolia’s operation.”⁶
8. On January 27, 2006, despite the fact that Pennichuck’s data request failed to “identify with specificity the information sought” as required by the Commission’s regulations,⁷ Nashua provided a response confirming that Veolia Water Indianapolis, LLC had “received a subpoena from the United States Attorney’s Office” but that “[s]ubsequently, the Indiana Department of Environmental Management released test results confirming that Veolia Water Indianapolis, LLC has not violated any state or federal drinking water quality standards.”⁸
9. Rather than revise its request to identify with specificity relevant documents or information as required by Puc 203.09 (c), on March 16, 2006 Pennichuck filed a *Motion to Compel* production of “all information in the possession or control of Nashua or its agents or consultants” related to this matter.⁹ Pennichuck’s Motion ignored the fact that the IDEM had publicly announced its finding that Veolia

⁴ See Exhibit A.

⁵ Exhibit A. On June 8, 2006 this rule was readopted with amendments, as set forth in Puc 203.09 (c).

⁶ Exhibit A.

⁷ Puc 203.09 (c).

⁸ Exhibit A.

⁹ See March 16, 2006, *Motion to Compel the City of Nashua to Respond to Pennichuck Water Works, Inc.’s Data and Document Requests*.

Water Indianapolis, LLC had not violated any state or Federal drinking water standards and made wildly inaccurate arguments that the Indianapolis water system was the “only Veolia contract to operate an entire water system (i.e. supply, treatment and distribution) of any size in the United States” and that Nashua had “delayed responding by asserting that objection”.¹⁰

10. On March 30, 2006, Nashua objected to Pennichuck’s *Motion to Compel*, explaining that Pennichuck’s arguments concerning Indianapolis were materially incorrect. For example, Nashua had previously identified in response to a Pennichuck data request 32 water systems for which Veolia Water North America operated production, treatment and distribution facilities.¹¹ Nashua had further responded to Pennichuck’s Data Request 3-6 only ten days after it was submitted in accordance with the procedural schedule, and had not delayed responding in any sense.¹² Pennichuck’s *Motion to Compel* was simply an attempt to use misinformation and the fact that a subpoena had been issued to argue that, in spite of evidence to the contrary, some “malfeasance” must have taken place.
11. On or about April 28, 2006, the Commission’s Hearings Examiner, Donald Kreis convened a conference to address, *inter alia*, Pennichuck’s *Motion to Compel* a response to data request 3-6.
12. During this conference, a settlement agreement was proposed wherein Nashua would provide the Indianapolis subpoena “*subject to a protective order*”¹³ and would respond to limited requests for relevant information, in contrast to Data

¹⁰ Page 4, Para. 7.

¹¹ See Nashua’s March 30, 2006 Objection, Pages 8-9.

¹² See Nashua’s March 30, 2006 Objection, Page 7, Para. 20.

¹³ See Exhibit B, Letter of April 28/May 5, 2006 (emphasis in original).

Request 3-6 that sought as noted above “all information in the possession or control of Nashua or its agents or consultants or of Veolia”.

13. The proposed settlement was memorialized in a letter proposal prepared by Nashua setting forth the terms of agreement and Pennichuck’s response thereto contained in Exhibit B.
14. The key point shown by Exhibit B is that, in lieu of providing “all information” in response to a data request that lacked the necessary specificity, Nashua agreed to limit the scope to “non-confidential”¹⁴ information “relevant”¹⁵ to this proceeding. Furthermore, because Veolia Water Indianapolis, LLC had never publicly disclosed the subpoena it received nor the documents requested or provided to investigators, the settlement terms expressly contemplated that the subpoena and any related documents that the company had provided in confidence to investigators would be submitted “*subject to a protective order*” to protect the company’s substantial privacy interest in preventing an entirely unwarranted impression that it had violated state or Federal water quality standards where no “violation of state or federal drinking water quality standards” had occurred.¹⁶
15. Under the circumstance, the documents in Exhibit B represent a binding settlement agreement with respect to this matter. Specifically, in lieu of providing “all information” related to the Indianapolis investigation, Pennichuck agreed that

¹⁴ Nashua understands the term “non-confidential” in this context refers to documents that are not subject to certain legal restrictions on disclosure such as vulnerability assessments protected from disclosure by law, or documents subject to other legal privileges such as attorney-client privileges.

¹⁵ Use of the term “relevant” (as opposed to “likely to lead to the discovery of relevant”) information reflects the concern that Pennichuck’s data requests should relate to documents relevant in this proceeding and Pennichuck could not simply request “all information” concerning a water system serving all of Indianapolis.

¹⁶ Exhibit A.

only “relevant”¹⁷ information would be provided and Nashua would not be required to produce the entire investigation of a water system serving over 1.1 million residents in greater Indianapolis.

16. In reliance on these terms, Nashua negotiated a protective order using terms that were essentially identical to the two protective orders already approved in this proceeding, and provided Pennichuck’s counsel with the subpoena on or about May 31, 2006.
17. Nashua has included with this Motion, in a separate envelope and marked “CONFIDENTIAL AND SUBJECT TO A PROTECTIVE ORDER” pursuant to Puc 203.08, a copy of the subpoena as Exhibit D. As set forth in Section III, under the circumstances the subpoena meets the criteria for confidential treatment under RSA 91-A and Puc 203.08.
18. However, on June 1, 2006, one day after receiving the subpoena, Pennichuck submitted its data request 5-89 seeking the following:
 - 5-89 Please produce all documents and information provided in response to items 1 through 4 of Grand Jury Subpoena 05-64-SDD-240-08 issued from the United States District Court for the Southern District of Indiana dated September 30, 2005.
19. Rather than request only *relevant* documents as agreed to, at the first opportunity Pennichuck violated the settlement agreement and effectively renewed its prior request for “all documents and information” related to the entire investigation.
20. While at first glance Data Request 5-89 purports to request only “items 1 through 4”, Pennichuck’s request for these four items included all of the materials

¹⁷ Exhibit B.

originally sought by the investigators in direct violation of Pennichuck's agreement to request only information "relevant" to this proceeding.

21. On July 21, 2006, Pennichuck filed a second *Motion to Compel* seeking a response to its data request 5-89 for "all documents and information" related to the Indianapolis investigation.
22. Ironically, Pennichuck's July 21, 2006 Motion states, but fails to appreciate, the significance of the agreement reached resolving this matter. Pennichuck states on Pages 5-6 of its *Motion to Compel* that:

Nashua agreed by its counsel's letter [...] to produce "relevant non-confidential documents (provided in response to the subpoenas). .. following disclosure (to Pennichuck) of the subpoenas." Veolia has now refused to produce responsive documents *based upon burdensomeness and unlikelihood of leading to admissible evidence.* (emphasis added).

23. The distinction between documents *relevant* to this proceeding as opposed to those with some "likelihood of leading to admissible evidence" was an essential component of the settlement. Production of all documents requested in Exhibit D for a system serving over 1.1 million residents in the greater Indianapolis area is a fools errand that would require Nashua to spend enormous resources tracking down information with no conceivable relevance to this proceeding.
24. As a result, on July 31, 2006, Nashua filed its *Objection to Motion to Compel*. Nashua's objection stated as follows:

Pennichuck's Motion to Compel a response to Data Request No. 5-89 violates the agreement reached resolving Pennichuck's prior Motion to Compel. Pennichuck's prior Motion sought all documents related to what it alleges were problems or malfeasance in Indianapolis. An agreement was reached that Nashua would respond to requests for relevant information subject to a protective order. *Pennichuck's Data Request No. 5-89, however, simply*

ignores the fact that the parties agreed to limit this data request to focus on limited documents and [not] “all documents and information”.¹⁸

25. On November 7, 2006, the Commission issued Order No. 24,699 that is the subject of this filing. Order No. 24,699 correctly recites the appropriate standard in order to obtain protective treatment. The Order states that Nashua must:
 - (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public.
26. However, in the very next sentence without discussion or analysis of the factors that the Commission stated in a conclusory manner that “Nashua had not made the requisite showing”.¹⁹
27. Curiously, Order No. 24,699 contains the statement that: “[t]he inference we draw from this somewhat complex series of filings is that Nashua is refusing to produce any additional documents responsive to PWW’s request until we issue a protective order.”²⁰ As a result, it appears that the Commission’s Order declined to rule on Nashua’s objections raised in Exhibit A, Nashua’s March 30 and July 31, 2006 *Objections to Pennichuck’s Motion to Compel* and the limitations on discovery expressly agreed to in Exhibit B.
28. Nashua speculates that without the benefit of the subpoena included with Exhibit D, the Commission failed to appreciate the scope of Pennichuck’s request for the

¹⁸ Objection, Page 8, Para 21 (emphasis added). Due to a typographical error, the word “not” contained in brackets above was omitted from Nashua’s objection. The meaning intended by Nashua’s objection is clear from the context, however.

¹⁹ Order No. 24,699, Page 6.

²⁰ Order No. 24,699, Page 5.

responses to the subpoena “items 1 through 4”. However, Exhibit D makes clear that Nashua had not refused to provide information until a protective order was issued, but rather objected due to Pennichuck’s failure to submit reasonable requests consistent with the settlement agreement.

29. In filing Exhibit D in response to the Commission’s Order, Nashua requests that the Commission find that Nashua has fully complied with its Order and that further discovery is unwarranted in light of Pennichuck’s refusal to limit the scope of its data request to relevant information.

III. MOTION FOR PROTECTIVE ORDER

30. Nashua seeks a protective order providing for confidential treatment of information provided by Veolia Water Indianapolis, LLC related to the Indianapolis investigation. Nashua requests that the Commission impose the terms and conditions set forth in the proposed order (Exhibit C) subject to the continuing right of any person to challenge such confidentiality before the Commission, after notice and an opportunity to be heard.
31. RSA 91-A:5, IV expressly exempts from the public disclosure requirements of Chapter 91-A any records pertaining to “confidential, commercial or financial information.” The terms “commercial or financial” encompass information revealing financial condition. Information is considered commercial if it relates to commerce. *Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).
32. Order No. 24,699 on Page Six correctly recites the appropriate standard in order to obtain protective treatment. The Order states that Nashua must:

(1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public.

33. As set forth herein, the information contained in Exhibit D relates to the operation of Veolia Water Indianapolis, LLC's operations, a commercial operation within the meaning of RSA 91-A:5, IV. While Veolia Water has acknowledged that it received the subpoena, it has not disclosed the subpoena publicly because Veolia Water Indianapolis, LLC was found to be in compliance with state and federal drinking water standards and unwarranted disclosure of the subpoena could harm the company's competitive position on bids to operate other water systems throughout the United States and North America. See Nashua's June 1, 2006 *Motion for Protective Order*, Paras. 7-10; *Union Leader Corp. v. Nashua*, 141 N.H. 473, 477-478 (1996) ("[i]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity" and that "disclosing the identity of targets of law enforcement investigations can subject those identified to embarrassment and potentially more serious reputational harm")(citations and quotations omitted).
34. As the Commission acknowledged in Order No. 24,699, Veolia Water Indianapolis, LLC's strong privacy interest in not being associated with an unwarranted investigation "must be balanced against the public's interest in disclosure".²¹ In the case of *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106, ___ (2005), the New Hampshire Supreme Court

²¹ Page 6.

explained that in evaluating the public's interest in disclosure, the Commission must consider whether disclosure of the information would "inform the public about the conduct and activities of their government."

35. In this case, the subpoena contained in Exhibit D provides no meaningful information concerning the conduct or the actions of the Commission. Disclosure would therefore "reveal nothing about the PUC's own conduct"²² in this proceeding and would only provide a "derivative use" of obtaining information that Pennichuck hopes to use in defense of Nashua's petition. As the Supreme Court made abundantly clear in *Lamy*, such a use of information "carries little weight" in balancing the public's interest in disclosure and "does little more than raise the public interest in disclosure above nothing". *Lamy*, 152 N.H. ____ (citations and quotations omitted).
36. Even assuming for the sake of argument that Exhibit D would help Pennichuck's case, Nashua is still entitled to protective treatment because Nashua has agreed to make the information available as previously proposed in June 1, 2006 *Motion for Protective Order*. The question under RSA 91-A:5, IV, *Lamy*, and Puc 203.08 is not whether Exhibit D is relevant, but whether public disclosure of Exhibit D would disclose meaningful information concerning the Commission's activities. Because Exhibit D does not contain such information, there is no public interest in its disclosure under RSA 91-A:5, IV.
37. Weighing Veolia's substantial privacy interest for which Nashua sought protection against the limited public interest in disclosure, demonstrates that confidential treatment under Puc 203.08 is appropriate. Nashua has, therefore,

²² *Lamy*, 152 N.H. at ____.

proposed Exhibit C for the Commission's approval setting forth the terms of the previously approved protective orders in this proceeding.

WHEREFORE, Nashua respectfully requests that the Commission:

- A. Grant Nashua's *Motion for a Protective Order*;
- B. Issue a protective order consistent with Exhibit C, and the Commission's prior Orders No. 24,495 & 24,605 in this proceeding;
- C. Determine that Nashua has reasonably responded to Pennichuck's data request 5-89 in light of the circumstances set forth herein; and
- D. Grant such other relief as justice may require.

Respectfully submitted,
CITY OF NASHUA
By Its Attorneys
UPTON & HATFIELD, LLP

Date: November 27, 2006

By: 
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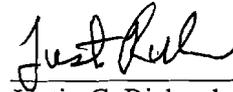
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David Connell, Esq.
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229 Main Street
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Reconsideration has been sent this day by first class mail and electronic mail to all persons on the Commission's official service list in this proceeding.

Date: November 27, 2006



Justin C. Richardson, Esq.

EXHIBIT A

City of Nashua

Petition for Valuation Pursuant to RSA 38:9

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 3 Round 1

Date Request Received: January 17, 2006

Date of Response: January 27, 2006

Request No. 3-6

Respondents: Philip G. Ashcroft,
David W. Ford, P.E., Robert R.
Burton, Paul F. Noran, P.E.

Req. 3-6 Please provide all information in the possession or control of Nashua or its agents or consultants or of Veolia with regard to problems or complaints or claims of malfeasance encountered in operating the Indianapolis, Indiana water system. . [Ten day response]

OBJECTION: Nashua objects to this data requests on the grounds that it is vague and fails to identify the information sought with specificity as required by Puc 204.04 (b). Furthermore, as set forth in the answer below, no problems or malfeasance took place with respect to Veolia's operation.

ANSWER: Without waiving the foregoing objection, Veolia Water Indianapolis, LLC received a subpoena from the United States Attorney's Office. Subsequently, the Indiana Department of Environmental Management released test results confirming that Veolia Water Indianapolis, LLC has not violated any state or federal drinking water quality standards. See IDEM and Veolia Water Indianapolis Press Releases (attached separately).

IDEM's findings were consistent with those of Veolia Water Indianapolis; VWI has continually met or exceeded state and federal drinking water standards since beginning operations in 2002. In fact, Indianapolis is the only major United States city to benefit from ISO certification for its drinking water.



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Contact: Barry Sneed
Phone: (317) 232-8512
Email: bsneed@idem.IN.gov **For Immediate Release:** Oct 6, 2005

Test results released for recent Indianapolis Water Company sampling

The Indiana Department of Environmental Management (IDEM) received test results on water samples taken on Friday, September 30, 2005, at 19 sampling sites served by Indianapolis Water Company. IDEM sent the samples to Underwriter Lab, an independent, certified lab in South Bend.

Laboratory results do not indicate a violation of state or federal drinking water quality standards. However, the tests results did show elevated levels of disinfection byproducts in some of the samples.

IDEM Commissioner Thomas W. Easterly will be issuing a letter to the Indianapolis Department of Public Works (IDPW) informing them of IDEM's findings. Easterly will ask the department to investigate whether the IDEM samples for disinfection byproducts levels are representative of normal system conditions.

Disinfection byproducts levels are often at their highest during late summer months due to factors such as increased temperatures. Most drinking water must be treated with disinfectants in order to inactivate or kill bacteria. Disinfection byproducts form when disinfectants such as chlorine, chlorine dioxide or ozone react with organic and inorganic substances present in source water.

State health officials say that the September 30 levels, according to federal guidance, are not likely to be a public health concern.

For more information on disinfection byproducts visit: www.idem.IN.gov/water/dwb/whpp/factsheets/disinfectbyprod.doc.

For additional information and results from the testing samples, visit www.idem.IN.gov/macsmcenter/index.html.

IDEM (www.idem.IN.gov) implements federal and state regulations regarding the environment. Through compliance assistance, incentive programs and educational outreach, the agency encourages and aids businesses and citizens in protecting and improving Indiana's environment. IDEM pursues enforcement action when a party disregards safety and endangers human health.

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Disclaimer



**Veolia Water Indianapolis Statement Regarding IDEM Findings
October 6, 2005**

Our fellow citizens should have every confidence that the water they drink from the tap is safe. Tonight we have yet another confirmation about the quality of the water we supply.

Earlier this evening, the Indiana Department of Environmental Management released test results confirming that Veolia Water Indianapolis has not violated any state or federal drinking water quality standards. We are pleased with these results. IDEM's findings are consistent with ours... Veolia Water has continually met or exceeded state and federal water quality standards since we began operating the Indianapolis Water system in 2002.

The U.S. Environmental Protection Agency Office of Water publishes routine monitoring requirements for disinfection byproducts. Those requirements establish a compliance standard that is a running annual average. Veolia Water has consistently met and been safely below the running annual average for disinfection byproducts.

Citizens should also know that Veolia Water takes comprehensive steps to treat and safeguard our community's water. The safety of our customers is our number one priority. We take this mission very seriously and believe that Indianapolis Water is one of the best managed systems in the country. In fact, Indianapolis is the only major U.S. city to benefit from ISO certification, thanks to the excellent work of our talented employees.

We will continue to be diligent in our water treatment and testing processes to ensure that Indianapolis Water customers are provided with safe, quality water for years to come.

Thank you.

Tim Hewitt
President & Operations Manager

EXHIBIT B

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**Upton
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Please respond to the Portsmouth office

November 7, 2006

Via Electronic and First Class Mail

Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: City of Nashua: *Petition for Valuation Pursuant to RSA 38:9*
Docket No. DW 04-048

Dear Ms. Howland:

I write in response to Hearings Examiner Donald Kreis' letter dated October 31, 2006 concerning Order No. 24,681 and Pennichuck's request for documents related to a grand jury subpoena in Indianapolis. As a general matter, Nashua agrees with the Hearings Examiners statement concerning the status. However, the letter was unclear to the extent that it could be understood that the remaining issue should be decided based on "the motion papers" rather than upon the agreement reached between Nashua and Pennichuck regarding this matter.

By way of background, on April 28, 2006, a technical conference was convened by the Hearings Examiner at which the parties agreed to resolve four of the five issues raised by Pennichuck's March 16, 2006 *Motion to Compel*. The four issues included Pennichuck's request for documents related to an investigation in Indianapolis that never resulted in any civil or criminal charges or any findings of misconduct by the Company. As part of the proposal to resolve Pennichuck's request for documents, on May 5, 2006, Nashua submitted a written proposal to resolve this issue based on the April 28, 2006 discussions to which Pennichuck agreed by letter dated May 9, 2006. See attached. As a result, the issue before the Commission is not based upon "the motion papers" but upon the terms of agreement reached to resolve this issue.

The Commission will note that as part of the resolution of this issue, Nashua agreed to make "relevant" documents available "upon reasonable request" subject to the terms of a protective order negotiated between Nashua and Pennichuck and submitted for Commission approval on June 1, 2006. Under the

EXHIBIT B

November 7, 2006

Page 2

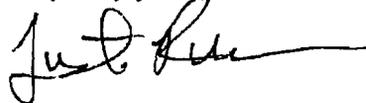
terms of the proposed protective order, any party may obtain a copy of the subpoena by duly executing the *Agreement to Comply with Protective Order* included as an exhibit to Nashua's motion. To date, only Pennichuck's counsel has executed the agreement and, accordingly, Nashua has not provided copies to any other party to this proceeding.

Nashua does not believe it is reasonably possible to rule on this issue without reviewing the subpoena that Nashua has made available under the terms of the proposed protective order. Pennichuck's data request 5-89 that sought "all documents and information provided in response to items 1 through 4 of Grand Jury Subpoena". This was not a reasonable request, however, because item 1 alone included all correspondence, notes, calendars, forms, reports, studies, monitoring plans, memoranda, electronic messages, analyses, and a wide variety of other documents related to the company's operations. In essence, rather than making a "reasonable request" for "relevant" documents, Pennichuck simply renewed its prior request for all documents related to the Indianapolis investigation.

Because the issue to be resolved relates directly to the language contained in the subpoena, I suggest that the Commission or its representative execute and return the *Agreement to Comply with Protective Order* included with Nashua's June 1, 2006 *Motion for Protective Order*. That will give the Commission the ability to review the broad scope of documents related to Pennichuck's data request 5-89 while preserving the Commission's ability to rule on Nashua's Motion for Protective Order. See Page 9, Para. K.

Nashua appreciates the Commission's attention to this matter. If you have any questions regarding this matter, please feel to contact me.

Very truly yours,



Justin C. Richardson

jrichardson@upton-hatfield.com

JCR/sem

Enclosures

cc: Official Service List DW-04-048 (electronic mail)
Claire McHugh (1st class mail).

Attachments

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**Upton
& Hatfield**^{LLP}
ATTORNEYS AT LAW

Please respond to the Portsmouth office

April 25, 2006

Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: City of Nashua: *Petition for Valuation Pursuant to RSA 38:9*
Docket No. DW 04-048

Dear Ms. Howland:

As referenced in the report of Hearings Examiner Donald Kries, Esq., to the Commission in this proceeding, representatives for the City of Nashua and the Pennichuck Water Works, Inc., met on Friday April 28, 2006 and discussed resolution of Pennichuck's Motion to Compel and Nashua's Objection thereto. In accordance with those discussions, I am providing this response on behalf of the City of Nashua by electronic mail to all the parties on the Commission's official electronic service list. Due to an unforeseen staff illness, I have not sent a copy by first class mail to all parties on the Commission's service list, but will do so on Monday May 8, 2006.

The parties discussed the Motion and Objection in terms of five substantive areas, set forth below. Based on discussion at the hearing, proposals were made to resolve four of the five substantive areas. No proposal was made to resolve number four of five, identified below. My understanding of these five areas, together with Nashua's response is the following:

1. *Information relative to problems concerning Veolia's Water Indianapolis, LLC's operations of the water system of the City of Indianapolis.*

As discussed last Friday, Nashua strongly disagrees that there were, in fact, any operational or other problems encountered with respect to Veolia's operations. As noted in Nashua's Objection, the Indiana Department of Environmental Management stated on October 6, 2005 that its own analysis did "not indicate a violation of state or federal drinking water quality standards."

Attachments

May 5, 2006

Page 2

However, in order to resolve this matter, *subject to an appropriate protective order*, Veolia Water North America – Northeast, LLC has agreed to make the subpoenas issued in the Indianapolis matter available by May 31, 2006 (earlier if available). Insofar as the proposal included all non-confidential documents or information provided in response to those subpoenas, Nashua further agrees to provide relevant non-confidential documents available, subject to an appropriate protective order, upon reasonable request and within a reasonable time period, such as 10 days, following disclosure of the subpoenas.

2. *Collective bargaining agreement for Veolia Water Indianapolis, LLC.*

As discussed last Friday, Nashua does not believe this information is relevant to this proceeding. However, in order to resolve this matter, Nashua will provide the collective bargaining agreement(s) for Veolia Water Indianapolis, LLC, no later than May 31, 2006 (earlier if available).

3. *Request for information related to all civil lawsuits related to the operation of water systems in the U.S. (except for employment or workers compensation matters) between Veolia Water and the Owner of the water system.*

Nashua will provide this information no later than May 31, 2006 (earlier if available).

4. *Internal communications related to the contract negotiations.*

Although the parties discussed this item, no proposal to resolve this matter was proposed. Accordingly, Nashua understands that the hearing examiner will review this matter and make a recommendation to the Commission.

5. *Veolia's risk profile and/or financial model.*

As discussed last Friday, this request arose *inter alia* in the context of Pennichuck's deposition requests for individuals involved in the negotiations of Nashua's contract with Veolia Water North America – Northeast LLC. To resolve this matter, it was proposed that:

- Nashua would provide Veolia's estimate of the total annual price (i.e. cost to Nashua) for each of the non-fixed components (the "buckets") under its contract with Nashua. These components are Renewal, Repair and Replacement Maintenance, Supplemental Services, and Capital Improvement Projects.; and
- Pennichuck agreed that it would not seek during depositions (or otherwise) information as to how Veolia determined those costs using its financial model or other confidential information.

Based on the foregoing, Nashua agrees to provide Veolia's estimate for each of the non-fixed components ("the buckets) no later than May 31, 2006.

Attachments

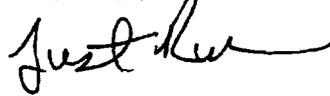
May 5, 2006
Page 3

The above sets forth my understanding of the proposals to resolve four of the five areas as discussed at the hearing held on April 28, 2006, and Nashua's response thereto. If I have failed to include any of the terms or issues related thereto, I request that the parties contact me as soon as possible in order to identify any changes necessary to correct the understanding with respect to the above items.

On behalf of Nashua and I believe all of the parties involved, I would also like to offer my appreciation to the Commission for its decision to use a hearings examiner to resolve this matter. Mr. Kreis's timely and appropriate discussion of the issues contributed greatly to the progress made on April 28, 2006.

If you have any questions concerning this matter, please contact me.

Very truly yours,



Justin C. Richardson
jrichardson@upton-hatfield.com

JCR

cc: Official Service List DW04-048
Donald Kries, Esq., Hearings Examiner

Attachments

From: Kreis, Donald [Donald.Kreis@puc.nh.gov]
Sent: Monday, May 08, 2006 2:39 PM
To: tdonovan@mclane.com; SARAH.KNOWLTON@MCLANE.com
Cc: Justin C. Richardson
Subject: Nasha/PWW discovery
Tom, Sarah:

I received a copy of Justin's letter of last Friday re the pending discovery dispute. If you could met me know the extent to which his response was satisfactory to you, I would be grateful.

cordially,
Don

Donald M. Kreis, Esq.
Hearings Examiner/Staff Attorney
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301
603.271.6006 (direct line)

Attachments

McLane

McLane, Graf,

Raulerson &

Middleton

Professional Association

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SARAH B. KNOWLTON
Direct Dial: (603) 334-6928
Internet: sarah.knowlton@mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

May 10, 2006

Justin C. Richardson, Esq.
Upton & Hatfield, LLP
159 Middle Street
Portsmouth, NH 03801

**Re: City of Nashua: Taking of Pennichuck Water Works, Inc.
DW 04-048**

Dear Justin:

I am writing in follow up to your letter regarding the April 28 meeting with Hearings Examiner Kreis (your letter is dated April 25, which I am assuming is a typo). We appreciate your efforts to follow up on the matters discussed at the discovery conference.

Your letter raises three issues that I want to follow up on. Regarding item #1 (the Veolia subpoenas), you indicate that Nashua will produce non-confidential documents or information provided in response to the subpoenas after you have produced copies of the subpoenas and have received a reasonable request from Pennichuck. While we do not object to making a further request for documents after reviewing the subpoenas, we would request that you have the documents ready to produce upon receipt of such a request in order to avoid any delay.

The second issue relates to the timing of Nashua's production of documents. Your letter states that Nashua will produce responsive documents no later than May 31, 2006, and earlier if possible. As you know, Pennichuck's reply testimony on valuation and public interest issues is due on May 22, 2006. Thus, it is likely that we will not have in hand copies of documents that may be highly relevant to this reply testimony in time to include them in the May 22 testimony. To the extent that we have not received responsive documents prior to May 22, Pennichuck reserves the right to supplement its reply testimony to include information obtained from this delayed discovery.

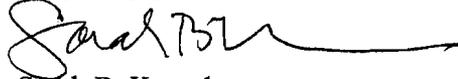
Finally, in regard to item #5 in your letter (Veolia's risk profile and/or financial model), we indicated at the discovery conference that we did not seek copies of the underlying model itself, but rather the outputs of the model and an understanding of what constituted the various "buckets" of costs. Your letter states that we would agree not to ask about how Veolia

Attachments

Justin C. Richardson, Esq.
May 10, 2006
Page 2

determined those costs at depositions or otherwise. I want to clarify that while our intent is to compare the total amounts in each bucket, we may need to ask some questions regarding what went into each bucket to make sure that we are doing an "apples to apples" comparison. Thus, we cannot agree to ask no questions about the figures provided.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sarah B. Knowlton", with a long horizontal flourish extending to the right.

Sarah B. Knowlton

cc: Donald Kreis, Esq., Hearings Examiner
Discovery Service List
Thomas J. Donovan, Esq.
Steven V. Camerino, Esq.

EXHIBIT C

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

PROTECTIVE ORDER

On November 22, 2006, the City of Nashua filed with the Commission certain documents in response to the Commission's Order No. 24,699 in which we stated that the City of Nashua could renew its request upon filing the documents for which Nashua sought confidential treatment.

Nashua requests that the Commission grant confidential treatment pursuant to Puc 203.08 using the two procedures approved by the Commission in two prior orders in this proceeding. See Orders No. 24,495 & 24,605. For the reasons set forth in Nashua's motion, we find Nashua's request to be reasonable and consistent with the provisions of RSA 91-A:5 and Puc 203.08 and recent decisions concerning exemption from the disclosure requirements of RSA 91-A. See e.g., *Union Leader Corp. v. Nashua*, 141 N.H. 473, 477-478 (1996); *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005).

By granting Nashua's motion, we approve of the procedures set forth herein and Nashua's request for confidential treatment subject to the continuing right of any party to challenge Nashua's designation of confidentiality upon receipt of information so designated as further set forth herein.

Based on the foregoing, it is hereby Ordered that:

A. Definitions.

- i. "Confidential Information" means documents, tangible things, or information that is in good faith designated by Nashua as CONFIDENTIAL; provided, however, that the Commission shall retain the authority to determine that such information is not exempt

EXHIBIT C

from public disclosure under RSA Ch. 91-A or any other applicable law or regulation or to expand or restrict the scope of what constitutes Confidential Information by further order consistent with this Order. Confidential Information may include, without limitation, trade secrets, security, financial or other commercial or proprietary information as well as all summaries, notes, extracts, compilations or any other direct or indirect reproduction from or of such Confidential Information. Information marked as CONFIDENTIAL – AUTHORIZED REPRESENTATIVES ONLY shall be limited to information relating to any EPA vulnerability assessments and material non-public information which if in a person's possession would make it unlawful to buy or sell securities, and other information but only upon prior approval of the Commission. Confidential Information does not include information that:

- (1) was in the public domain at the time it was communicated or disclosed by Nashua to recipient;
 - (2) was in the recipient's possession prior to the disclosure to the recipient, unless such information was previously obtained subject to any other confidentiality agreement, protective order or similar restriction or in violation of any such agreement, order or similar restriction; or
 - (3) lawfully enters the public domain through no violation of this Order after disclosure to recipient.
- ii. "Authorized Representative" shall mean a person who is a member of the Staff of the Commission ("Staff") or the Office of Consumer Advocate ("OCA") or two retained experts and one designated senior staff member of a party, or is counsel of record for Staff, OCA or a party. Said Authorized Representatives must execute a Non-Disclosure Certificate in the form of Exhibit A to this Order and be approved by Nashua prior to the disclosure of information designated "Confidential- Authorized Representatives Only".
- iii. "Qualified Persons" shall mean and refer to:
- (1) Counsel of record and persons in the regular secretarial, clerical, stenographical or paralegal employ of counsel of record, members of the Staff or the OCA or any Party;
 - (2) Employees of a party who are involved in this proceeding, except that Confidential Information disclosed to such persons shall be limited to that which reasonably relates to their responsibility in this proceeding;
 - (3) Expert witnesses or prospective expert witnesses retained or consulted by any party in this proceeding, except that the Confidential Information disclosed to such persons shall be limited to that reasonably necessary for them to form an opinion or prepare their testimony as to the matters about which counsel consulted or retained them;
 - (4) Such other persons as may hereafter be qualified to receive Confidential Information pursuant to this order or any other order of the Commission or a written agreement signed by Nashua.

EXHIBIT C

- iv. "Party" shall mean, with respect to the definition of a Qualified Person in (iii) above, a party (including intervenors) in this proceeding (other than the Staff, OCA, Nashua and the Pennichuck Entities) who is, in the case of a natural person, only that individual, or in the case of a corporate entity, a single designated management employee of that entity.
- B. Designation of Information as Either CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION-AUTHORIZED REPRESENTATIVES ONLY.** Nashua shall note the designation of information as Confidential or Confidential -Authorized Representatives Only in the following manner depending on the nature of the information:
- i. With respect to documents, by marking the document or transcript containing such material as "Confidential" or "Confidential - Authorized Representatives Only" in such a manner as will not interfere with the legibility of the document; and
 - ii. In the case of objects other than documents, by marking the surface of the object or the object's container, with the appropriate Confidential Information legend; and
 - iii. In the case of any view, by executing a written document to be executed by all participants in such view identifying the specific portions of the view that are Confidential.
- C. Disclosure Pursuant to this Order Only.** Confidential Information shall only be disclosed to Qualified Persons and/or Authorized Representatives and only under the circumstances described herein.
- D. Disclosure of Confidential Information.** Copies of Confidential Information designated as Confidential shall only be made for the Commission, Staff, the OCA, and other Qualified Persons, and only after Staff, the OCA, and other Qualified Persons have individually signed a Non-Disclosure Certificate, attached to this Motion as Attachment A, and only under the circumstances described herein. All executed Non-Disclosure Certificates shall be provided to Nashua. Any persons in receipt of Confidential Information shall maintain such information in a secure, enclosed storage receptacle except when the information is in active, immediate use.
- E.** To the extent any Qualified Person makes any notes or summaries concerning Confidential Information, the same shall be deemed Confidential Information and said Qualified Person shall be entitled to maintain said notes and summaries at their respective offices in a secure, enclosed storage receptacle except when the information is in active, immediate use.
- F.** The substance or content of Confidential Information shall not be disclosed to anyone other than a Qualified Person and/or Authorized Representative, depending upon the designation of the information. Prior to disclosure, each such Qualified Person and/or Authorized Representative shall execute a Non-Disclosure Certificate in the form of Exhibit A to this Agreement and be pre-approved by Nashua. Nashua shall promptly

EXHIBIT C

(within 24 business hours) consider any Non-Disclosure Certificate submitted to them in accordance with this Order and shall not unreasonably withhold approval. Promptly after its execution, the original executed Non-Disclosure Certificate shall be provided to Nashua and a copy thereof shall be retained by or provided to the party who sought to have the disclosure made to such Qualified Person and/or Authorized Representative. No Confidential Information disclosed pursuant to the terms of this Order shall be disclosed or used by a recipient for any purpose other than what is reasonably necessary for the conduct of this proceeding and proceedings substantially similar to prior litigation commenced by the Pennichuck Entities in Hillsborough County Superior Court, Southern District, Nos. 04-E-062 and 04-C-169. Upon written request made to undersigned counsel, they will disclose the names and status of persons who have executed Non-Disclosure Certificates.

- G. Disclosure to Competitors Prohibited.** Notwithstanding anything else to the contrary contained in this Order, no Confidential Information may be disclosed to any person affiliated with any entity in the water utility appraisal business ("Competitor"), even if such Competitor serves as counsel to or an expert for a Party. A person is "affiliated" with such an entity if that person is a shareholder of, director of, officer of, employee of, attorney for, or consultant to such an entity or any other entity that is under common control.
- H. Disclosure to Unauthorized Persons.** If any Confidential Information is disclosed to a person not authorized herein to receive such information, such disclosure shall not affect the confidentiality of such disclosed information. The person and/or entity making such disclosure shall immediately notify Nashua of the substance and content of such disclosed information and the identity of the recipient of such information, shall seek the return of such disclosed information, and said person and/or entity shall be barred from further access to Confidential Information and may also be liable for damages in accordance with applicable law.
- I. Depositions, Data Requests, and Other Discovery.** Each deposition transcript, answer to a data request, and document or thing produced constituting, comprising or containing Confidential Information shall be so identified and, where appropriate, marked prominently by the party seeking to use such information. Nashua may choose to make such marking of documents and things at the time that copies are made and distributed to any party. In the case of deposition transcripts, counsel for Nashua shall promptly advise the other participants in this proceeding of the specific pages claimed to fall within the terms hereof either during the deposition or within thirty (30) days of receiving the transcript of the deposition. If not so designated during the deposition, the entire deposition transcript shall remain confidential during the thirty-day period for confidentiality designation.
- J. Failure to Identify or Mark Information.** If Nashua inadvertently produces a document or information constituting, comprising or containing Confidential Information without identifying and marking it as such, they may so identify and mark such document or information at any time thereafter without waiver or prejudice.

EXHIBIT C

- K. Challenges to Designations of Confidentiality.** The Staff and any party to this proceeding or any member of the public may, at any time, give written notice to the undersigned counsel to Nashua that they challenge its assertion of confidentiality, including the designation of materials as Authorized Representatives Only and any decision by Nashua to not approve an individual as an Authorized Representative or a Qualified Person. If such dispute cannot be resolved amicably, then the requesting party may file a motion seeking an order of the Commission with respect to the material or individual in question. Nashua shall bear the burden of demonstrating that confidential treatment as asserted by it is appropriate or that an individual should be denied access. Such document or other information shall continue to be held as confidential under this Order until the Commission rules on the material in question.
- L. Filing Materials with the Commission.** All materials filed with the Commission or its Staff that have been designated by Nashua as comprising or containing Confidential Information, and any pleading or memorandum purporting to produce or paraphrase such information, shall be filed in a sealed envelope or other appropriate sealed container upon which shall include the name and docket number of this proceeding and the word "CONFIDENTIAL". Any documents submitted to the Commission, or any appellate court, as provided herein shall thereby become part of the record and subject to the provisions of this Order.
- M. Retention of Jurisdiction.** Jurisdiction of this proceeding shall be retained by the Commission after final determination for purposes of enabling any party or person affected by this order to apply to the Commission for such direction, order or further decree as may be appropriate for the construction, modification, enforcement or compliance herewith or for the punishment of any violation hereof, or for such additional relief as may become necessary to realize the intentions hereof.
- N. Disclosure of Confidential Information to Deponents.** Qualified Persons may be deposed regarding information marked as Confidential, and only Authorized Representatives may be deposed concerning information marked as Confidential – Authorized Representatives Only. Only Qualified Persons or Authorized Representatives, as appropriate, as defined in this Order may be present during such depositions for portions relating to Confidential Information. A reporter recording any Confidential Information or incorporating into a transcript any document containing Confidential Information shall transmit such transcript only to counsel of record for the parties, who are Authorized Representatives. Any such transcript shall not be filed with the Commission, except under seal.
- O. Further Order of the Commission.** Maintenance of the confidential status of any information shall in all cases be subject to further order of the Commission and nothing herein shall preclude any party from applying to the Commission for any appropriate modification hereof; provided, however, that prior to such application, Nashua and any other party to such dispute shall certify in writing that they have endeavored unsuccessfully to resolve the matter.

EXHIBIT C

- P. Return of Materials.** Upon termination or final conclusion of this proceeding, the Commission, to the extent that the Commission is not otherwise required to retain such materials, shall return all documents containing Confidential Information or Confidential -Authorized Representatives Only in the Commission's file to counsel for Nashua. Further, upon termination or final conclusion of this proceeding, all materials containing or comprising Confidential Information or Confidential –Authorized Representatives Only and any copies thereof in the possession of any other person shall be returned to counsel for Nashua; provided, however, that counsel of record may retain attorney work product that contains or comprises Confidential Information or Confidential Information-Authorized Representatives Only.
- Q. Storage of Information.** Any persons in receipt of Confidential Information shall maintain such information in a secure, enclosed storage receptacle except when the information is in active, immediate use.
- R. Availability to Others.** Nashua shall not be required to provide any Confidential Information to any person who is not designated as an Authorized Representative or a Qualified Person. Any other person seeking access to such information shall first file a motion with the Commission demonstrating good cause for its release to them.
- S. Other Proceedings.** If any party is requested to disclose information designated as "Confidential" or "Confidential - Authorized Representatives Only" pursuant to a subpoena, order of a court of competent jurisdiction, or otherwise, that party shall give notice of any such request to Nashua, as appropriate, at least ten (10) business days prior to any scheduled date for the disclosure of the information. In the event that period for the requested disclosure of this information is shorter than ten (10) business days, the party shall give the undersigned counsel to Nashua notice prior to the date for the requested disclosure.

By order of the Public Utilities Commission of New Hampshire this _____ day of

November, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary

EXHIBIT C

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

Docket No. DW 04-048

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

1. I confirm that I have read Order No. _____ issued by the New Hampshire Public Utilities Commission in Docket No. DW 04-048 on _____, 2006, ("Protective Order"), a copy of which is attached hereto. I understand that I am a Qualified Person/Authorized Representative (circle appropriate designation).
2. I hereby confirm and reiterate that:
 - A. I will maintain the confidentiality of the Confidential Information in accordance with the Protective Order, will use, store and maintain such information so as to safeguard against the disclosure of such Confidential Information to any unauthorized person.
 - B. I will use any Confidential Information imparted to me under the Protective Order only for the purpose of the above proceeding, and I will make no commercial or other use of any such Confidential Information, nor will I assist or permit any other person to do so.
 - C. At the conclusion of the proceedings in DW 04-048, I will comply with paragraph 9(P) of the Protective Order by returning all Confidential Information and Confidential Information designated as being for Authorized Representatives Only in my possession or control.
 - D. I agree to be subject to the continuing jurisdiction of the New Hampshire Public Utilities Commission in connection with the Protective Order and the enforcement thereof.

In witness whereof, I have caused this agreement to be executed this _____ day of _____, 2006.

Signature: _____
Name: _____
Home Address: _____
Employer: _____
Position: _____
Employer's Address: _____
Witness: _____
Date: _____