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November 27, 2006

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Via Hand Delivery By New England Courier

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

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

Dear Ms. Howland:

Enclosed for filing with the Commission are an original and six copies of Pennichuck's Motion in Limine and Supporting Memorandum to Disqualify George E. Sansoucy and Glenn C. Walker as Valuation Expert Witnesses.

We have provided an electronic copy of the filing to the PUC librarian and the parties.

Thank you for your assistance with this matter. Please feel free to call me if you have any questions.

Very truly yours,

Thomas J. Donovan

TJD/dap
Enclosures

cc: Service List
Duane C. Montopoli, CEO and President, Pennichuck Corporation
Donald Ware, President, Pennichuck Water Works, Inc.

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

City of Nashua – Taking of Pennichuck Water Works, Inc.

DW 04-048

PENNICHUCK'S MOTION IN LIMINE AND SUPPORTING MEMORANDUM TO DISQUALIFY GEORGE E. SANSOUCY AND GLENN C. WALKER AS VALUATION EXPERT WITNESSES

NOW COME Pennichuck Water Works, Inc. ("PWW"), Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc., Pennichuck Water Service Corporation and Pennichuck Corporation (collectively "Pennichuck") by and through their attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, and move to disqualify George E. Sansoucy, P.E., ("Sansoucy") and Glenn C. Walker ("Walker") pursuant to New Hampshire law from testifying in this proceeding as valuation expert witnesses on the basis that their expert opinions of the value of PWW's assets have no indicia of reliability. In support of this motion in limine, Pennichuck states as follows:

I. RELEVANT PROCEDURAL BACKGROUND

A. SANSOUCY AND WALKER'S VALUATION AND OTHER TESTIMONY

Direct Testimony. On January 12, 2006, Sansoucy and Walker submitted a Self-Contained Appraisal Report of Pennichuck Water Works, Inc. (the "Sansoucy Appraisal") as part of their prefiled direct testimony. Their combined expert opinion of the value of the assets was $85 million as of December 31, 2004. Sansoucy Appraisal p. 2 (excerpts attached as Exhibit 1). The opinion purported to be an expert appraisal of the "market value of the assets owned by PWW that the City of Nashua is acquiring through the New Hampshire RSA 38 proceeding." *Id.* The direct testimony had the second "purpose" of "provid[ing] the Commission with additional

information concerning public interest issues dependant upon valuation such as rate and revenue requirement comparisons . . ., the proposed contracts for oversight and operation of Nashua's water system . . ., and other information." 1/12/2006 Direct Test. of Sansoucy and Walker ("Direct Testimony") p. 1 (Exhibit 2).

Reply Testimony. On May 22, 2006, Sansoucy and Walker submitted testimony which included a critique of PWW's valuation testimony, and an extended discussion of public interest. Sansoucy and Walker testified:

> ...we believe that the Staff's [April 13, 2006 testimony finding that it was not in the public interest for Nashua to acquire PWW's assets] unfairly criticized Nashua's petition by adopting many of the Company's arguments without conducting or presenting its own, independent analysis. We further believe that Staff misunderstood Nashua's proposal and either ignored or failed to consider the benefits that the establishment of a municipally owned system would bring to the public interest as well as key commitments Nashua made in order to alleviate impacts to the public interest.

5/22/2006 Reply Test. of Sansoucy and Walker ("Reply Testimony") p. 2 (Exhibit 3).

Sansoucy extensively testified at his deposition that the Commission Staff "has demonstrated a very serious bias against the city and against the public ownership of the plant." Deposition of George E. Sansoucy (7/11/2006 and 7/12/2006) ("Sansoucy Valuation Deposition") p. 22 (Exhibit 4). When asked to explain, Mr. Sansoucy testified the Staff was "Biased. Biased towards Pennichuck. Biased against the city and municipal ownership." *Id.* He then testified for an extended length of time about his opinion of the bias of Commission Staff. *See generally id.* pp. 22-149.[1] He also demonstrated the bounds of his advocacy in

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[1] In Sansoucy's own words, his "definition of bias" is "**in the face of fact or lack thereof a propensity to lean in a particular direction that is not warranted to lean to,**" *id.* p. 118. Over and over in the deposition Sansoucy accused the staff of an institutional bias: "**[Staff] have done no independent analysis,**" *id.* p. 25; "**Staff . . . has not articulated what it believes the problem's at,**" *id.* p. 28; "**I think there is an institutional bias against the city and public ownership,**" *Id.* p. 34; "**There's a fundamental institutional bias towards municipal ownership,**" *id.* p. 79-80; "**And if staff were not biased or did not have an institutional bias in this matter, they**

supporting the City's takeover attempt: "I don't see how the staff could possibly have concluded that there are not net benefits [with Nashua owning the property]. It's a – it's just a given fact that in the long run Nashua's proposal would be less expensive; and I don't see how they [the Staff] could feel that there was no net benefits." *Id.* p. 122.

Update Testimony. On November 14, 2006, Sansoucy and Walker filed Update Testimony, but Sansoucy and Walker did not prepare an appraisal update. Instead, Sansoucy and Walker testified that they believed that the "property additions" made from December 31, 2004 through final valuation—"PWW's continued spending under its capital investment plan"—***should be added*** to the Sansoucy Appraisal's value of the PWW assets. Mr. Sansoucy and Mr. Walker proposed the following methodology for "reconciling" their appraisal to the present:

> As the Commission will establish the fair market value of the property sometime in the future, we have developed a logical method that could be used to establish a value as of the Commission Order date that would reflect the value of the system but avoid the requirements of preparing a new appraisal as of that date. As set forth in our testimony on January 12, 2006, we propose that property additions made since December 31, 2004 be added to the fair market value determined by the Commission in the same amount as their contribution to rate base. We further propose that the Commission measure this increase by determining the difference between rate base value as of December 31, 2004 and rate base as of the Commission's Order. The difference between those two figures represents new additions since December 31, 2004, with some minor adjustments for property removed from service and depreciation.

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would have immediately stated that Pennichuck Water Services Company should have no effect whatsoever, should not be affected whatsoever by this taking," *id.* p. 81; **"I think that staff has taken at face value the Guastella testimony without any analysis,"** *id.* p. 86; **"staff has fundamentally ignored what Nashua has said . . . .,"** *id.* p. 89; **"we find it very disturbing that [Mr. Naylor] has drawn that conclusion without having any experience whatsoever in the public/private partnership mode of operation,"** *id.* p. 90; **"I believe that if [Mr. Naylor] were not biased in this matter, he would have withheld his – his statement that this is not in the public interest,"** *id.* at p. 100; **"I believe that that is – I think demonstrates that there is imbedded institutional bias in this matter on the one hand,"** *id.* p. 101; citing to the **"longstanding series of statements. . . [t]hat there is an institutional bias against Nashua, against municipal ownership of Pennichuck,"** *id.* p. 104; **"There has been throughout this testimony, throughout this proceeding, what we believe to be an institutional bias on the blind assumption that growth automatically means lower costs,"** *id.* p. 111; stating that at the first tech session Staff **"showed – you played your hand on this. You showed your underbelly,"** *id.* p. 124.

11/14/2006 Update Testimony of Sansoucy and Walker ("Update Testimony") at p. 4 (Exhibit 5). Sansoucy and Walker's example of how their formula would work provided a value indicator on December 31, 2007 of $139 million. *Id.* p. 5.

B. THE UNRELIABILITY OF SANSOUCY'S TESTIMONY AS PRESENTED BY PWW'S EXPERT APPRAISER.

Mr. Robert Reilly, the expert witness for PWW, has issued both affirmative valuation testimony, as well as a critique of Sansoucy and Walker's valuation testimony.[2] As this motion concentrates on the unreliability of Sansoucy and Walker, this procedural background will summarize only Mr. Reilly's critiques of Sansoucy and Walker.

Reply Testimony. On May 22, 2006, Mr. Reilly issued a written report and testimony in which he identified ***14 fundamental errors*** in Sansoucy's and Walker's testimony. Mr. Reilly, who is an eminently qualified and nationally recognized expert, testified as to the extent of the problems with the Sansoucy and Walker appraisal:

> The Sansoucy Appraisal is one of the most fundamentally flawed appraisals I have reviewed. It would be impossible to correct the Sansoucy Appraisal, as the number and extent of the errors renders the conclusion totally unreliable. If I were asked by a client, my advice would be that the Sansoucy Appraisal is useless for the purposes of determining the fair market value of the PWW operating assets, and should therefore be discarded in its entirety.

Reply Testimony of Robert Reilly (5/22/06) ("Reilly Reply Testimony") at pp. 2-3 (Exhibit 7). The extensive letter report attached to the Reilly Reply Testimony outlines the numerous errors with Sansoucy and Walker's appraisal. *Id.*

Update Testimony. On November 14, 2006, Mr. Reilly filed his update testimony with reports. In one report, Mr. Reilly "analyzed the [Sansoucy Valuation Deposition] and the

[2] Mr. Reilly's qualifications are impeccable, and a copy of his extensive and detailed resume is attached to his testimony. At Mr. Reilly's deposition, counsel for Nashua, Mr. Upton, stated that Mr. Reilly was "probably one of the most qualified people [Mr. Upton] ever had the privilege of deposing." (6/27/2006 Dep. of Robert Reilly at p. 5)(Exhibit 6).

deposition of Glenn C. Walker ('Walker') dated July 13, 2006 ('the Walker Deposition')." Update Testimony Report of Robert Reilly (11/14/06)("Update Report"), p. 2 (Exhibit 8). Mr. Reilly highlighted five errors from the Sansoucy Deposition and Walker Deposition and concluded: the Sansoucy Appraisal "is unreliable and fails to provide a reliable conclusion of the fair market value of the PWW operating assets as of December 31, 2004." *Id.* at p. 7.

II. SANSOUCY AND WALKER SHOULD BE DISQUALIFIED.

Sansoucy and Walker's valuation testimony is unreliable and should be excluded. This Commission should not lower the bar to allow Sansoucy and Walker to testify as to their opinion of value if such an expert opinion would not be permitted in court. Under New Hampshire law, a witness shall not be allowed to offer expert testimony unless: (a) such testimony is based upon sufficient facts or data; (b) such testimony is the product of reliable principles and methods; and (c) the witness has applied the principles and methods reliably to the case. RSA 516:29-a, I. Sansoucy and Walker's testimony does not meet these minimum standards.

A. NEW HAMPSHIRE LAW REQUIRES THAT EXPERT TESTIMONY BE RELIABLE.

Under New Hampshire law, four factors guide an evaluation of the basis for proffered expert testimony: (1) whether a theory or technique has been or can be tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential error rate of a particular theory or technique; and (4) whether the theory or technique has been generally accepted in the appropriate scientific literature. RSA 516:29-a, II(a); *see also Baker Valley Lumber, Inc. v. Ingersoll-Rand Co.*, 148 N.H. 609, 614 (2002); *State v. Dahood*, 148 N.H. 723, 726-27 (2002). This four-factor test was first articulated by the United Supreme Court in

the seminal *Daubert* opinion,[3] but the test is not limited to the enumerated factors. RSA 516:29-a, II(b) (noting that other factors may be considered). The role of the judge—and this Commission—as gatekeeper is now a matter of substantive law in New Hampshire, and serves as a rejection of an open-ended standard for expert witness. *Compare, New Hampshire Rule of Evidence* 702.

The proper focus for such an evaluation is not the reliability of an expert's ***conclusions***, but, rather, the reliability of the expert's ***methodology or technique***. *Baker Valley Lumber, 148 N.H. at 615-16.* The principles articulated by the United States Supreme Court and the New Hampshire Supreme Court, have been extended to apply to non-scientific experts, including real estate appraisers.[4]

1. This Commission Should Require Sansoucy and Walker to Present Reliable Expert Testimony.

This standard of acceptability is not limited to the courts. At least one state public utilities commission has applied the *Daubert* reliability standard in the context of a public utilities matter. It stated:

> The importance of validation is underscored by the Commission's discussion regarding expert testimony . . . . The Commission acknowledged the standard set by the U.S. Supreme Court in

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[3] In *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the United States Supreme Court concluded that, when assessing the admissibility of expert testimony, judges must ensure that the testimony of an expert is reliable. *Id.* at 589. The Court later clarified its Daubert decision, explaining that the general holding of that case applied to all expert testimony, including that based upon "other specialized" knowledge. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999).

[4] *See Zachar v. Lee*, 363 F.3d 70 (1st Cir. 2004) (noting "the reach of *Daubert's* gatekeeping function [extends] to cover all types of expert testimony involving technical or otherwise specialized knowledge," and applying the *Daubert* holding to the expert testimony of a real estate appraiser); see also *U.S. v. McLaren Reg'l Med. Ctr.*, 202 F.Supp.2d 671, 677-86 (E.D. Mich. 2002) (applying *Daubert* reliability standards to expert testimony of real estate appraisers and brokers regarding fair market value of rental space); *Cayuga Indian Nation of N.Y v. Pataki*, 83 F.Supp.2d 318, 322 (N.D.N.Y. 2000) (overruled on other grounds) (acknowledging that application of *Daubert* reliability inquiry to the expert witness testimony of real estate appraisers was appropriate); *U.S. v. 14.38 Acres of Land*, 884 F.Supp.224 (N.D. Miss., 1995) (applying *Daubert* reliability inquiry to testimony of expert real estate appraiser).

> [*Daubert*]. . . . [which] focused on the methodology used by experts to arrive at their conclusions, and emphasized the responsibility of the courts to ensure that the proffered evidence is valid and has been tested. . . . The Commission [then] applied the *Daubert* standard to the evidence in the Phase 1 proceeding.

2002 Wash. UTC LEXIS 393 (October 11, 2002) (Washington Utilities and Transportation Commission). This Commission should not lower the bar.

2. Sansoucy and Walker Agree that USPAP and *The Appraisal of Real Estate* are Authoritative Standards Against Which the Reliability of their Appraisal Opinion Should be Judged.

Sansoucy and Walker have agreed that at least two industry appraisal standards are applicable to their valuation testimony. First, Sansoucy has testified that the Sansoucy Appraisal has been completed in a manner that is consistent with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Sansoucy Valuation Deposition p. 13 (Exhibit 4); Deposition of George E. Sansoucy (9/1/2005) ("Sansoucy Public Interest Deposition") pp. 27-28, 35-37 (Exhibit 9). By offering that the Sansoucy Appraisal is USPAP compliant, Sansoucy and Walker explicitly agree that ***USPAP* is a generally accepted standard**, and attest that the opinions offered comply with that standard. *See* Sansoucy Appraisal citations to USPAP at p. 2 (note 1) and 62 (certification)(Exhibit 1). Second, Sansoucy and Walker have admitted, by their numerous citations to it, that The Appraisal Institute, ***The Appraisal of Real Estate*** (12th ed. 2001) **is an authoritative standard** in the appraisal industry. Sansoucy and Walker cite to it extensively throughout the Sansoucy Appraisal. *See* Exhibit 1 pp. 36-44 (notes 15-24) and 53-54 (notes 31-32).

This Commission should look to USPAP and *The Appraisal of Real Estate* as authoritative standards when serving as the gatekeeper in determining the reliability of Sansoucy and Walker's valuation. Other than USPAP and *The Appraisal of Real Estate*, the Sansoucy Appraisal has no other citations to appraisal literature or authority.

B. VIOLATIONS OF USPAP: SANSOUCY'S BIAS MAKES THE ENTIRETY OF HIS VALUATION OPINION CONCLUSION UNRELIABLE.

Sansoucy and Walker cannot meet a foundational and fundamental requirement of USPAP—that they be unbiased and impartial when preparing the appraisal—and therefore the expert opinions they have offered should be excluded.

1. USPAP Requires an Appraisal to be Unbiased and Impartial

Mr. Sansoucy's report (and the testimony before the Commission) states that the Sansoucy Report is "a complete appraisal utilizing a self-contained report format as these terms are defined in the Uniform Standards of Professional Appraisal [Professional] Practice (USPAP)." Sansoucy Appraisal p. 2 (Exhibit 1); Direct Testimony p. 2 (Exhibit 2). The Sansoucy Appraisal states:

- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and ***are our personal, impartial, and unbiased and professional analyses, opinions and conclusions.***
- We have no present or prospective interest in the property that is the subject of this report, and ***no personal interest or bias with respect to the parties involved.***
- We have ***no bias*** with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was ***not contingent upon the developing or reporting predetermined results.***
- Our analysis, opinions and conclusions were developed, and this report has been prepared in ***conformity with the Uniform Standards of [Professional] Appraisal Practice.***

Sansoucy Appraisal p. 62 (Exhibit 1). In other words, Sansoucy and Walker affirmed that the applicable standards of the industry require that an appraiser be unbiased and impartial.

For real estate appraisals, USPAP sets the "ethical and professional conduct standards" in New Hampshire. RSA 310-B:18-a. USPAP requires a certification of compliance with its standards be included in every appraisal, Standards Rule 10-3, and requires that an "appraiser not

misrepresent his or her role." USPAP 2004 Edition, The Appraisal Foundation, Ethics Rule, p. 7 (Exhibit 11). The Management section of USPAP's Ethics Rule also prohibits the acceptance of an assignment contingent upon "the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose." *Id.* p. 8. Consistently, USPAP prohibits "predetermined opinions and conclusions," as set forth in the Conduct section of USPAP's Ethics Rule. *See also* Advisory Opinion 19 (AO-19) *id.* p. 190.

2. Sansoucy and Walker are Biased and Partial—and will Profit From a "Favorable" Outcome of the Condemnation.

Sansoucy is plainly not an unbiased, impartial, objective and independent appraiser without a personal interest in the subject of the appraiser. His bias and partiality to the City of Nashua is reflected from the inception of the assignment—when Sansoucy promoted himself as the advocate of other cities in condemnation efforts. This bias and partiality continued throughout the assignment and beyond—when he stands to profit through additional paid work if the acquisition is successful. An appraiser's job is to objectively and impartially appraise the market value of the subject property. It is entirely inconsistent for the same witness to appraise property under USPAP, while testifying as an advocate that acquiring the property is in the best interest of the public.

a. <u>Activities Evidencing Bias Which Pre-Date Sansoucy's Engagement to Appraise the Property.</u>

Sansoucy's biased view of the acquisition is evidenced literally from "day one." In March 2004 Mr. Sansoucy made a presentation to the Budget Review Committee of Nashua in which he advocated the takeover attempt and demonstrated his view of himself as advocate. For instance, in promoting himself for his expert role, Sansoucy publicly took credit for "***throwing*** Consumers [Water Company] out of the State [of New Hampshire]." Budget Committee Meeting Minutes, March 16, 2004, p. 11 (emphasis added) (Exhibit 12).

Moreover, in contravention of the ethics rule that an appraiser have no predetermined opinions of value or predetermined results, Sansoucy announced prior to being retained by the City that he ***would be*** "proposing a value of $81 - $82 million for this taking." *Id.* p. 17. In announcing his predetermined value, Sansoucy asserted that this was part of a negotiation, which he was spearheading: "We are going to throw the price out tonight—It is a shot over the bow so to speak." *Id.* p. 11. Moreover, Mr. Sansoucy stated that his valuation standard would be to advance a value that could be paid without the City increasing rates:

> The test of value—the ultimate test of value is no net harm. What is the no net harm standard—it is a very practical standard that we applied in Hudson, we applied in Ashtabula where the rate payers are not asked to carry a greater rate because of the sale, the company is not asked to give up or constrict assets, we pay fair market value for the assets, but we don't overpay those assets so that there is a rate increase. ***We will be going in with no rate increase as the standard of transfer of the value***. *Id.* p. 14.

Moreover, Sansoucy participated in recommending that a water district be formed—even recommending the name—because the regional effort "***sweetens the deal***." *Id.* p. 10 (emphasis added).

In selling his services to the Budget Committee, Sansoucy's represented that "my charge will be to present a plan that offers ***no net harm*** to any ratepayer or to the company." *Id.* (emphasis added). Sansoucy told the Budget Committee Meeting: "When I have done my job – my job if all goes well I come back to you with a price you can accept and a deal you can live with going forward." *Id.* at p. 29. But, at the same time as promoting himself as the protector of the company (*i.e.* a deal that would not harm PWW), Sansoucy demonstrated advocacy and improper motive when he suggested that if the taking did not succeed, Nashua could simply assess PWW higher property taxes:

> While that is true if you get to the end of the day and decide not to go forward that money has been spent and you don't get it back

> remember why you are getting out – you are getting out because the value has been set too high. ***You can now use that value***, that too high value that was too high for you to buy it – that is a determination of fair market value that you can use in setting your assessment level.

Id. p. 4 (emphasis added). Gamesmanship and strategic thinking are not qualities of an appraiser, they are the qualities of an advocate.

b. <u>Sansoucy's Contract with the City Memorializing his Engagement Demonstrates that he Was Retained to Advocate for the City's Acquisition.</u>

Sansoucy's March 19, 2004 contract with Nashua contains four separate tasks which demonstrate built-in bias and personal interest:

- Initial public interest finding and RSA 38 proceedings at the NH Public Utilities Commission, which includes development of the RFP for the operations contractor, development of the financial plan for Nashua's operation of the system, preparation of a rate analysis, preparation of a water ordinance, and preparation of "***summary to show public benefit of total taking***."

- Testimony before the NH Public Utilities Commission, which includes valuation and rate studies, submission of testimony and assistance "in the preparation of the ***trial plan for the main proceedings before the PUC***."

- General consulting, including support for attorneys concerning declaratory judgment action, "***support efforts*** related to regionalization" and "public presentation and meetings for the City relating to all issues of the taking."

- Final asset transfer to public ownership, including "***assist*** with transfer documents," "prepare final contracts for…" system operation, ***assist*** with adoption of final rate ordinance, assist with the closing, set up customer account procedures and transfer customer balances, set up CIAC and contractor specifications.

Agreement, Exhibit 70 Sansoucy Public Interest Deposition (Exhibit 13). As these excerpts show, Mr. Sansoucy was retained by the City to be an advocate to support the City's takeover attempts.

c. **Mr. Sansoucy Has Made Good on His Contract to Advocate for the City's Acquisition.**

Mr. Sansoucy has delivered on his promise to advocate that the taking is in the public interest and support the efforts of the City—Sansoucy has been responsible for the public interest aspect of the case. Sansoucy Valuation Deposition p. 20 (Exhibit 4). This is demonstrated in all of Mr. Sansoucy's various prefiled testimony, and at his depositions. *See, supra,* Section I.A.

(i.) *The Testimony Sansoucy and Walker Filed Advocating for the City's Position.*

In the Direct Testimony, Mr. Sansoucy and Mr. Walker testified that "[w]e have concluded that the public interest is served by Nashua purchasing PWW." Direct Testimony at p. 12 (Exhibit 2). He then testified that the public interest would be better served by a taking because Nashua would be a better steward of the watershed, Nashua would create a regional water district, and Nashua would operate the water system more efficiently. *Id.* at pp. 12-15.

Likewise, in the Reply Testimony, Mr. Sansoucy and Mr. Walker sought to disprove the Staff's conclusions that the acquisition was not in the public interest, testifying: "Our testimony will address how the testimony offered by PWW and Staff is ***flawed*** with respect to whether the City's purchase of the PWW system is in the public interest." Reply Testimony at p. 16 (Exhibit 3). He then testified that Nashua ownership is the key to a regional water system in the Merrimack Valley, that PWW is not a good steward of its watershed, that any negative effect upon the remaining PWW companies to acquire troubled entities is due to improper subsidization, that out-of-town customers would not suffer under Nashua ownership and that customer service will not suffer under Nashua ownership. *Id.* at pp. 16-32.

Finally, Sansoucy provided additional testimony in support of Nashua's public interest case on July 20, 2006, criticizing Commission staff testimony. He stated that PWW ownership does not promote regionalization, that other PWW entities will not be unduly harmed by a taking

of PWW, that billing and collections will be handled well by Nashua, that Nashua will not unduly reduce the water service work force, that Nashua will acquire troubled water systems, that Nashua will have lower cost of service, that satellite system service will not suffer, and that PWW has not been a good steward of the watershed. Testimony of George E. Sansoucy, July 20, 2006, pp. 4-25 (Exhibit 14).

Even Nashua recognized that the move to Sansoucy was made because he was uniquely qualified to handle ***the acquisition***. Sansoucy e-mailed Mayor Streeter and others on September 1, 2004, stating: "We have a team that includes Carol Anderson's group, Rob's people, Dave Connell and my staff that have a ***proven track record and loyalties to the city of Nashua***." Exhibit 77, Sansoucy Valuation Deposition (Exhibit 15). The former head of the Aldermanic Water Committee, Alderman Brian S. McCarthy, acknowledged in his deposition that Mr. Sansoucy was retained to acquire PWW assets, and not to evaluate them:

> Q. At some point the list of advisors for the city changed from Mr. Rizzo, Mr. Hartman and Mr. Sansoucy to where it was Mr. Sansoucy and his company that came on board. Was there a reason for that shift?
>
> A. The Rizzo company was originally engaged to look at the water operation itself and to give us some characterization and recommendations. When we made the decision to go forward with the acquisition, Mr. Sansoucy seemed to be the more appropriate consultant to be engaging at that time.
>
> Q. In other words, Mr. Sansoucy seemed to be the better one to handle the acquisition of assets as opposed to evaluation of resources?
>
> A. Yes.

Deposition of Brian S. McCarthy (July 20, 2005), p. 44 (Exhibit 16). Obviously, an appraiser does not advocate that the purchase is a good acquisition for the client; rather, he appraises the property.

(ii.) *The Other Advocacy of Mr. Sansoucy and Mr. Walker for the City's Position.*

Sansoucy's advocacy in this case does not stop with providing "expert" testimony. The record is replete with other examples of his substantial work to promote the takeover:

- ***Reserving Domain Names.*** Mr. Sansoucy's office reserved twelve web site domain names on behalf of the Merrimack Valley Regional Water District, and gave advice on its incorporation. Exhibits 59, 60, Deposition of Philip L. Munck (Exhibit 17).
- ***Recruiting Membership and Support.*** Sansoucy wrote to the Town of Hollis Selectmen advocating that the town join the Merrimack Valley Regional Water District, saying "[i]f the District and its members want this effort to proceed, ***everyone is going to have to stand up and be counted.*** If towns sit on the sideline waiting for the outcome of the eminent domain proceedings, they are sending a signal to Pennichuck that its threats can be successful." In response to a question that Nashua had not been forthcoming with its strategy to neighboring towns, Sansoucy stated: "Our goal is to correct that perception to the best of our ability without compromising our ability to be successful in our efforts to secure public ownership of the water supply." Exhibit 6, Deposition of Karen E. White. (Exhibit 18).
- ***Drafting Talking Points Supporting the Condemnation.*** Sansoucy's office provided "press release talking points" to Mayor Streeter's assistant on November 22, 2004, including one that stated: "Pending a formal appraisal with more detailed data from Pennichuck, Nashua believes the market value of the utility assets being sought to be $81 million." Exhibit 62, Deposition of Philip L. Munck. (Exhibit 19).
- ***Drafting Water Ordinances.*** Sansoucy has prepared the draft water ordinance and the cash flow requirements for Nashua to operate the water system. Deposition Exhibit 36, Deposition of Katherine Hersh, (Exhibit 20). He testified at the June 29, 2006 Special Water Committee Meeting: "I don't expect you to write the holes [in the document]. I expect to write them." Special Water Committee Meeting Minutes, p. 14 (Exhibit 21) "I have to eventually testify to the PUC why the City can do this. So I actually write these [ordinance terms]." *Id.* p. 49.
- ***Guiding the City and Constructing the Arguments.*** "I'm guiding you with thoughts and ideas." Special Water Committee Meeting Minutes, May 8, 2006, p. 36 (Exhibit 22). "I'm going to prepare a white paper for you on different methods of [water] conservation..." Id., p. 70. "Fred, I want to interject because we are constructing Nashua's argument before the PUC." Special Water Committee Meeting Minutes, January 30, 2006, p. 33 (Exhibit 23).
- ***Drafting the Condemnation Petition.*** Sansoucy participated in drafting the condemnation petition in this docket, took responsibility for the request for

proposal process for operations and oversight contractors, participated in contract negotiations, and assisted with the construction of arguments and the preparation of the trial plan. Sansoucy Valuation Deposition, pp. 157-58 (Exhibit 4); Sansoucy Public Interest Deposition, pp. 254-55 (Exhibit 9).

- ***Negotiating With the Post-Takeover Operator.*** Sansoucy conducted two meetings at his office with Veolia representatives concerning its operations proposal, and suggested changes to same. Deposition of Joseph Tomashosky, pp. 42-43 (Exhibit 24). Sansoucy played an important role on the Nashua team to negotiate the operations contract with Veolia. *Id.* p. 116.

Mr. Sansoucy has proven to be a whatever-it-takes advocate—doing whatever jobs are necessary to support the condemnation.

d. <u>Sansoucy and Walker Could Profit If the Condemnation is "Successful" and the PWW Assets are Transferred to the City.</u>

Finally, part of Sansoucy's assignment is directly contingent upon the outcome. If the condemnation results in the transfer of the assets to the City, Sansoucy's contract provides that he will receive additional work budgeted at $95,000. Agreement, pp. 5,7 (Exhibit 13). This work includes Sansoucy "assist[ing] with transfer documents," "prepar[ing] final contracts," assisting with adoption of final rate ordinance, assisting with the closing, setting up customer account procedures and transferring customer balances, and setting up CIAC and contractor specifications. *Id.*

Obviously, Sansoucy will not receive any of this lucrative post-taking work unless Nashua is successful in its taking. For Nashua to be successful in its takeover attempt, Sansoucy and Walker must convince this Commission both that (a) the transfer to Nashua is in the public's best interest and (b) that Sansoucy's efforts to "make the numbers work" have been successful. Mr. Reilly stated in his reply testimony that this was not acceptable under USPAP:

> This list of services indicates that Sansoucy agreed to perform certain tasks after the condemnation is completed, thus potentially giving him a prospective interest in the outcome of the condemnation appears to be in conflict with the certification in the [Sansoucy Appraisal], which states 'We have no present or

prospective interest in the property that is the subject of this report, and no personal interest or bias with respect to the parties involved.' Reilly Reply Testimony, Report p. 5 (Exhibit 7).

3. The Sansoucy Appraisal Should Be Excluded as Sansoucy and Walker Have Violated USPAP'S Standards for Objectivity.

The Conduct section of the USPAP Ethics Rule states that "advocacy [except as to one's appraisal report] in appraisal practice is a violation of the Ethics Rule" p. 7 (Exhibit 11). Based on the above-cited record, Sansoucy is not an independent, unbiased appraiser, as is required by USPAP. Rather, Sansoucy is creator, implementer, strategist, ***and*** valuator. Even Sansoucy agrees that an appraiser must comply with the USPAP standards, although his purported appraisal failed to employ the minimum USPAP ethical standards for appraisals of business property. *See*, RSA 516:29-a, I; *Daubert*. Sansoucy and Walker's assurances that they have not allowed their public interest advocacy to have an effect on the outcome of the appraisal is insufficient. For the purposes of establishing reliability, an expert's own assurance that he or she has used generally accepted scientific methodology is not sufficient. *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1315-16 (9th Cir. 1995) (on remand).

The bias is not just a question of the ***weight*** that this Commission should give to Mr. Sansoucy's testimony. Rather, ***USPAP makes impartiality the industry standard.*** Thus, this is a question of whether the "expert" opinion is sufficiently reliable to be admissible at all.

USPAP VIOLATIONS

USPAP (INDUSTRY) STANDARD: *THE APPRAISER MUST NOT....*	SANSOUCY/ WALKER VIOLATED?	SANSOUCY AND WALKER VIOLATED BY...
Misrepresent His Role	Yes	Representing Themselves As Impartial Appraisers When Interested in Advocating the Takeover
Have Predetermined Opinions and Conclusions	Yes	Seeking to "Make the Numbers Work" and Reaching the Conclusion Promised at the March 2004 Budget Review

Be Biased or Partial	**Yes**	Advocating that the Takeover Was in the Public Interest (Both in Testimony and Other Actions) and "Proven Loyalties" to the City
Advocate (Except For One's Own Report)	**Yes**	Advocating and Recruiting Support for the Takeover, Conducting Public Relations, and Guiding the City and Negotiating the Pay-Off Contracts
Accept An Assignment Contingent upon the Outcome	**Yes**	Having an Expectation of Fees for Post-Takeover Work if Condemnation Successful

Mr. Reilly agreed that the above actions, set forth in the Reilly Reply Testimony, represent a violation of USPAP. "Sansoucy viewed his assignment as protecting the interest of the involved parties, trying to keep rates static, and promoting the property transfer, and not as independently appraising PWW assets." Reilly Reply Testimony, Report p. 4 (Exhibit 7). The testimony should be excluded as not reliable.

C. VIOLATIONS OF THE APPRAISAL OF REAL ESTATE: SANSOUCY AND WALKER FAILED TO FOLLOW GENERALLY ACCEPTED APPRAISAL METHODOLOGY IN PREPARING THE SANSOUCY APPRAISAL.

Sansoucy and Walker purport to apply the three recognized general approaches to the appraisal of business assets: the sales comparison, cost (asset-based) and income approaches. For instance, in the Direct Testimony, Sansoucy and Walker testified: "[w]e considered ***all three methods of valuation widely recognized in the appraisal of utility property***, *i.e.* the cost approach, the sales comparison approach and the income approach." Direct Testimony at pp. 2-3 (emphasis added)(Exhibit 2). In the Update Testimony, Sansoucy and Walker testified: "we considered all three methods of valuation ***widely recognized*** in the appraisal of utility property, *i.e.* the cost approach, the sales comparison approach, and the income capitalization approach. . . . ***the market value was then determined by reconciling the values indicated by each of the three approaches.***" Update Testimony at pp. 2-3 (emphasis added)(Exhibit 5). In the Sansoucy

Appraisal, Sansoucy and Walker stated: "[t]he ***three widely recognized approaches used to value property*** are: 1) the cost approach; 2) the sales comparison approach; and 3) the income capitalization approach. The applicability of each approach to value varies with the nature and purpose of the valuation assignment." Sansoucy Appraisal at p. 34 (Exhibit 1). Despite using the right appraisal language, the Sansoucy Appraisal falls far short of the requisite reliability.

1. Sansoucy's "No Net Harm" Standard is Not an Established Appraisal Methodology and Is Unreliable.

While Sansoucy claims to apply the three recognized approaches to valuation, he actually bases his valuation opinion on a "no net harm" standard that he has devised. *See, supra,* Section II.B.2.a. This valuation opinion is based on the erroneous concept that ***rates will drive the value***, to the extent that the "rates" in question are those that the consumers will have to pay ***under City ownership***. This erroneous notion was first broached at the Nashua Budget Review Meeting on March 16, 2004 when City Attorney Robert Upton stated:

> ...but I would prefer to see value and public interest dealt with ***simultaneously*** because those questions are largely the same in this case because they are driven by rates. Rate [sic] are going to determine the value that you will have to pay for it...

p. 3 (Exhibit 12). Mr. Sansoucy then testified at his deposition:

> A. I try to measure a plan that basically is what I call the no net harm plan to all parties in the case, rate-payers, ***city***, company, stockholders, et cetera.
>
> * * *
>
> Q. So the no net harm standard is or is not a measure of value in your analysis?
>
> A. In part it is a measure of value. Value is part of it.

Sansoucy Valuation Deposition p. 203 (Exhibit 4).

Sansoucy's "no net harm" approach is not a legitimate appraisal methodology. He testified that the three "widely recognized" approaches to valuation were the cost approach, the market approach and the income approach. The "no net harm" standard is not recognized, it is untested, is not subject to peer review, is unreliable and subjective, and is not generally accepted in any appropriate appraisal literature. RSA 516:29-a, II(a); *see also Baker Valley*, 148 N.H. at 614. Even more alarming is that Mr. Sansoucy's subjective valuation analysis directly interferes with the constitutionally protected valuation process, which requires that a party receive fair market value for any property taken.

While this Commission is quite familiar with setting rates, it is universally accepted that rate making is not an indication of fair market value. Mr. Walker agreed, stating in his deposition that "Rate base is not fair market value." Deposition of Glenn C. Walker (7/13/06) pp. 137-38 (Exhibit 25). In *Dade County v. General Water Works Corporation*, 267 So. 2d 633, 640 (Fla. 1972), the Florida Supreme Court stated:

> The complete dissimilarity between rate-making and the just and full compensation standard which govern eminent domain have resulted in rejection of attempts to equate ratemaking with eminent domain for determining fair market value.

Moreover, Mr. Reilly testified as to the analytical and practical differences between the two concepts in his Direct Testimony:

> Rate base is an accounting and regulatory concept that represents a statement of the historical cost of some, but not all, specified utility plant in service assets less accounting (or 'book') depreciation. This Commission allows a utility to earn a specified rate of return on the original cost of its 'rate base.' Conversely, fair market value is an appraisal concept of the current value-in-exchange between a willing buyer and a willing seller. In other words, the difference is a conceptual one:
>
> - Rate base is an ***income concept*** that governs the relationship between the regulatory Commission and the utility; and

- Fair market value is an ***exchange concept*** that governs the relationship between the utility owner and the entity purchasing the utility.

Reilly Direct Testimony (1/22/06) pp. 10-11 (Exhibit 26); Reilly Reply Testimony, Report pp. 8-9 (Exhibit 7). PWW is entitled to the ***fair market value*** of its assets. Sansoucy's "no net harm" standard is, in essence, a public interest concept that is disconnected from the determination of value. As this unreliable valuation methodology underpins Mr. Sansoucy's valuation, it should be rejected by this Commission as an indicator of value.

2. Sansoucy and Walker Misapplied the Accepted Appraisal Methodologies, Resulting In an Unreliable Appraisal.

For each approach, the appraisal profession has developed well established ***methodologies*** within the approach that are routinely followed. But, just because an "appraiser" claims that he "applied" the cost approach, sales approach and income approach does not mean that the valuation is admissible. *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1315-16 (9th Cir. 1995) (on remand). Rather, to qualify as an expert, one must actually apply the recognized and reliable methodology to be entitled to give an opinion. In all three approaches, Sansoucy and Walker have defied convention and ignored the well-established rules for application of the methodologies.

a. <u>Sansoucy and Walker Failed to Follow Generally Accepted Appraisal Methodology in the Cost Approach</u>

It is generally accepted that the cost approach is an important, if not the best, appraisal approach to valuing special interest property, such as that of a public utility. *The Appraisal of Real Estate*, pp. 25-26, 354 (stating that the "cost approach is also used to develop an opinion of market value . . . of special-purpose or specialty properties, and other properties not frequently exchanged in the market")(Exhibit 10). Special purpose property is property:

> (1) with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built and (2) that has relatively limited market at any particular time. [citing *The Appraisal of Real Estate*]
>
> First, PWW was built for the unique purpose of supplying potable water and fire protection to the residents of Nashua and ten surrounding New Hampshire municipalities. Second, the PWW system represents property that is not frequently exchanged in the market. Since both requirements of special purpose property are met, the operating assets of PWW represent special purpose property.

Reilly Update Report pp. 2-3 (Exhibit 8). Mr. Sansoucy agreed that the cost approach should be given primary weight for special purpose property: "If they [the Commission] determined that the property is special purpose property and has regulated income then they are going to look at the cost approach." Sansoucy Valuation Deposition at pp. 339-340; *see also* p. 315 (Exhibit 4).

(i.) *Sansoucy and Walker Knew the Cost Approach Was Not Going to be Given Any Weight, Despite that the PWW Assets Are Special Purpose Property.*

It is true that the Sansoucy Appraisal has a section entitled "Cost Approach," and devotes several pages to discussing that appraisal approach. Sansoucy Appraisal at pp. 36-43 (Exhibit 1). But, Sansoucy knew at the time that he performed his cost approach that he was not going to consider the results in the ultimate valuation. Sansoucy told the Nashua Aldermanic Budget Review Committee on March 16, 2004 that he had no intention of giving the cost approach any weight:

> In this instance, the replacement cost new less depreciation would be a very high number - $120 - $150 million before market based depreciation – economic depreciation as a result of sales and income. This sale and this market cannot afford $150 million. That is a ludicrous number. Can't afford it.

p. 15 (Exhibit 12).

Moreover, it is even more remarkable that he failed to give it any weight simply because he subjectively decided that the valuation conclusion was, in his words "going over the top." Sansoucy Valuation Deposition, p. 373 (Exhibit 4).

Sansoucy failed to follow generally accepted appraisal methodology by failing to properly conduct and consider the cost approach on the singular basis that it would result in a value that was too high. Given that PWW is special purpose property, for Sansoucy and Walker to subjectively and arbitrarily decide that the cost approach would not be considered, even before they did it, makes the valuation opinion unreliable.

(ii.) *Sansoucy and Walker Relied on Records that they Knew Were Unreliable.*[5]

Sansoucy has routinely taken the position in other appraisal work that a quantity survey analysis is more reliable than a trended analysis; yet, in this valuation, he did not conduct a quantity analysis on PWW. *See, e.g.,* p. 26 and Table 5, *Valuation of Water Utility Property of the Hanover Water Works Company as of December 31, 2000* (Exhibit 27). Instead, Sansoucy attempted to rely upon cost index trending, an approach that is not considered reliable:

> Although cost index trending may be helpful in confirming a current cost estimate, it is not a reliable substitute for the cost-estimating methods described in the following section [the comparative unit method, the unit-in-place method and the quantity survey method].

Appraisal of Real Estate, p. 369 (Exhibit 10).

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[5] Not surprisingly, within the cost approach, Sansoucy and Walker failed to properly conduct the valuation of the real estate assets of PWW: (1) Sansoucy and Walker failed to conduct an appraisal of the real estate owned by Pennichuck Water Works, Inc.; (2) the appraisal report prepared by Sansoucy and Walker does not purport to conduct an appraisal of the real estate, but simply incorporates assessment values from the tax rolls of the City of Nashua, Sansoucy Appraisal, pp. 42-43. (Exhibit 1); (3) values placed upon a property by a municipality for assessment purposes are not admissible as evidence of value in a condemnation proceeding, *Beers v. Davidson*, 81 N.H. 326 (1924); and (4) authoritative appraisal texts warn against the use of tax assessment information because "[b] Budgetary and time constraints on public agencies responsible for collecting and maintaining assessment data can cast doubt on the accuracy of the data," *The Appraisal of Real Estate*, p. 423 (Exhibit 10). Sansoucy and Walker failed to follow generally accepted appraisal principles in valuing the real estate assets and therefore should not be allowed to offer real estate valuation testimony in this proceeding.

With a trended analysis, such as Sansoucy and Walker have performed, it is critical that the records the appraiser is relying on be impeccable. *Id.* (noting that one of the problems with cost index trending is accuracy of the data). In short, the principle of trending is that the appraiser uses the cost of a particular asset from the time it was installed and estimates, based on that cost, what the current cost of the same asset would be. Obviously, the known variables will be the date the asset was installed, and the historical cost. The records that Sansoucy relied on, however, are not reliable for this purpose:

> Due to the limitations of the computer program originally used to generate the CPR, the acquisition dates do not reflect the actual dates that assets were acquired. For example, some of the PWW assets date back to the late 1800's. However, the PWW computer program would not accept dates prior to 1901. Also, in order to permit the computer application to correctly calculate depreciation, PWW had to enter acquisition dates for certain assets that were more recent than the actual acquisition date for that asset. Finally, because mass account items are grouped (regardless of size and age) and include adjustments for retirements and additions, the original cost and acquisition date information for those mass account items does not reflect actual original costs and actual acquisition dates.

Reilly Reply Testimony, Report p. 11 (Exhibit 7). Critically, at the time that Sansoucy and Walker relied on these records, they ***knew*** that the records were not reliable. Sansoucy testified that he chose "to go with the [CPR] as they were regardless of their accuracy." Sansoucy Valuation Deposition, p. 409 (Exhibit 4).

While there are numerous other deficiencies in the Sansoucy Appraisal's cost approach,[6] it is self-evident that it is unreliable to base an appraisal on records that are known to be deficient. For the gatekeeping function to have any meaning, Sansoucy and Walker's cost approach should not be considered as an indication of fair market value.

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[6] These deficiencies are outlined in more detail in the Reilly Reply Testimony, Report pp. 9-13 (Errors 3 through 6) (Exhibit 7), and in the Update Report at pp. 2-6 (Exhibit 8).

b. Sansoucy and Walker Failed to Follow Generally Accepted Appraisal Methodology in the Sales Comparison Approach and Income Approach.

In applying the sales and income approaches, Sansoucy and Walker misapplied the accepted standards, shortcut necessary and fundamental research, and misnamed their approaches. The net effect of the numerous errors results is an indicator of value that is untrustworthy.

(i.) *The Market Approach: Failed to Research the Sales Relied Upon.*

Sansoucy and Walker should not be allowed to offer testimony of their sales comparison approach because they failed to follow generally accepted appraisal techniques which require that comparable sales be adequately researched. *Appraisal of Real Estate*, pp. 422, 425-426[7] (Exhibit 10). Instead, Sansoucy and Walker listed a number of transactions, and then without adequate information or analysis simply ran averages and means, contrary to generally accepted appraisal practice. "Statistical results such as averages should not be misinterpreted as, or substituted for, a full understanding of market behavior." *Id.*, p. 427. Sansoucy's use of the mean is particularly egregious given that the raw data showed a wide variance of values. Sansoucy Appraisal, p. 49 (Exhibit 1). Moreover, Sansoucy and Walker simply did not consider information about the motivations of the buyers, expenditures after the transaction, the physical and functional condition of the properties, and other factors which would require adjustments. Walker Deposition, pp. 166–181 (Exhibit 25).

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[7] This includes ***gathering data***, including price, real property rights conveyed, financing terms, motivations of buyers and sellers, dates of sales, expenditures after the transactions, the property's location, physical and functional condition, economic characteristics, and use of the property, and then reviewing and ***adjusting*** the comparable sales for any differences with the subject property.

Moreover, Sansoucy and Walker failed to make any adjustments based upon the differences between and among the various sales identified. In Walker's deposition, the following exchange took place during a discussion of the sales comparison approach:

> Q. Okay. Did you make any adjustments to the financial statements of the nine companies that you included in your comparability analysis in comparing those companies to Pennichuck Water Works?
>
> A. No.
>
> Q. What adjustments, if any, did you make to the financial statements of PWW for comparison with those nine companies?
>
> A. None
>
> * * *
>
> Q. No. Mr. Walker, I'm talking about adjustments to the raw data. I still assume you would use ratios even after you made adjustments, if you were going to make any.
>
> A. Well, I guess, then, we didn't make – we let the data speak for what the data was.

Id. pp. 168-169.

> Q. ...you did **not** do any type of comparability analysis between the subject and the nine companies to make any judgment as to whether or not the subject should be accorded the average multiple of the PAC? (emphasis added).
>
> A. Okay. In relation to those nine companies that is correct.

Id. p. 177-178. On that basis, any testimony about their Comparable Sales Approach should not be considered as an indicator of fair market value.

(ii.) *Income Capitalization Approach: Misnamed the Appraisal Technique Used.*

Sansoucy and Walker should not be allowed to offer testimony of their income approach for failure to follow generally accepted appraisal techniques. Sansoucy and Walker stated in their Sansoucy Appraisal and in their deposition testimony that a discounted cash flow method

should be utilized where future income and expenses are not expected to be constant (as in the case of PWW because of the capital expenditure plan). But in conducting the income approach analysis, they did not utilize a discounted cash flow. Rather, they used a direct capitalization approach, based on one year's income and expenses. Sansoucy Appraisal, pp. 53, 56 (Exhibit 1). Direct Capitalization is a not reliable approach in valuing PWW:

> Direct capitalization is widely used when properties are already operating on a stabilized basis....The methodology may be less useful...when income and/or expenses are expected to change in an irregular pattern over time.

Appraisal of Real Estate, p. 529 (Exhibit 10). By failing to utilize a discounted cash flow (yield capitalization) Sansoucy and Walker failed to take into account the committed ongoing and future capital improvements and resulting anticipated revenue increases.[8]

WHEREFORE, PWW requests that Commission:

A. Exclude all valuation testimony of Mr. Sansoucy and Mr. Walker because of numerous violations of USPAP and the failure to follow *The Appraisal of Real Estate,* which make the appraisal unreliable;

B. Exclude all valuation testimony of Mr. Sansoucy and Mr. Walker on the grounds that it failed to meet the RSA 516:29-a and *Daubert* standard because Sansoucy's "no net harm" standard is not proper methodology and violates Pennichuck's constitutional protection to receive fair market value for its property,

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[8] This is not exhaustive of all the errors of the Sansoucy Appraisal. The fundamental errors relating to the Sales Approach were delineated in the Reilly Reply Testimony, Report pp. 13-17 (fundamental errors 7 through 12) (Exhibit 7). As to the Income Approach, those errors were included in the Reilly Reply Testimony, Report pp. 18-20 (fundamental errors 13 and 14) *Id.* PWW relies on this testimony, in addition to the specific errors outlined in this Motion In Limine.

C. Exclude the cost approach testimony of Mr. Sansoucy and Mr. Walker on the grounds that it failed to meet the RSA 516:29-a and *Daubert* standard on the basis of improper methodology,

D. Exclude the sales comparison approach testimony of Mr. Sansoucy and Mr. Walker on the grounds that it failed to meet the RSA 516:29-a and the *Daubert* standard on the basis of improper methodology,

E. Exclude the income approach testimony of Mr. Sansoucy and Mr. Walker on the grounds that it failed to meet the RSA 516:29-a and the *Daubert* standard on the basis of improper methodology,

F. Exclude all valuation testimony of Mr. Sansoucy and Mr. Walker on the grounds that it is not sufficiently reliable to assist the trier of fact in any meaningful way, and

G. Grant such other and further relief as may be just.

Respectfully Submitted,

Pennichuck Water Works, Inc.
Pennichuck East Utility, Inc.
Pittsfield Aqueduct Company, Inc.
Pennichuck Water Service Corporation and
Pennichuck Corporation

By Their Attorneys,

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November 27, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2006, a copy of Pennichuck's Motion in Limine has been forwarded by electronic mail to the parties listed on the Commission's service list in this docket.

Thomas J. Donovan