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August 22, 2006



OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

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:

On behalf of Pennichuck Water Works, Inc., I enclose for filing an original and six copies of a Motion for Reconsideration and/or Rehearing Regarding Order No. 24,654. An electronic copy of the Motion will be sent to Kim Smith.

Thank you for your assistance with this matter. If you have any questions, please do not hesitate to call.

Very truly yours,

A handwritten signature in cursive script that reads "Sarah B. Knowlton".

Sarah B. Knowlton

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

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

City of Nashua: Taking of Pennichuck Water Works. Inc.

Docket No. DW 04-48

**MOTION FOR RECONSIDERATION AND/OR REHEARING REGARDING
ORDER NO. 24,654**

Pennichuck Water Works, Inc. ("PWW" or "Pennichuck") respectfully requests that, pursuant to RSA 541:3, the Commission reconsider or conduct a rehearing of Order No. 24,654 ("Initial Order") regarding Nashua's projected cost of operating and maintaining the water system it seeks to acquire in this docket. In support of this Motion, PWW states as follows:

1. This Motion for Reconsideration and/or Rehearing arises out of the Commission's determination that Nashua may refuse to produce certain information relating to the projected costs for the City to operate and maintain the assets of PWW (the "PWW Assets") if it is successful in taking those assets by eminent domain. By way of background, on January 12, 2006, Nashua filed testimony setting forth the factual basis for why it believes the taking of the PWW Assets is in the public interest. This testimony consisted of Nashua's valuation of the PWW Assets and other information "dependent on valuation such as rate and revenue requirement comparisons based on our valuation of PWW's assets, the proposed contracts for oversight and operation of Nashua's water system submitted...and other information." Direct Pre-Filed Testimony of George E. Sansoucy and Glenn C. Walker, p.1. In this testimony, Nashua alleged that:

Our testimony today demonstrates that acquisition of PWW's assets at their market value will allow Nashua to operate its water system under the proposed

contracts for operation and maintenance will benefit customers of the system by providing state of the art service while using market forces to reduce overhead and provide savings to customers.

Id., p. 2. Nashua's testimony further alleged that its "proposed contracts with R.W. Beck and VWNA for oversight and operation of Nashua's water system, lends further support to Nashua's Petition by demonstrating that Nashua will provide high quality service while producing significant savings for the benefit of customers of the system." *Id.* at 5. Nashua's testimony ultimately concludes that it can operate the PWW Assets at cumulative savings of \$292 million to PWW's customers, in part based on its alleged decrease in operations and maintenance costs. *Id.* at 10.

2. In order to test the accuracy of Nashua's assertions, on January 27, 2006, PWW issued data requests to Nashua seeking "...copies of all prior drafts of the Veolia and R.W. Beck agreements with Nashua...along with documents which constitute or refer to all negotiations concerning said agreements or prior drafts thereof." *See* Exhibit 1 to PWW's Motion to Compel. PWW sought these documents – and in particular, those relating to the negotiation of the draft contracts – based on the structure of the Veolia and R.W. Beck contracts, which on their face, do not divulge the actual expenses to be incurred by Nashua.

3. As explained in the pre-filed direct testimony of John Joyner, the Veolia contract contains a complex scheme for remuneration to Veolia for its services. Although there is a \$5 million base annual fee, under the contract there are many critical activities that are not included in that fee and which are subject to additional charges. For example, review and inspection of construction, fire flow tests, creation of as-built plans, and repair and maintenance of pipes, service lines and equipment are not included in this annual

payment, and are subject to additional payments on a time and materials basis. *See* February 27, 2006 Testimony of John Joyner, p. 9. Under this contract scheme, Veolia will receive additional compensation for costs it incurs to repair or maintain the PWW Assets outside of preventative maintenance, such as costs to repair broken pipes. *Id.*, p. 10. In order for PWW, and ultimately the Commission, to determine the likely cost of these critical functions and whether Nashua can in fact operate and maintain the PWW Assets in a more cost efficient manner than Pennichuck, there must be a full disclosure of what those costs are reasonably anticipated to be.

4. Pennichuck is not seeking through its data request to discover negotiating positions of Veolia and Nashua in working out their proposed contract. It is seeking information that might shed light on what they, and in particular, Veolia believed these additional critical services might cost. Because the contract pricing structure has apparently changed from the original Veolia proposal to the final draft contract, it is highly likely that the parties' proposals during the negotiating process will shed considerable light on what they thought these services would cost and how much should be included in the contract price to cover them. Pennichuck believes that it was during the negotiating process that the parties to the contract settled on a structure under which these costs would not be included in the base fee. It was in that context that PWW submitted DR 3-14 seeking documents relating to the negotiation of the Veolia and R.W. Beck contracts. Yet Nashua, and now the Commission, through Order 24,654, have precluded Pennichuck from assessing whether Nashua can obtain the savings its projects.

5. In Order 24,654, the Commission reaches multiple erroneous conclusions. First, the Commission states that Pennichuck's request seeks "certain documents related

to the negotiations that preceded Nashua's signing of written contracts with two firms." Order 24,654 at 2. To Pennichuck's knowledge, Nashua has still not signed the contracts with Veolia or R.W. Beck, despite that Nashua's entire case is premised on their operation of the PWW Assets. Thus, the Commission appears to misunderstand the status of the contracts themselves, which are currently drafts only and remain subject to change according to Nashua and Veolia.

6. The Commission further holds that it does not "perceive circumstances in which information about the negotiations that led to the contracts themselves would become part of the record in this proceeding." Order 24,654 at 3. The Commission's conclusion is based on the faulty premise that the contracts themselves reveal the information necessary to determine the charges Nashua will incur in contracting with Veolia and R.W. Beck. In their current form, as proffered by Nashua, the contracts describe only the types of services that will be provided, and which of the buckets of compensation those services fall into. The only known dollar figure is the \$5 million base annual fee. The contracts do not reveal how much Nashua will pay in total to Veolia to provide the other categories of services that are not covered by the base fee, though it is a certainty that Nashua has estimated what it expects to pay and Veolia has estimated what it expects to receive, since they both claim that Nashua will save money under these contracts. Pennichuck would note that both Nashua and Veolia have every incentive to obfuscate what the total compensation will likely be under these other buckets of payment. Nashua would like the Commission to believe that most of its costs will be subsumed into the \$5 million annual fee and that any additional compensation under the

contract will be minimal, while Veolia, of course, would like to avoid producing its projected billings under these other contract provisions.

7. The Commission's statement that its ultimate decision will be driven by "the costs themselves, as fixed by the contracts in question" reflects its misunderstanding of this issue. Order 24,654 at 4. Even if Nashua signed the Veolia and R.W. Beck contracts today, there would be no way of knowing what the contract costs (over and above the annual fee) would total because only the categories of costs, not the costs themselves, are specified in the contract. For example, how many pipes and valves does Veolia project repairing under the contract each year? How many fire flow tests will be conducted, and at what cost? Without this information, neither Pennichuck nor the Commission can determine whether Nashua can operate the system at a cost savings. This information can only be obtained by knowing what Nashua and Veolia projected for these costs during the negotiating process.

8. The only way for the Commission to consider the total costs of the Veolia and R.W. Beck contracts – which it must – is to allow for the discovery of evidence of what the parties to the proposed contracts estimate those costs to be. By denying Pennichuck's Motion to Compel, the Commission has precluded Pennichuck from obtaining and presenting evidence that is central to this case, which ultimately could taint the Commission's determination of this matter.

9. For these reasons, the Commission should reconsider Order No. 24,654 and allow the discovery of documents responsive to Pennichuck Data Request 3-14.

10. Counsel for PWW attempted to contact the parties to obtain their positions on the Motion. The Town of Merrimack takes no position on the Motion, Nashua and the

Merrimack Valley Regional Water District do not assent, and the other parties did not have the opportunity to respond prior to its filing.

WHEREFORE, PWW respectfully requests that the Commission:

A. Order Nashua to produce all documents relating to the projected cost of operating and maintaining the PWW Assets under the Veolia and R.W. Beck contracts; and

B. Grant such other relief that the Commission deems just and reasonable.

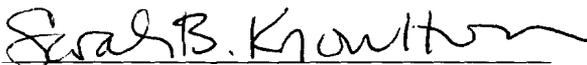
Respectfully submitted,

Pennichuck Water Works, Inc.

By Its Attorneys,

McLANE, GRAF, RAULERSON &
MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: August 22, 2006

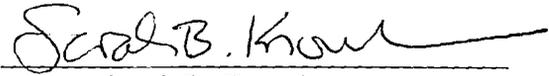
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Certificate of Service

I hereby certify that on this 22nd day of August, 2006, a copy of this Motion for Reconsideration and/or Rehearing has been forwarded to the parties listed on the Commission's service list in this docket.



Sarah B. Knowlton
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