THE STATE OF NEW HAMPSHIRE

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September 5, 2006

Debra A. Howland
Executive Director and Secretary
NH Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301

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

Dear Ms. Howland:

Enclosed please find Staff's Objection to the City of Nashua's Motion to Continue to be filed in the above docket.

Thank you. If you have any questions, please feel free to contact me.

Sincerely,

Marcia A. B. Thunberg
Staff Attorney/Hearings Examiner

cc: Service list

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Petition for Valuation Pursuant to RSA 38:9

Docket No. DW 04-048

STAFF'S OBJECTION TO NASHUA'S MOTION TO CONTINUE

On August 25, 2006, the City of Nashua filed a motion requesting the Commission extend the present procedural schedule by approximately four and one half months. Staff objects to this request and states as follows:

1. The procedural schedule governing discovery in this docket was first approved by the Commission in Order No. 24,457, dated April 22, 2005. According to that procedural schedule, hearings were expected to occur in September 2006. Depositions on technical, financial, and managerial capabilities and public interest issues were to be completed by August 29, 2005 and depositions on valuation issues were to be completed by April 7, 2006.

2. On May 17, 2005, the Pennichuck Companies filed a motion to establish a procedure for depositions. This motion was assented to by Nashua, OCA, Staff, and the Towns of Milford, Raymond and Pittsfield. On July 8, 2005, the Commission issued Order No. 24,486 granting PWW's Motion to Establish Procedures for Depositions. In this order, the Commission acknowledged that N.H. Code Admin. R. Puc 204.4(g) allowed depositions as a form of discovery but the Commission reaffirmed that parties do not have authority to issue subpoenas to compel witnesses to attend depositions.[1]

3. As guidance to the parties in this docket, the Commission stated that "if depositions are to be conducted in this docket, they take place by agreement of the parties."

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[1] The Commission cited its decision in *Tilton and Northfield Aqueduct Company,* 74 NH PUC 451 (1989) wherein it granted a motion to quash a deposition subpoena.

Order No. 24,486 (July 8, 2005) slip op. at 3. The Commission agreed with the assented-to motion that parties, to the extent practicable, should generally follow accepted practices and procedures for taking depositions found in Superior Court Rule 35 through 45-A and RSA 517 and cooperate in scheduling depositions by agreement without involvement from the Commission. "Parties shall use best efforts to produce for deposition, upon request, witnesses employed by a party or under a contractual relationship with a party relating to this proceeding." The Commission further stated that it would be prepared to issue subpoenas in the event the parties could not agree. The Commission directed that in the event witnesses are not produced by agreement, the requesting party should file a request for issuance of a subpoena with the Commission and that such request should "state how the proposed deposition comes within the scope of Superior Court Rule 35(b)(1). Absent an objection, the Commission directed its Executive Director to issue the subpoena on the eleventh day after the request.

4. At the request of Nashua and PWW, the Commission approved a modification to that procedural schedule by way of a secretarial letter dated October 3, 2005. According to this revised procedural schedule, hearings were set to occur in January 2007. Since this adjustment to the procedural schedule post-dated the deadline for completing public interest depositions, that deadline was not adjusted. Depositions on valuation issues were adjusted to be completed by July 6, 2006.

5. On April 25, 2006, consistent with the Commission's instructions in Order No. 24,486, Nashua filed a request for issuance of subpoenas concerning witnesses PWW and Nashua had not yet come to an agreement for scheduling depositions. Nashua stated in its request that on March 29, 2006 and April 7, 2006, it "requested the opportunity to depose witnesses related to Pennichuck's public interest case" but that PWW "has failed to cooperate to

produce any of its witnesses as ordered by the Commission." Request at 2. Nashua requested subpoenas for:

Bonnie Hartley	Don Ware
William Patterson	Steve Densberger
Maurice Arel	Chuck Staub
Chris Stala	John Joyner
R. Kelly Meyers	Greg Clukey
Jack Heath	Eileen Pannetier
Douglas Patch	Donald Correll.

7. On May 3, 2006, PWW filed an objection to Nashua's request. PWW characterized Nashua's request as an effort to "remake the procedural schedule" and identified two other occasions on which Nashua has had an opportunity to revisit amending the procedural schedule. PWW further stated that it would cooperate and allow Nashua "to take certain of the depositions requested" notwithstanding the fact that Nashua was seeking to depose 14 witnesses two weeks prior to Nashua's May 22, 2006 reply testimony.

8. On May 15, 2006, General Counsel Donald M. Kreis filed a report with the Commission informing the Commission that Nashua and PWW had reached agreement on the taking of depositions and that Nashua's request for subpoenas was withdrawn. Mr. Kreis reported that Nashua and PWW had agreed to the depositions of:

Bonnie Hartley	Don Ware
William Patterson	Steve Densberger
Chris Stala	John Joyner
R. Kelly Myers	Eileen Pennetier
Douglas Patch	Donald Correll

Nashua and PWW agreed that the depositions would be completed by Friday, July 28, 2006. Nashua also agreed to forego the depositions of other persons listed in its request for subpoenas, those being:

Maurice Arel	Chuck Staub

Greg Clukey Jack Heath

9. On August 25, 2006, Nashua filed a Motion to Continue and requested the present procedural schedule be extended as follows:

Procedural Schedule	**Existing Date**	**Proposed Date**
Capstone Testimony Jointing Public Interest and Valuation Issues	September 15, 2006	December 1, 2006
Data Requests on Capstone and Reply Testimony	September 29, 2005	December 22, 2006
Resposnes to Data Requests on Capstone and Reply Testimony	October 20, 2006	January 19, 2007
Capstone Rebuttal Testimony by any party	November 14, 2006	February 23, 2007
Settlement Discussions	November 20, 2006	March 2, 2007
Pre-Hearing Briefs	December 15, 2006	April 20, 2007
View	December 2006	April 2007
Hearings	January 2007	May 15, 2007

10. In support of its request to extend the procedural schedule, Nashua avers that "several important discovery and procedural steps remain to be completed prior to the Capstone Testimony and Briefs to be submitted in this proceeding on September 15 and December 15, 2006."

A. Nashua states that it has yet to take the depositions of Msses. Correll, Ware, Densberger, Stala, and Joyner and has yet to receive record requests and transcripts pertaining to witnesses Incropera, Guastella, and Hartley. Nashua stated PWW intends to conduct a deposition of Joseph Tomashosky on August 14, 2006 and Philip Ashcroft on August 29, 2006 and Nashua expects PWW to make record requests at these depositions and that Nashua will need time to respond to those requests.

B. Nashua avers that the Commission has yet to rule on PWW's July 21, 2006 Motion to Compel; August 1, 2006 Motion to Strike; and August 23, 2006 Motion for Reconsideration and/or Rehearing; and that those rulings may affect Nashua's September 15, 2006 Capstone testimony and December 15, 2006 briefs. Nashua also avers that due to the voluminous discovery materials developed in this docket, the procedural schedule does not provide Nashua with sufficient time to meaningfully incorporate the information into its Capstone Testimony.

11. Staff objects to Nashua's reason for extending the procedural schedule because it seeks additional time to conduct depositions. The Commission laid out a specific process for conducting the depositions and a specific timeline within which to conduct those depositions. Nashua has extended the deadline for taking depositions twice and is now asking the Commission to in essence extend it a third time. If Nashua felt it was not receiving cooperation from PWW to produce deposition witnesses prior to the agreed-to July 28, 2006 deadline, it could have filed for issuance of subpoenas. Nashua did not fully avail itself of the process the Commission approved in Order No. 24,486. Additionally, Correll, Ware, and Joyner are public interest witnesses who supplied testimony as late as February 27, 2006. Correll and Ware also supplied testimony on January 12, 2006. Nashua admits in its *Request for Issuance of Subpoenas,* filed April 25, 2006, that it did not seek depositions of these witnesses until it made requests on March 29, 2006 and April 7, 2006 for PWW to produce these witnesses.

12. Staff also objects to Nashua's reason for extending the procedural schedule because the Commission has not yet ruled on certain discovery motions. If pending orders were to impact Nashua's capstone testimony, Staff would expect those pending orders to be on motions filed by Nashua. Instead, the orders concern motions filed by PWW. None of the

discovery motions pertain to information Nashua is seeking and it is difficult to follow the reasoning that those decisions would affect Nashua's capstone testimony and briefs enough to warrant an extension of the procedural schedule.

13. In support of its motion, Nashua further avers that the "volume of information to be incorporated into Capstone Testimony and Briefs already produced in this proceeding vastly exceeds that anticipated at the time the procedural schedule was adopted" and the present "procedural schedule has not provided Nashua with sufficient time to meaningfully incorporate this information into Capstone Testimony." Nashua also states that its' obligations to respond to pleadings has absorbed time that Nashua would have otherwise have used to prepare for Capstone Testimony and Briefs. Nashua states "[a]dditional time will assist the parties and Commission in focusing and narrowing the issues to be addressed at its hearings."

14. Staff is sympathetic to the need to review the voluminous discovery amassed in this docket, however, there comes a point in time in discovery when enough is enough and the deadlines agreed to in the procedural schedule need to be honored. In Staff's opinion, that time has arrived. Staff understands one of Nashua's counsels was unavailable during approximately June 28 through July 18, 2006 due to the birth of a child and this absence hampered Nashua's ability to respond to discovery, however, the law office should have covered for this absent attorney, rather than use the inability to prepare as a reason justifying an extension of the procedural schedule.

WHEREFORE, Staff respectfully requests the Commission:

A. Deny Nashua's *Motion to Continue* and request the Commission extend the procedural schedule; and

B. Grant such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

Staff of the New Hampshire
Public Utilities Commission

Date: September 5, 2006

By: Marcia A B Thunberg
Marcia A. B. Thunberg
Staff Attorney/Hearings Examiner

Certificate of Service

I hereby certify that on this 5th day of September 2006, a copy of this Objection to Nashua's Motion to Continue has been forwarded to the parties listed on the Commission's service list in Docket No. DW 04-048.

Marcia A B Thunberg
Marcia A. B. Thunberg