

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

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

Docket No. DW 04-048

DIRECT TESTIMONY OF DONALD L. CORRELL

February 27, 2006

1 Q. Mr. Correll, have you previously provided testimony in this proceeding?

2 A. Yes. I submitted testimony on January 12, 2006.

3 Q. What is the purpose of this additional testimony?

4 A. In its Order No. 24,567, the Public Utilities Commission allowed the City of
5 Nashua to submit new information concerning the City's plans to use a third party
6 contractor to operate the water systems now owned by Pennichuck Water Works
7 (PWW). The PUC imposed a very short timeframe for discovery on that
8 additional testimony and for PWW to submit responsive testimony. As it turns
9 out, Nashua is actually proposing to use four different outside contractors—
10 Veolia, R.W. Beck, Tetra Tech and Dufresne-Henry—to operate the PWW
11 systems if it is ultimately successful in its eminent domain efforts. In addition, at
12 the February 21, 2006 technical session, the City's consultant, George Sansoucy,
13 indicated that the City is considering contracting out the billing and collection
14 function, rather than retaining it as previously indicated by the City in its
15 submissions to the Commission.
16 Because of the enormity of the task of conducting discovery on the four very large
17 companies identified by Nashua, the nature of their relationship with Nashua and
18 their track record, if any, of operating similar systems under this type of
19 arrangement, I am limiting my comments at this time to Veolia because that
20 company is being put forward by Nashua as the lead operator of the water systems
21 the City seeks to take from PWW. This testimony will set forth what we have
22 learned about Veolia's track record in other communities in the United States
23 where it has done business. In addition, Mr. John Joyner of Infrastructure

1 Management Group will provide his analysis of the proposed contract between
2 Nashua and Veolia, and Mr. Donald Ware will discuss how the arrangement with
3 Veolia compares to the service that customers receive today from PWW.
4 I should stress that because of the time constraints imposed by the procedural
5 schedule established in Order No. 24,567 and a lack of cooperation or delayed
6 responses from Nashua, PWW has not yet had an opportunity to complete its
7 investigation of Veolia and the other contractors that the City proposes to engage,
8 but I will discuss what we have found thus far. I or other witnesses for PWW will
9 certainly update this testimony at a later date based on what we are able to
10 determine once Nashua has responded to all of our data requests regarding Veolia
11 and once they have made all of the requested witnesses available and we have had
12 a chance to complete our own investigation regarding Veolia's track record in
13 other communities.

14 **Q. The City has proposed to contract with Veolia Water North America—**
15 **Northeast, LLC (“VWNA”). What is this entity?**

16 **A.** VWNA is an operating subsidiary of Veolia Environnement, a very large French
17 owned company that is publicly traded on the Paris Bourse, the principal French
18 stock exchange. Veolia Environnement is the former water industry business of
19 Vivendi Universal, which used to own approximately 15% of Philadelphia
20 Suburban Corporation (“PSC”). This is the very same business that Nashua
21 complained so loudly about in 2002 at the time of the proposed merger of PSC
22 and Pennichuck Corporation. When it was part of Vivendi, Veolia
23 Environnement was known as Vivendi Environnement, but in 2003 the company

1 changed its name. It is French controlled, with headquarters in Paris. The
2 business that is conducted today by VWNA was known as US Filter when it was
3 owned by Vivendi. Included as Attachment DLC-8 to this testimony is some
4 basic background corporate information regarding Veolia Environnement and
5 how VWNA fits in that was obtained from Veolia's filings with securities
6 regulators. (Numbering of the attachments to this testimony is consecutive to that
7 in my direct testimony filed on January 12, 2006.)

8 **Q. How does the French ownership of VWNA relate to the issues in this**
9 **proceeding?**

10 A. As I noted above, the City itself protested in 2002 that the merger of Pennichuck
11 Corporation with PSC could mean the shifting to far away places of management
12 of the water system. At the time, "far away" meant Philadelphia. (It is worth
13 noting that, at the time of the PSC transaction, it had been publicly announced that
14 Vivendi was in the process of selling off its entire interest in PSC.) Under the
15 City's proposal, the decision as to how to staff and operate the water system will
16 ultimately be made by people who are responsible to shareholders in France. The
17 immense multinational company that these executives are responsible for
18 managing for their French shareholders, owns or operates assets not just
19 throughout the entire United States, but also in Europe, Asia and many other
20 locations. In such a huge corporate structure, the needs of Nashua are likely to be
21 of little significance and will not be a high priority. The City can be certain that
22 VWNA will not provide resources or services that are not spelled out in the
23 contract with the City without additional cost to the City. It is therefore quite

1 likely that, to a far greater extent than Nashua has accused PWW, the interests of
2 shareholders will guide the choices made by the contract operator. Unlike for
3 Veolia, throughout Pennichuck's 150 year history Nashua has been, and for the
4 foreseeable future will continue to be, Pennichuck's largest "customer".

5 I should also note that the few individuals employed by Veolia who may be
6 assigned to live in or near Nashua as part of the relationship with the City will be
7 people who are not likely to be senior executive officers or other high level
8 personnel in the overall Veolia corporate structure, but rather will be individuals
9 who can be changed over very easily and quickly if they do not meet the goals of
10 the larger corporate entity.

11 These concerns exist in such a structure because Nashua will be such a tiny part
12 of the overall Veolia economic framework. In fact, the staffing model that Veolia
13 is using for its agreement with Nashua shows that many of its operations will be
14 located elsewhere. Senior regional management, transitional services, accounting,
15 human resources, environment, health, safety and security will all be located in
16 Norwell, MA. Information technology will be located in Indianapolis. And
17 payroll will be located in Houston. I have included as Attachment DLC-9 an
18 excerpt from the deposition of Robert R. Burton, a Veolia employee who has
19 submitted testimony in this proceeding. I am also including as Attachment DLC-
20 10, Exhibit 82 from that deposition.

21 **Q. What other concerns do you have about the City's proposed relationship**
22 **with Veolia?**

1 A. It is worth noting that Nashua has not entered into a legally binding relationship
2 with Veolia or any of its other contractors. In fact, although the City claims that
3 its ability to operate the water system should be judged based on the abilities of
4 the four contractors it has now identified, all of those relationships can be changed
5 at any time and there is absolutely no assurance that those contractors will be the
6 ones that the City ultimately engages. In fact, there is nothing to stop the City
7 from deciding not to use a contractor at all and operating the water system itself
8 even though it has told the PUC that it will not do so. At this point, the City does
9 not have a binding contract with Veolia, but rather just a form of agreement that
10 presents an initial proposal of sorts. Aside from their ability to change provisions
11 that are set forth in the contract that has been submitted to the Commission, there
12 remain unfilled terms in the draft contract for items such as unit costs and job task
13 times. (See, for example, the Veolia contract included as Attachment B to the
14 testimony of Philip G. Ashcroft et al, Appendices E and H, submitted by Nashua
15 on January 12, 2006 and the excerpt from the deposition of Paul Doran attached
16 as DLC-11.) As a result, PWW and the other parties to this proceeding have been
17 put in the position of having to respond to a moving target. The fact that PWW
18 and the Commission must analyze a moving target was further confirmed by
19 Nashua just last week at the February 21 technical session, where Nashua's
20 representatives stated that they believe they are free to change their proposal as
21 the case goes forward to respond to failings that are identified by PWW or other
22 parties. This further confirms what PWW has said since the beginning of this
23 proceeding, which is that Nashua is undertaking this proceeding as a means of

1 “kicking the tires,” rather than because it has a well thought out plan for operating
2 the utility.

3 **Q. Have you conducted an independent investigation of Veolia’s track record in**
4 **other communities?**

5 A. At my request, research was conducted regarding Veolia’s record throughout the
6 United States. Some disturbing themes arose, which I think are worth sharing
7 with the Commission.

8 **Q. What were those themes?**

9 A. One is that, in order to do business with governmental entities, Veolia necessarily
10 has to look for ways to gain as much access as possible to the governmental
11 officials making the procurement/contracting decisions. Unlike what happens
12 with operation of a water system by an investor owned utility, an outside
13 contractor such as Veolia needs to focus extremely heavily on a governmental
14 relations effort as part of its plan to obtain and maintain its position as an outside
15 contractor. Often this is likely to mean sending many individuals into a
16 community to build relationships with officials. That type of relationship can
17 create many risks if the contractor does not practice the highest level of business
18 ethics. In such cases, the potential for improper conduct and relationships, rather
19 than making decisions strictly on the merits, is great. In at least two cases we
20 have found to date in the U.S.—Bridgeport, Connecticut and New Orleans—
21 Veolia employees were convicted of making illegal payments to government
22 officials. (The criminal conduct in Bridgeport involved an employee of
23 Professional Services Group, a prior name for VWNA's current business.) In

1 addition, in Rockland, Massachusetts, a town employee and a Veolia employee
2 jointly pilfered cash set aside for capital improvements to the sewer treatment
3 plant which Veolia operated for the town. Included with my testimony as
4 Attachment DLC-12 is some of the supporting information that we have found to
5 date regarding such situations.

6 Another theme we found was that of troubled relations with employees. Such
7 problems are not surprising given the pressure that Veolia frequently faces to
8 meet the cost projections and contractual fee arrangements it must agree to in
9 order to win municipal contracts. Examples of labor issues at Veolia water
10 systems that we have found to date are those in Indianapolis and in New Bedford,
11 Massachusetts. On a related and perhaps more troubling note, we found that the
12 City of Angleton, Texas terminated its contract with Veolia because of lack of
13 performance and sued the company for breach of contract. The City claimed that
14 Veolia had failed to maintain adequate staffing levels, did not submit annual
15 capital budget reports as required, and improperly charged expenses to the
16 maintenance and repair budget that was funded by the City. (Attachment DLC-13
17 provides some of the documents that we found that refer to these situations, all of
18 which involve underlying labor problems.) Interestingly, based on the contract
19 submitted by Nashua in this case, it is clear that the City has failed to negotiate
20 with Veolia to ensure even minimal protections for the 30 to 40 PWW workers
21 that Veolia has indicated it wants to hire. Unlike in Indianapolis, where the city
22 required that Veolia not lay off workers for two years, that it recognize the current
23 labor union and that it assume the existing labor contract, here Veolia has made

1 no promises to the many PWW unionized workers who enjoy hard-earned health
2 insurance, pensions and retirement health benefits and whose assistance both the
3 City and Veolia claim is so critical to a successful transition. The types of
4 protections extended in Indianapolis are common practice in private operation
5 procurement relationships. (I have included with this testimony as Attachment
6 DLC-14, a copy of Section 4.02 of the Veolia contract with Indianapolis.) In fact,
7 Veolia has stated that if PWW employees wish to join Veolia, it will offer them
8 much less: no pension, no retirement health benefit and other cuts in an effort to
9 “streamline” employee pay and benefits. (See the response to Data Request Staff
10 DR 3-23 to Nashua attached as Attachment DLC-15.) This would result not only
11 in these employees receiving lower pay and benefits than do current PWW staff,
12 but also less than the benefits of Nashua city employees. We have to assume that
13 one result of a Nashua/Veolia takeover therefore could well be labor unrest in
14 Nashua’s drinking water system.

15 A third theme we found was a lack of candor about quality of service issues in
16 systems operated by Veolia. Problems in this regard have arisen in particular in
17 Indianapolis, where (i) the labor union has alleged that Veolia management is not
18 trustworthy, (ii) a number of non-union employees have brought suit alleging first
19 amendment violations, (iii) the U.S. Attorney's Office is conducting an
20 investigation into possible falsification of water documents, and (iv) an employee
21 has brought suit claiming that he was fired in retaliation for speaking out on
22 matters of public safety. Copies of documents relating to these matters are
23 included with this testimony as Attachment DLC-16, although I would note that

1 to date Nashua and Veolia have refused to produce documents relating to some of
2 these matters.

3 **Q. In their January 12 testimony, the witnesses from Veolia indicated that you**
4 **have been a proponent of public-private partnerships. Is that correct?**

5 A. I definitely have been and continue to be a proponent of public-private
6 partnerships for the operation of governmentally owned utility infrastructure. In
7 fact, that is the business that PWW's affiliate, Pennichuck Water Service
8 Corporation, is in. That is very different from believing that government should
9 own utility infrastructure in the first place or, worse yet, that it should take such
10 infrastructure from effective, efficient private companies by eminent domain. Just
11 as I believe that private ownership and operation of such assets under appropriate
12 governmental regulation is the most effective and efficient means to deliver the
13 highest level of service to customers, I also believe that in those cases where such
14 assets are already under governmental ownership, substantial improvements in
15 service and/or cost efficiencies can often be achieved through an effectively
16 structured public-private partnership through an outsourcing of its operation to a
17 private company. My support for public-private partnerships, therefore, has no
18 relevance to this proceeding, other than as an articulation of my belief that private
19 companies can in many cases do a better job operating such systems.

20 **Q. Does that conclude your testimony?**

21 A. Yes, at this time. As we obtain additional information from Veolia and Nashua in
22 response to our discovery requests and we are able to conduct our own

- 1 investigation of the problems Veolia has had in other parts of the country, I may
- 2 supplement this testimony with additional information.