

State of New Hampshire

Hillsborough County South

Superior Court
No. 02-E-

Barbara B. Pressly

v.

Pennichuck Corporation

PETITION FOR A COURT ORDER UNDER RSA 293-A:16.04
FOR ACCESS TO, AND COPIES OF, THE SHAREHOLDER LIST OF
PENNICHUCK CORPORATION

NOW COMES your Petitioner, Barbara B. Pressly, by and through her attorney, Eugene F. Sullivan, III, and respectfully requests that this Honorable Court issue an order pursuant to the provisions of RSA 293-A:16.04 requiring the Pennichuck Corporation to allow for the inspection and copying of the Corporation's shareholder list. In support thereof your Petitioner states as follows.

1. Petitioner, Barbara B. Pressly, is a shareholder of the Pennichuck Corporation and a resident of Nashua, New Hampshire with an address of 11 Orchard Avenue, Nashua, New Hampshire 03060.

2. Respondent, Pennichuck Corporation, is a publicly traded New Hampshire corporation with a principal place of business, or office, located at 4 Water Street, Nashua, New Hampshire 03060. Its registered agent is John T. Pendleton at 39 E Pearl Street, Nashua, New Hampshire, 03060.

3. Pennichuck Corporation is a holding company principally comprised of subsidiary water utilities providing water service to approximately 30,000 customers in 23 communities throughout New Hampshire under the regulatory supervision of the New Hampshire Public Utilities Commission.

4. On April 29, 2002, Pennichuck Corporation issued a press release announcing that its Board of Directors had entered into a “a definitive agreement to merge in a stock transaction [with Philadelphia Suburban Corporation] which, including the assumption of \$27 million of debt, has a total enterprise value of approximately \$106 million, and represents \$33.00 per Pennichuck share based on a PSC share price of \$23.00 to \$25.00.”

5. Philadelphia Suburban Corporation is the second largest publicly-traded water utility holding company in the Nation.

6. Since the announcement of the proposed merger the stock of Philadelphia Suburban Corporation has ranged in value from approximately \$30.00 per share on April 29, 2002 to its current market price of approximately \$20.00 per share.

7. Ms. Pressly was informed by Pennichuck Corporation that the proposed merger agreement must be, and will presently be, presented to the shareholders of the corporation at a duly noticed shareholder meeting for its approval.

8. Ms. Pressly was also informed by Pennichuck Corporation that the directors and shareholders of Pennichuck Corporation are free to entertain counter offers or proposals for the purchase of the corporation at that same meeting.

9. Barbara Pressly has publicly formed an ad hoc group designed to bring together the New Hampshire communities served by Pennichuck Corporation’s water subsidiaries to make a counter-offer to purchase the stock and/or assets of the Pennichuck Corporation. Ms. Pressly’s goals and efforts toward that end has received some notoriety in the New Hampshire press. See e.g., Appendix 1.

10. On September 21, 2002, Ms. Pressley wrote to Charles Staab, the Vice President, Treasurer and Principal Financial Officer of Pennichuck Corporation as a shareholder of

Pennichuck Corporation formally requesting a list of all shareholders, their addresses or other means of contact, and the number of shares owned by each shareholder. See, Appendix 2.

11. Ms. Pressly's request further stated that,

[t]his information will be used exclusively to communicate with [shareholders] regarding the Corporation's business and in particular the proposed sale of the Corporation to Philadelphia Suburban Corporation.

12. On October 11, 2002, Marice L. Arel, President and CEO of Pennichuck Corporation, responded to Ms. Pressly's formal request by stating that based on the provisions of 293-A:16.02 of the New Hampshire Business Corporation Act,

and in light of your recent public statements concerning Pennichuck, we respectfully deny your request for the [shareholder list], as your request does not meet the requirements of the Act.

Appendix 3.

13. The letter sets forth no detail to support his conclusion, and is a bad faith attempt by the Corporation's officers and directors to prevent Ms. Pressly from communicating with her fellow shareholders to inform them of the substantial efforts and accomplishments by her group toward forming a joint municipal compact to acquire Pennichuck Corporation.

14. Pursuant to the provisions of RSA 293-A:16.02(a) a shareholder of a New Hampshire corporation is entitled to inspect and copy a list of shareholders and their addresses provided the following three criteria are met;

- (1) His demand is in writing, and is made in good faith and states a proper purpose;
- (2) He describes with reasonable particularity his purpose and the records he desires to inspect; and
- (3) The records are directly connected with his purpose.

RSA 293-A:16.02(c)

15. In the case at hand, Ms. Pressly's requested the shareholder list in writing.

16. She stated that her purpose was to communicate with shareholders concerning the proposed merger with Philadelphia Suburban Corporation.

17. Moreover, Mr. Arel's reference to Ms. Pressly's "recent public statements", reveals that the Corporation was aware that Ms. Pressly was preparing an alternative to the offer from Philadelphia Suburban Corporation, which, while it may be contrary to the wishes of current management that supports that proposal, may ultimately be in shareholders' best interest.

18. Attempting to communicate with shareholders regarding a proposed offer of purchase and alternatives is a good faith request and a proper purpose under New Hampshire law. *See Davey v. Unitil Corporation*, 133 N.H. 833(1991) (Decided under prior law.)

19. In *Davey v. Unitil Corporation*, Mr. Davey, a Unitil shareholder, sought a copy of the shareholder list of the Unitil Corporation which he planned to provide to Eastern Utilities Associates. Eastern Utilities Associates had made a hostile tender offer for the shares of Unitil which Unitil management was opposing and actively fighting.¹

20. In upholding Mr. Davey's right to the shareholder list the Supreme Court stated that,

Communication with other shareholders *concerning the merits of a pending tender offer is recognized as a "proper purpose" for demanding a corporation's shareholder list and is considered a shareholder's right.* (Emphasis added)

Davey v. Unitil Corporation, 133 N.H. 833, at 838.

¹ "The purpose of this request is to permit me to communicate with other stockholders with respect to matters of mutual interest, including EUA's tender offer for all Unitil shares...." *Davey v. Unitil Corporation*, 133 N.H. 833, at 836.

21. Pursuant to the provisions of RSA 293-A:16.04,

[i]f a corporation does not within a reasonable time allow a shareholder to inspect and copy [a shareholder list], the shareholder who complies with RSA 293-A:16.02(b) and (c) may apply to the superior court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded

RSA 293-A:16.04(b).

22. Ms. Pressly has clearly established that she is entitled to the requested shareholder list as she has complied with all of the provisions of RSA 293-A:16.04(b) and is entitled to an order of this Court requiring Pennichuck Corporation to provide her with that list to communicate with shareholders regarding the current offer of merger by Philadelphia Suburban Corporation and potential alternative offers.

23. Moreover, pursuant to the provisions of RSA 293-A:16.04,

If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.
(Emphasis added)

RSA 293-A:16.04(c).

24. The case at hand is indistinguishable from the facts in *Davey v. Unital Corporation* in which a shareholder requested a shareholder list to communicate with fellow shareholders regarding a pending offer to purchase the stock of that corporation.

25. Mr. Arel's letter denying Ms. Pressly access to the shareholder list is intentionally vague and designed to avoid stating a reason for such a denial.

26. The denial on its face and otherwise, therefore, was not made in good faith, and does not state any reasonable basis to doubt Ms. Pressly's right to the shareholder list.

WHEREFORE, Barbara B. Pressly respectfully requests that this Honorable Court:

- A. Issue an Order requiring Pennichuck Corporation and its appropriate record keepers to allow Ms. Pressly access to copies of the shareholder list as requested in her letter of September 21, 2002;
- B. Issue an Order awarding reasonable costs and attorney fees under RSA 293-A:16.04;
- D. Grant such other relief as is just and equitable.

Respectfully submitted,
Barbara B. Pressly,
By and through her attorney,

October 29, 2002



Eugene F. Sullivan, III
87 North State Street
Concord, New Hampshire 03301
603.227.0600

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Officials are investigating the fire that started early Monday as a possible case of arson.

Fire Inspector Rick Wood said the fire could have been started with newspaper or with the use of an accelerant, such as gasoline.

FIRE | PAGE 10

Pressly pushing for water authority

Nashua: Activist wants group to take over Pennichuck

By BRAD LEIGHTON
Telegraph Staff

NASHUA - Community activist Barbara Pressly is trying to pull together a committee whose goal would be to establish a regional water authority that would acquire Pennichuck Corp.

"All the towns have an interest in the water, so I think this is an idea that needs to be looked at," said Pressly, who has been critical of the proposed \$106

WATER | PAGE 9

Kerren McKeeman of Hollis warms up for her routine outside t Circus Smirkus in Milford.

Circus

By MARRIAH SHIELDS
Telegraph Staff

MILFORD - The fresh popcorn and cotton candy, which tickles your nose all day. The ringing laughter. The smiles and attentive eyes.

The music, the lights, the huge, colorful tent.

The close friendships formed over the eight-week performance season.

These are some reasons the 35 teenagers who form Circus Smirkus dedicate themselves to the show.

Plus, they love to perform.

As part of Circus Smirkus, a circus troupe for teens, the kids learn all the tricks of the trade, even the not-so-

great parts.

Circus Smirkus hit town T two performances, and wi two more shows today at 2 at the intersection of Old Wilton Route 101. The circus is Greensboro, Vt., and has be since 1987.

The troupe travels eight c weeks in the summer, and learn that even though the other things in their lives, eight weeks there is nothing tant as Smirkus.

"You're on the road all the 17-year-old Jacob Skeff Greenfield. "If there's anyth

Sununu says experience, not Smith, is reas

By KEVIN LANDRIGAN
Telegraph Staff

U.S. Rep. John E. Sununu said Tuesday that the decision by Sen. Bob Smith to leave the Republican Party and mull over a third-party campaign for president ranks far down a list of reasons

Sununu said of Smith's switch to become an independent for five months back in July 1999.

Earlier this week, Smith questioned if Sununu was running to punish Smith for exiting the GOP and launching a vocal attack accusing party leaders of abandoning its core, conservative princi-

graph editorial "They respect House. They u vice chairman accident."

In 2000, Sun the panel but Nussle.

VOTE

Telegraph
Wed.
Aug. 7, 2002

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Water: Regional authority is in earliest stages, according to Pressly

CONTINUED FROM | PAGE 1

million acquisition of Pennichuck by Bryn Mawr, Pa.-based Philadelphia Suburban Corp.

Pressly hopes the committee could back the introduction of a bill in the legislative session starting in January that would enable the creation of regional water authorities.

The former state senator and alderman emphasized that her idea is only in its beginning stages and that the committee has not met. Yet already people from the city and the surrounding towns are involved, she said.

While Pennichuck is based in the city, the utility supplies water to several surrounding towns. Pressly and other advocates are concerned that the acquisition of Pennichuck by an out-of-state company may adversely affect the quality and quantity of the area's drinking water. They are also concerned about what effect out-of-state control might have on the local environment.

The state Public Utilities Commission is reviewing the proposed merger with Philadelphia Suburban, and the city has commissioned a \$99,600 study of the local water utility.

All the communities should have control over their drinking water, Pressly said.

"A regional water authority would certainly solve the issue of local control versus out-of-state or out-of-country control," Pressly said.

Mayor Bernie Streeter said the city's consultants, George E. Sansoucy and Rizzo Associates, are still studying the issue. The city will not develop a

INTERESTED IN THE CAUSE?

Barbara Pressly can be reached at 880-7752.

position on the proposed acquisition until at least November, the mayor said.

"There are a number of possibilities, and establishing a regional water authority is clearly one of them," Streeter said. Other options include a city acquisition of Pennichuck, establishing a joint partnership with Philadelphia Suburban to run the local water utility, or establishing another kind of partnership with the Pennsylvania company, the mayor added.

"We really need to take a careful look at what other water companies this size have done," he said.

Dean Shankle, Merrimack's town manager, said the towns should keep all of their options open, but establishing a regional water authority would not be easy.

"This town has never been involved in water before, but it does make sense to look at all our options and weigh both the positives and negatives," Shankle said. "It never hurts to look at things, including a regional water authority, but I'm not for jumping on any bandwagons."

Maurice Arel, president and chief executive officer of Pennichuck, said Pressly asked if he would appoint a member of his staff to sit on the committee, but there may be legal issues that could prevent that.

There are some regional water authorities in existence in the country, but there are a number of obstacles that Pressly's committee would have to overcome, Arel said.

There are now different

rate structures between Pennichuck's two subsidiaries, Pennichuck Water Works and Pennichuck East Utilities, which the company acquired from the now-defunct Consumers New Hampshire in 1998, Arel said.

If a regional authority were to blend those rates, then water rates in the city would probably have to rise, since the towns under Pennichuck East pay about twice as much as Nashua for water, Arel said.

Different communities also have different needs for capital improvements, and a regional authority would have to work out a way to divide up those costs, Arel said.

The authority also would have to bond the cost of buying Pennichuck, and the process of appointing authority members would have to be established, Arel said.

"It could be done. It would just be difficult," Arel said.

Pressly agreed there are obstacles to overcome.

"That's why we had better start talking about it," she said.

Even if the city and surrounding communities don't establish a regional water authority, state legislation would enable other communities to have that option, she said.

But she believes area communities could establish a regional water authority, and that they could work together to resolve rate and cost issues.

"We're just starting out," she said. "I'd welcome ideas from anyone who is interested."

Brad Leighton can be reached at 594-6446 or leightonb@telegraph-nh.com.

BOB HAMMERSTROM
Milford.

spots

so hopes to attend school after she finishes high school, but she's not sure about the details.

of Wilton will attend the University of New Hampshire this fall. But

he process of merging the two acts together is a professional circus. If she gets the right opportunity, she'll take

as the opportunity to leave the 20-year-old circus means leaving

ing a circus. When the time comes, she'll be off.

reached at 249-6446 or graph-nh.com.

Using site has noise from Route 3, airplanes

use to develop the site would eventually frustrate people.

Peterson of

Other board members said that a train each day wouldn't make much of a difference in terms of noise.

"We're talking about a train a

who buys in that development should be aware of the railroad track noise and should be ready.

"It doesn't bother us. We enjoy it," she said. No one showed

ing units in five developments, and a sixth development with 45 units is under construction. Town planners have approved 45 elderly attached condos at

Subj: The Bond Buyer newspaper story Date: 10/1/02 10:33:04 AM Eastern Daylight Time From: Michael.McDonald@thomsonmedia.com (McDonald, Michael) To: barbaravia@aol.com ('barbaravia@aol.com')

October 1, 2002

Planned Water District to Ask New Hampshire for Bonding Power

By

Michael McDonald <mailto:michael.mcdonald@tfn.com>

A proposed municipal water district in southern New Hampshire will ask the state legislature in January to pass a bill clarifying its ability to operate and issue bonds, which if successful could lead to the sale of more than \$100 million in new municipal debt.

"They need legislation to give them bonding authority that would not in any way impair the credit of the individual communities that comprise the district," said Eugene Sullivan, a lawyer in Concord and a former state Public Utilities Commission lawyer who drafted the bill. "Right now, it's not clear. This legislation would make it clear."

The proposed water district grew out of local resistance to the sale of Pennichuck Corp., the area's private water monopoly, to Philadelphia Suburban Corp., which until recently was partially owned by the French conglomerate Vivendi Universal.

The water monopoly, which has existed for 150 years and taps much of its supply from watersheds along the Merrimack River, is being sold for \$106 million. In June, Pennichuck asked the state PUC to approve the sale, which is structured as a stock for stock merger of the two companies, and the commission has set a Feb. 28 date for a decision.

The publicly traded company also needs shareholder approval of the sale. The next board of directors meeting is Friday. Pennichuck sells water to more than 20,000 customers in southern New Hampshire. Philadelphia Suburban, which is based in Bryn Mawr, Pa., and is one of the largest water and sewer companies in the country, has more than 2 million customers in six states east of the Mississippi.

The companies announced the deal in the spring.

Pennichuck's largest customer is Nashua. Backers of the proposed district have asked the city and the 25 other communities that buy water from Pennichuck to help create the district. Earlier this year, Nashua hired a consultant to study the creation of a municipal water district, and the results of the study are expected in two weeks.

The Nashua Region Planning Commission is also studying the proposed district, at the request of the 26 communities served by the water monopoly.

"We have no particular interest but to see if we can find a new entity controlled by the ratepayers to purchase and manage the water supply," said Barbara Pressly, former Nashua alderman and state senator who is heading the ad hoc water group.

The group is seeking to change an existing state law, RSA 53:A, which allows cities and towns to join together in municipal contracts. The change would give the agreements the legal status of a municipality, opening the door to an independent governmental entity that would have bonding authority distinct from the communities it would serve.

If created, it would be the first such regional district in the state.

While a group of communities would need the legislative clarification, Nashua could set up its own individual water operations without any change to the law. It already controls its own sewage operations. The consultant, Rizzo Associates, is studying this option as well as the larger regional district.

However, a city official said Nashua would find it stressful raising the capital if it decided to go it alone. David Fredette, the city's treasurer, said Nashua is just coming off an ambitious bonding campaign to build new schools, which came on top of other ongoing needs.

He said the city has sold \$110 million in bonds in the last couple of years and plans to sell another \$60 million for infrastructure and the local fire department in the next couple of years. "That's going to be the biggest part of the study," Fredette said. "Can we afford to purchase the whole thing?"

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Barbara Pressly
11 Orchard Avenue
Nashua, N.H. 03060
(603) 880-7752

Mr. Charles Staab
Pennichuck Corporation
4 Water Street
Nashua, N.H. 03060
September 21, 2002

Dear Chuck,

As a share holder of Pennichuck Corporation I formally request a list of all the other share holders, their addresses, phone numbers and/or their email and fax numbers, and the number of shares they own.

This information will be used exclusively to communicate with them regarding the Corporation's business and in particular the proposed sale of the Corporation to Philadelphia Suburban Corporation.

Please send this to me as soon as possible. Thank you for your time and attention.

Sincerely,

Barbara Pressly

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Pennichuck Corporation

October 11, 2002

Ms. Barbara Pressly
11 Orchard Avenue
Nashua, NH 03060

Dear Ms. Pressly,

I am in receipt of your letter to Chuck Staab, dated September 21, 2002, requesting "a list of all other share holders, their addresses, phone numbers and/or email and fax numbers, and the number of shares they own."

Although I understand that you are a shareholder of Pennichuck Corporation, based on the provisions of Section 293-A:16.02 of the New Hampshire Business Corporation Act and in light of your recent public statements concerning Pennichuck, we respectfully deny your request for the above-listed shareholder information, as your request does not meet the requirements under the Act.

Sincerely,



Maurice L. Arel
President and CEO

1150639.1

cc. C. Staab
M. Krebs

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