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N.H. PUBLIC UTILITIES COMMISSION



OFFICE OF CORPORATION COUNSEL

July 22, 2004

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

RE: DW 04-048; City of Nashua

Dear Ms. Howland:

Enclosed for filing is an Affidavit documenting publication of Order of Notice in the above-referenced matter.

Very truly yours

David R. Connell, Esquire Corporation Counsel

DRC/dlg Enclosure

AFFIDAVIT

- I, Janice Tremblay, being duly sworn, do depose and say:
- 1. I am the Purchasing Manager for the City of Nashua.
- 2. I am making this Affidavit in connection with State of New Hampshire Public Utilities Commission DW 04-048.
- 3. In accordance with the Order of Notice dated June 22, 2004 in this matter, on behalf of the City I caused a copy of the Order of Notice to be published in the following newspapers, all on June 28, 2004: The Telegraph, The Union Leader, and the Concord Monitor.

Attached are copies of the cut sheets from these publications.

Sanice Tremblay 4.

State of New Hampshire County of Hillsborough

Subscribed and sworn to before me this _____ day of July, 2004.

Journa S. Draham Justice of the Peace/Notary Public My Commission expires: 5/5/09

Legal Notice

THE STATE OF NEW MAMPSHIRE PUBLIC UTILITIES COMMISSION DW 04-048 ORDER OF NOTICE

On March 25, 2004, the City of Nashua, New Hampshire (Nashua) filed with the New New Hampshire (Nashua) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Valuation pursuant to RSA 38-9. New Hampshire RSA Chapter 36 authorises municipalities to establish, expand, take, purchase, lesse, or otherwise acquire, maintain, and sporate utilities for the use of its inhabitants. Pursuant to RSA 38-9. If a dispute arises besuant to RSA 38:9, if a dispute arises between the municipality and the public utility as to how much of the plant and property lying within or without the municipality the public interest requires the municipality to acquire, the Commission is essentially charged with determining what plant and property is required, the value of that plant and property, and the amount of any damages suffered by the public utility by the severance of the plant and property.

Nahua seeks the Commission's determination of a fate menter the public of the plant.

nation of a fair market value of the plant and property of Pennichuck Corporation's three regulated utilities: Pennichuck Water Works, Inc. (PWW): Pennichuck East Utilities, inc. (PEU); and Pittsfield Aqueduct Company, Inc. (PAC) (collectively, the Pennichuck Utilities). The Pennichuck Utilities are all public utilities as defined by RSA 362:2 and RSA 362:4, and are thus regulat-ed by the Commission and subject to RSA

As explained in Nashua's Petition, the Pennichuck Utilities provide utility service across a broad area of New Hampshire inchuding service in the following municipali-ties: Amherst; Atkinson; Bedford; Derry; Epping: Hollis: Hooksett: Londonderry: Mer-rimack: Milford: Nashua: Newmarket: Pelham; Pittafield; Plaistow; Raymond; Salem; Sandown; and Windham. Nashua's Petition sets forth, in detail, the history of its desire to acquire the plant and property of the Pennichuck Utilities. That history will not be recited here, however, interested parties may refer to the Commission's web sits. www.puc.state.nh.us where Nashua's Petition can be viewed in full.

On April 5, 2004, the Pennichuck U ties filed a motion requesting that the Com-mission either dismiss Nashua's Petition, in full or in part, or in the alternative, stay the proceeding. The motion to dismiss can also be viewed in its entirety on the Commission's web site. The Pennichuck Utilities make four arguments, three of which raised substantive issues of how the Commission should treat Nashua's filing, and the fourth involves the constitutionality of the statute authorizing the Commission to review Na-

shua's Petition.

atma's Pettiton.

Other pleadings have been filed in the instant docket, DW 04-048, and include the following. On April 15. 2004, the Town of Millord filed for intervention. On April 15, 2004, the City of Nashua filed with the Commission an objection to the Pennichuck Commission an objection to the Pennichuck (Itellities' motion on diamins. On April 29. Utilities' motion to dismiss. On April 29, 2004, the City of Nashua filed with the Commission a Motion to Disqualify the Pennichuck Utilities' Counsel, to which the Pennichuck Utilities objected on May 10, 2004. Pennication Utilines objected on May 10, 2004. On May 26, 2004, the Town of Milord filed with the Commission a Motion to Consider and Maintain Effectiveness of Existing Contract. On June 4, 2004, the Pennichuck Utilities filed a response to Milford's Motion to Consider, which effectively asked the Commission to defer considera-tion of the issues raised in the Motion. According to the Pennichuck Utilities. Milford concurred with the response

Concurrently, the Pennichuck Utilities and their parent, Pennichuck Corporation, (together, Pennichuck) have challenged the constitutionality of RSA Chapter 38 before the Milled Southern District in a Petition for Declara-tory Judgment filed on Pebruary 4, 2004. Pennichuck's Superior Court Petition is atlached to Nashua's Petition as Exhibit II. in the Petition for Declaratory Judgment, Pen-

nichuck seeks, inter alia:

1) a ruling that RSA 28:9-11 fails to provide Pennichuck with equal protection of the law with respect to its faindamental private property right, contrary to N.H. Constitute of the seeks and the seeks are seeks.

tution pt. 1, art. 12:

2) a ruling that Nashua's actions, specifically its alleged delaying behavior, has de-prived Pennichuck of its right to engage in commerce and constitutes an unconstitutional temporary and permanent taking of Pennichuck's private property rights, oun-trary to N.H. Constitution, pt. 1, art. 12, 83;

3) a ruling that the time frame within which Nashua could file its RSA 38 Patition with the Commission has expired, due to a short limitations period and under a theory

of laches; and

4) a ruling that Nashua's notice pursuant to RSA 38:6 is invalid in that it seeks property Pennichuck avers is not necessary for municipal utility service in the City of Na-shua. The Pennichuck Utilities also filed, among other things, a Motion for Preliminary injunction as well as a Special Deciaration with the Hillsborough County Superior Court, Southern District.

On May 3, 2004, the Commission issued a Secretarial Letter stating it would defer is-suing an Order of Notice in Docket No. DW 04-048 in order to allow the Superior Court time to act on the Pennichuck Utilities' Motion for Preliminary Injunction. On June 7, 2004, the Superior Court denied the request for a preliminary injunction. Subsequently, on June 10, 2004, Nashua filed with the Commission a letter citing the Superior Court Order and asking the Commis-sion to issue an Order of Notice and to commence proceedings in the instant docket. The Pennichuck Utilities, on June 15, 2004, similarly requested that the Commission convene the parties as soon as possi-ble to consider the status of the docket and address procedural issues, including the Pennichuck Utilities' Motion in Dismis

inasmuch as the Superior Court has de-nied Permichuck's Motion for Preliminary Injunction, the Commission has determined, consistent with the May 3, 2004 Secretarial Letter, that it is appropriate to issue an Order of Notice at this time and to hold a Prehearing Conference for the limited purposes of addressing motions for intervention, receiving a report from the City of Nashua and the Pennichuck Utilities on the current procedural status of other court proceedings, and to hear oral argument on certain preliminary matters, name-

Whether it is appropriate for the Commission to proceed to consider Nashua's Pe-

tition for Valuation;
2) Whether counsel for the Pennichuck Utilities is disqualified from representing it in this proceeding; and

3) Whether the Town of Millard's Motion

to Consider and Maintain Effectiveness of Existing Contract is premature.

The Commission does not intend to entertain statements of position regarding Nashua's valuation petition at the Prehearing Conference. Moreover, there will not be a technical session following the Prehearing Conference. The Commission, therefore, will defer, among other things, hearing state-ments of position and establishing a procedural schedule, pending resolution of the preliminary matters noted above.

Based upon the foregoing, it is hereby ORDERED, that a Prehearing Conference, pursuant to M.H. Admin. Rules Puc 203.05, be held before the Commission located at 8 old Suncook Road, Concord, New Hampshire on July 28, 2004 at 10:00 a.m., at which each party will provide oral argu-ments on issues noticed in this order, and it

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the City of Nashua ahall motify all persons of this dock-Nation along in personne of this order of Notice by publishing a copy of this Order of Notice no later than July 7, 2004 in The Triegraph, Concord Monitor, and Union Leader, publication to be documented by affidavit filed with the Commission on or be-

Mars July 98, 2004; and it is

FURTHER ORDERED, that the Executive Director shall notify all persons destring to be heard at this hearing by publishing in a newspaper with statewide circulation, no later than July 2, 2004, a display ad setting forth the purpose, time and place of the searing; and it is

FURTHER ORDERED, that the City of Nashua ahali mail a copy of this order, no later than July 14, 2004, by first class U.S. mail, to the clerks of each municipality man, to the carrier of call minimum, within which plant and property of the Pen-michuck Utilities exists, proof of mailing to be documented by affidavit filed with the Commission on or before July 28, 2004;

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.02, any party necking to intervene in this proceeding who has not previously intervened shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to the Office of the Consumer Advocate on or before July 23, 2004, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 and RSA 541-423 [bb. and tele. A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make eald Objection by filing an original and 8 copies thereof, with a copy provided to the Office of Consumer Advocate, on or before July 28, 2004.

By order of the Public Utilities Commis-sion of New Hampshire this twenty-second day of June, 2004.

Debra A. Howland Executive Director & Secretary Individuals needing assistance or sandia-ry communication sids due to aemony im-pairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 8 Old Suncook Road, Con-cord, New Hampshire 03301-7319, 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for asaistance should be made one week prior to the scheduled event.

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PUBLIC NOTICES 603.594-6550



www.AHPublicNotices.com

PUBLIC CHAIRES COMMISSION DW 04-048

ORDER OF NOTICE

On March 25, 2004, the City of National, New Hampshire (Nesture) flied with the New Hampshire Public Utilities Commission (Commission) a flutition for Valuation pursuant to RSA 88.9. New Hampshire RSA Classes 38 authorizes municipalities to estiliblish, aspand, take, purchase, lease, or otherwise maquire, sphiritain, and operate utilities for the use of its inhabitants. Pursuant to RSA 38.9, if a dispute arises between the multidipility and the public utility as to how much of the plant and property lying within or without the studicipality the public interest requires the municipality to acquire, the Commission is essentially charged with determining what plant and property to required, the value of that plant and property, and the amount of any damages suffered by the public utility by the severance of the plant and property. Nashua seeks the Commission's determination of a fair market value of the plant and property of Pannichuck Corporation's three regulated to fitted: Pennichuck Water Works, Inc. (PEW); Pennichuck East Utilities, Inc. (PEU); and Pittafield Aquaduct Company, the (PWW); Pennichuck Littlies are all public stillies as defined by RSA 382:2 and RSA 382:4, and are thus regulated by the Commission and subject to RSA 38.

As explained in Nashua's Petition, the Pennichuck Utilities provide utility service across a broad area of New Hampshire including service in the following municipalities: 'Artheret; Althreon; Bedford; Derry; Epping; Hollis; Hooksett; Londonderry; Merrimack; 'Milliord; Nashua; Newmerket; Pelham; Pittsfield; Plaistow; Raymond; Salem; Sandown; and Windham. Nashua's Petition sets forth, in detail, the history of its desire to acquire the plant and property of the Pennichuck Utilities. 'That history will not be recited here, however, interested parties may refer to the Commission's web site, www.puc.state.nh.us, where Nashua's Petition can be viewed in full.

On April 5, 2004, the Pennichuok Utilities filed a motion requesting that the Commission either dismiss Nashua's Petition, in full or in part, or in the alternative, stay the proceeding. The motion to dismiss can also be viewed in its entirety on the Commission's treb site. The Pennichuok Utilities make four arguments, three of which raise substantive issues of how the Commission should treat Nashua's filing, and the fourth involves the sensitiutionality of the statute authorizing the Commission to review Nashua's Petition.

Other pleadings have treen filled in the instant docket, DW 94-948, and include the following. On April 15, 2004, the Town of Milford filed for intervention. On April 15, 2004, the City of Nashua filed with the Commission an objection to the Pennichuck Utilities' motion to dismiss. On April 29, 2004, the City of Nashua filed with the Commission a Motion to Disqualify the Pennichuck Utilities' Counsel, to which the Pennichuck Utilities objected on May 10, 2004. On May 26, 2004, the Town of Milford filed with the Sommission a Motion to Consider and Maintain Effectiveness of Existing Contract. On June 4, 2004, the Pennichuck Utilities filed a response to Milford's Motion to Consider, which telfscrively asked the Commission to defer consideration of the issues raised in the Motion. According to the Pennichuck Utilities, Milford concurred with the response.

Concurrently, the Pennichuck Utilities and their perent, Pennichuck Corporation, (together, Pennichuck) have challenged the constitutionality of RSA Chapter 88 before the Hillsborough County Superior Court, Southern District in a Patition for Declaratory Judgment filed on February 4, 2004. Pennichuck's Superior Court Petition is attached to Neetun's Petition as Exhibit H. In the Petition for Declaratory Judgment, Pennichuck seals, inter alia:

 a ruling that RSA 20:0-1.4 fails to provide Pennichuck with equal protection of the law with respect to its fundamental private property right, contrary to NJA.Constitution pt. L art. 12;

 a ruling that Nashun's actions, specifically its alleged delaying habarior, has deprived Pennichuck of its right to engage in commerce and constitutes an uncertabilitional temporary and permitment taking of Pennichuck's private property rights, contrary to N.H. Constitution, pt. I, art. 12, 83;

 a ruling that the time frame within which Nashua could file its RSA 38 Petition with the Commission has aspired, due to a short limitations period and under a theory of laches; and

4) a ruling that Nashua's notice pursuant to RSA 38:6 is invalid in that it seeks property Pennichuck avers is not necessary for municipal utility service is the City of Nashua. The Pennichuck Utilities also filed, among other things, a Motion for Preliminary Injunction as well as a Special Declaration with the Hillsborough County Superior Court, Southern District.

On May 3, 2004, the Commission issued a Secretarial Letter stating it would defer issuing an Order of Notice in Dockst No. DW 04-048 in order to allow the Superior Court time to act on the Pennichuck Utilities' Motion for Preliminary Injunction. On Time 7, 2004, the Superior Court denied the request for a preliminary injunction. Subsequently, on June 10, 2004, Nashua filled with the Commission a latter-citing the Superior Court order and atting the Commission to issue an Order of Notice and to commence proceedings in the fastent dockst. The Pennichuck Utilities, on June 15, 2004, similarly requested that the Commission convens the parties as soon as possible to consider the status of the dockst and attinges procedural issues, including the Pennichuck Utilities' Motion to Dismiss.

Insamuch as the Superior Court has denied Pennichuck's Motion for Preliminary Injunction, the Commission has determined, consistent with the May 8, 2004 Secretarial Lettis; that it is appropriate to issue an Order of Notice at this time and to hold a Preheering Conference for the limited purposes of addressing motions for intervention, receiving a report from the City of Nashua and the Pennichuck Milities on the current procedural status of other court proceedings, and to hear oral argument on certain preliminary matters, namely:

- Whether it is appropriate for the Commission to proceed to consider Nashua's Petition for Valuation;
- Whether counsel for the Pennichuck Utilities is disqualified from representing it in this proceeding; and
- 3) Whether the Town of Milford's Motion to Consider and Maintain Effectiveness of Existing Contract is premature.

The Commission does not intend to entertain statements of poeltion regarding Nashua's valuation petition at the Prehearing Conference. Moreover, there will not be a technical esssion following the Prehearing Conference. The Commission, therefore, will defer, among other things, hearing statements of position and establishing a procedural echedule, pending resolution of the preliminary matters noted above.

Based upon the foregoing, it is hereby

ORDERED, that a Preheating Conference, pursuant to N.H. Admin. Rules Puc £08.06, be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on July 28, 2004 at 10:00 a.m., at which each party will provide oral arguments on issues noticed in this order; and it is

FURTHER ORDERED, that pursuent to N.H. Admin. Rules Puc 203.01, the City of Nashus shall notify all passons of this dockst and the issues presented in this Order of Notice by publishing a copy of this Order of Notice no later than July 7, 2004 in The Telegraph, Concerd Monitor, and Union Leader, publication to be documented by efficient filed with the Commission on or before July 28, 2004; and it is

FURTHER ORDERED, that the Executive Director shall notify all persons desiring to be heard at this hearing by publishing in a newspaper with statewide circulation, we later than July 2, 2004, a display aid setting forth the purpose, time and place of the hearing; and this

FURTHER ORDERED, that the City of Neshus shall mail a copy of this order, as interthen July 14, 2004, by first class U.S. shall, to the clarks of each manicipality within which plant and property of the Pennichutik Utilities exists, proof of maling to be documented by affidavit filled with the Commission on of before July 28, 2004; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. States Fac 203.02, any party seeking to intervene in this proceeding who has not previously littervened shall submit to the Commission an original and eight expise of a Petition to intervene with copies sent to the Office of the Consumer Advocate on or before July 23, 2904, study Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.92 and RSA 541-A:32.J(b); and it is

FURTHER ORDERED, that any party objecting to a Patition to Intervene make said Objection by filing an original and 8 sopies thereof, with a copy presided to the Office of Consumer Advocate, on or before July 28, 2004.

By order of the Public Utilities Commission of New Hampshire this twenty-second day Debra A. Howland
Esscutive Director & Secretary of June, 2004.

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PUBLIC NOTICE

THE STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION DW 04-048

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Nashua seeks the Commission's determination of a fair market value of the plant and property of Pennichuck Corporation's three regulated utilities: Pennichuck Water Works, Inc. (PWW); Pennichuck East Utilities, Inc. (PEU); and Pittsfield Aqueduct Company, Inc. (PAC) (collectively, the Pennichuck Utilities). The Pennichuck Utilities are all public utilities as defined by RSA 362:2 and RSA 362:4, and are thus regulated by the Commission and subject to RSA 38.

As explained in Nashua's Petition, the Pennichuck Utilities arounds utilities arounds.

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1) a ruling that RSA 38:9-11 fails to provide Pennichuck with equal protection of the low with respect to its fundamental private property right, contrary to N.H. Constitution at 1 and 13:

Constitution pt. 1, art. 12;

2) a ruling that Nashua's actions, specifically its alleged delaying behavior, has deprived Pennichuck of its right to engage in commerce and constitutes an un-constitutional temporary and permanent taking of Pennichuck's private property rights, contrary to N.H. Constitution, pt. 1, art. 12, 83;

3) a ruling that the time frame within which Nashua could file its RSA 38 Petition with the Commission has expired, due to a short limitations period and under a theory of laches; and

4) a ruling that Nashua's notice pursuant to RSA 38:6 is invalid in that it seeks property Pennichuck overs is not necessary for municipal utility service in the City of Nashua. The Pennichuck Utilities also filed, among other things, a Motion for Preliminary Injunction as well as a Special Declaration with the Hillsborough County Superior Court, Southern District.

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Inasmuch as the Superior Court has denied Pennichuck's Motion for Preliminary injunction, the Commission has determined, consistent with the May 3, 2004 Secretarial Letter, that it is appropriate to issue an Order of Notice at this time and to hold a Prehearing Conference for the limited purposes of addressing motions for intervention, receiving a report from the City of Nashua and the Pennichuck Utilities on the current procedural status of other court proceedings, and to hear oral argument on certain preliminary matters, namely:

1) Whether it is appropriate for the Commission to proceed to consider Nashua's Petition for Valuation;
2) Whether counsel for the Pennichuck Utilities is disqualified from representing it in this proceeding; and

3) Whether the Town of Milford's Motion to Consider and Maintain Effectiveness of Existing Contract is premature.

The Commission does not intend to entertain statements of position regarding Nashua's valuation petitian at the Prehearing Conference. Moreover, there will not be a technical session following the Prehearing Conference. The Commission, therefore, will defer, among other things, hearing statements of position and establishing a procedural schedule, pending resolution of the preliminary matters noted above.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on July 28, 2004 at 10:00 a.m., at which each party will provide oral arguments on issues noticed in this order; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the City of Nashua shall notify all persons of this docket and the issues presented in this Order of Notice by publishing a copy of this Order of Notice no later than July 7, 2004 in The Telegraph, Concord Monitor, and Union Leader, publication to be documented by affidavit filed with the Commission on or before July 28, 2004; and It

FURTHER ORDERED, that the Executive Director shall notify all persons desiring to be heard at this hearing by publishing in a newspaper with statewide circulation , no later than July 2, 2004, a display ad setting forth the purpose, time and place of the hearing; and It is

FURTHER ORDERED, that the City of Nashua shall mail a copy of this order, no later than July 14, 2004, by first class U.S. mail, to the clerks of each municipality within which plant and property of the Pennichuck Utilities exists, proof of mailing to be documented by affidavit filed with the Commission on or before July 28, 2004; and it is

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y order of the Public Utilities Commission of New Hampshire this twenty-secnd day of June, 2004.

> Debra A. Howland **Executive Director & Secretary**

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