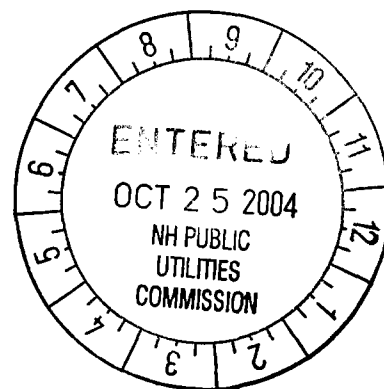


Fred S. Teeboom
24 Cheyenne drive
Nashua, NH 03063
(603) 889-2316

23 October 2004

Debra A. Howland
Executive Director and Secretary
NH Public Utilities Commission
21 S. Fruit St, Suite 10
Concord, NH 03301-2429

Re: Docket DW 04-048



Dear Ms. Howland:

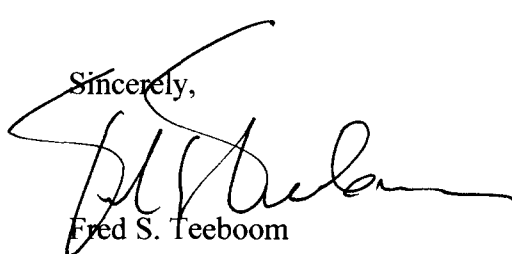
PUC Order 124,379 dated 1 October 2004 granted Fred S. Teeboom's request for intervention in this docket.

PUC Order No. 124,379 also provided parties with the opportunity to submit briefs on whether Nashua has properly followed the voting requirements of RSA Chapter 38 and whether the votes taken are consistent with the requests made in the Petition.

Enclosed are the original and eight copies of Intervener Fred S. Teeboom's Brief Regarding Nashua's vote under RSA 38.

A copy of this letter and the Brief has been mailed to all parties on the attached Service List.

Sincerely,


Fred S. Teeboom

STEVEN V CAMERINO
MCLANE GRAF RAULERSON & MIDDLETON
15 N MAIN ST
CONCORD NH 03301-4945

MARK JOHNSON
TOWN OF HOLLIS
TOWN HALL
7 MONUMENT SQ
HOLLIS NH 03049-6121

EUGENE F SULLIVAN III
ATTORNEY AT LAW
210 NORTH STATE ST
CONCORD NH 03301-3222

DAVID CARON
LONDONDERRY - TOWN OF
50 NASHUA RD
STE 100
LONDONDERRY NH 03053-3416

STEPHEN J JUDGE
WADLEIGH STARR & PETERS PLLC
95 MARKET ST
MANCHESTER NH 03101

FRED S TEEBOOM
24 CHEYENNE DR
NASHUA NH 03063

KATHERINE E CHAMBERS
TOWN OF MILFORD
TOWN HALL
ONE UNION SQ
MILFORD NH 03055-4240

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NASHUA NH 03063-2045

MATTHEW H UPTON
UPTON & HATFIELD
10 CENTRE ST
PO BOX 1090
CONCORD NH 03302

DAVID R CONNELL
CITY OF NASHUA
229 MAIN ST
PO BOX 2019
NASHUA NH 03061-2019

WILLIAM MULLIGAN
TOWN OF MERRIMACK
PO BOX 940
MERRIMACK NH 03054

ROBERT UPTON II
UPTON & HATFIELD
23 SEAVEY ST
PO BOX 2242
NORTH CONWAY NH 03860

ELIZABETH COUGHLIN
MERRIMACK RIVER WATERSHED COUNCIL
600 SUFFOLK ST 4TH FLR
LOWELL MA 01854-3629

BARBARA PRESSLY
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DOM S D'AMBRUOSO
RANSMEIER & SPELLMAN PA
ONE CAPITOL ST
PO BOX 600
CONCORD NH 03302-0600

JOHN J RATIGAN
DONAHUE TUCKER & CIANDELLA
225 WATER ST
PO BOX 630
EXETER NH 03833-0630

WILLIAM R DRESCHER
DRESCHER & DOKMO
21 EMERSON ROAD
PO BOX 7483
MILFORD NH 03055-7483

F ANNE ROSS
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301-2429

JAY HODES
BOSSIE KELLY HODES BUCKLEY & WILSON
440 HANOVER ST
MANCHESTER NH 03104

LAURA A SPECTOR
MITCHELL & BATES PA
25 BEACON ST EAST
LACONIA NH 03246

Docket #: 04-048-1 Printed: October 20, 2004

FILING INSTRUCTIONS:

WITH THE EXCEPTION OF DISCOVERY (SEE NEXT PAGE) FILE 1 ORIGINAL & COVER LETTER, PLUS 8 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
8 OLD SUNCOOK RD
CONCORD NH 03301-7319

BRIEF BY FRED S. TEEBOOM
INTERVENER IN DW 04-048

NASHUA FAILED TO COMPLY WITH RSA 38 VOTING REQUIREMENTS

23 October, 2004

I. INTRODUCTION

Fred S. Teeboom was granted Intervention in DW 04-048 by PUC Order No. 24,379 dated 1 October 2004. In this order, the PUC provided the parties the opportunity to submit briefs to address the issue whether Nashua has properly followed the voting requirements of RSA 38 and whether the votes taken are consistent with the requests made in the Petition.

II BACKGROUND LEADING TO THE CITYWIDE VOTE

1. On April 2002 the Pennichuck Corporation, a New Hampshire private corporation, announced a merger with Philadelphia Suburban Corporation, a Pennsylvania private corporation, in a stock swap then estimated at \$106 million.
2. Rizzo Associates, a consulting firm contracted by Nashua to review and evaluate Pennichuck Water Works, published its report on November 1 2002, amended on 20 December, 2002. Rizzo commented favorably on the public purchase of the water utility, limited to portions of the PWW located within city limits, plus dependent water supply facilities outside city limits, *assuming a willing seller*.¹
3. On 26 November the Nashua Board of Aldermen voted for the City of Nashua to acquire all or a portion of the Pennichuck water system.
4. 24 December 2002 Fred S. Teeboom, a citizen of Nashua and PWW ratepayer, filed a Petition in Hillsborough Superior Court (02-E-0441) for a Writ of Mandamus for the City of Nashua to supply voters with information containing Pro and Con arguments for the 14 January Special Election, citing Section 108 of the Nashua City Charter for measures submitted for a citywide vote.
5. On 6 January 2003 the Court denied the Petition, on basis that the Board of Aldermen do not have a legal right to acquire a water plant without approval by a majority of the city voters, as dictated by RSA 38:3.²
6. On 14 January 2003 during a Special Election the voters in Nashua approved by a margin of 6525 to 1867 (78%) to proceed with the acquisition.

¹ "Comprehensive Review of the Pennichuck Water System, Nashua New Hampshire," Summary Report, Rizzo Associates, 1 November, 2002

² The Court cited Section 102 of the City Charter that restricts the Board of Aldermen to submit for approval or rejection by a citywide vote any measure, which the Board has a legal right to pass. It is difficult to comprehend the Court's argument that the Board does not have a legal right to pass this measure since RSA 38:3 specifically directs the measure be submitted to a citywide vote following a 2/3 affirmative vote by the Board of aldermen.

III NASHUA FAILED TO PROVIDE VOTERS WITH ADEQUATE INFORMATION CONCERNING THE WATERWORKS ACQUISITION

Nashua failed to provide voters with Pro and Con information, which seriously undermined a true understanding of this complex vote, and the consequential liability to the taxpayers should PWW not agree to sell all or parts of its holdings to Nashua.

1. The city held several public forums to discuss the acquisition, as well as a public hearing prior to the Aldermanic vote. However, these did not address the liabilities and complexities of an involuntary acquisition, by Eminent Domain.
2. City representatives acknowledged that purchase and bonding figures were only estimates, not based on actual appraisal. No presentation was made as to the costs involved if the purchase was unfriendly and had to be accomplished by Eminent Domain process.
3. The forums can be characterized as presenting a very positive picture with respect to the ratepayer.³ Furthermore, there was considerable public emotional appeal about the dangers of "foreign ownership" of the local water company, selling "our water to outside entities," and being subject to "foreign control of our local water." This was occasioned by the ongoing merger of PWW with Philadelphia Suburban (PSC), with PSC then being considered a French company prior to its divestiture.⁴
4. Downplayed was the need for the expenditure of a large sum of public funds having to be secured by general revenue bonds, estimated by the Rizzo Report to exceed \$167 million, based on an estimated acquisition cost of \$100 million, and \$67.5 million in capital expenditures and reserve funding in the initial five years.⁵
5. The estimated acquisition cost of "around \$100 million" was based on the agreed upon merger price of \$106 million by PSC, not on an independent appraisal.
6. Much of the financial information having a direct bearing on the Referendum measure is still outstanding. Information such as:⁶
 - Appraisal Report of the Pennichuck Water System.
 - Comparing anticipated customer costs under PSC with public ownership.
 - Analysis relative to bond acquisition.
 - Potential Liabilities.
 - Impact on Nashua acquiring a water system from a private company.

³ Citing page xii of the 1 November 2002 Rizzo Report, which projected rate increases of 28% under city ownership vs. 49.5% under private ownership over a 20-year period.

⁴ Reference DW 02-126. The merger was called off by PSC following the 14 January citywide vote.

⁵ "Comprehensive Review of the Pennichuck Water System, Nashua New Hampshire," Summary Report, Rizzo Associates, 1 November 2002. PWW officials disagreed publicly with these projections.

⁶ "Additional Services, Comprehensive Review of the Pennichuck Water System," Memorandum, Rizzo Associates, 3 December 2002

7. None of this information was provided prior to the vote. After the vote, negotiations went non-public, presumably under the RSA 91-A Right-to-Know law exemptions (RSA 91-A); it is therefore not known whether this information is now available.
8. Resolution R-02-127 endorses public acquisition of PWW, according to RSA 38:3, but fails to provide information why it is in the public interest to do so, other than a general assertion that "maintenance of an adequate supply of clean, affordable drinking water is essential to the viability of any community," and similar general statements. However, it fails to mention why public ownership vs. private ownership is expedient to attain these goals.
9. Bond counsel drafted the language for the ballot question using the language of RSA 38:3, with no additional information. The City Attorney, in written legal analysis of a Board of Aldermen resolution to provide voters with information regarding the 14 January election, quotes the Secretary of State and Bond Counsel to have said that voter information in this case is permitted, but not required (Exhibit I).⁷
10. The ballot question mentions an Aldermanic Resolution adopted on 26 November without specifics other than "that it is expedient for the City to establish a water works system." (Exhibit II).
11. The Voter Information, like the ballot question, is based entirely on the language of RSA 38:3, but fails to provide information why it is expedient for the City to establish a water works system. (Exhibit III).⁸
12. The Voter Information simply states that a "YES" vote means that the City may continue to pursue acquisition of the Pennichuck water system under the procedures outlined in RSA 38, and a "NO" vote means that the city may not continue the acquisition now, and the issue may not be submitted to the voters again for at least two years (Exhibit III).
13. The City in its Memorandum of Law concerning the Petition brought by Fred S. Teeboom states, ***"This approach was preferred by the Board of Aldermen to the problematic alternative of trying to formulate a comprehensive, neutral summary of complicated, contentious issues."*** (Exhibit IV)⁹
14. The City fails to mention that PUC oversight over rate increases will effectively be eliminated following the acquisition.
15. The City failed to clarify that the voters have only one direct vote on this question, remaining negotiations and final approval being delegated to the Board of aldermen and the Mayor.

⁷ Analysis by Corporation Counsel to R-02-148, relative to Voter Information Regarding the Special Election, 23 December 2003.

⁸ Voter Information for the 14 January 2003 Special Election published by the Nashua City Clerk.

⁹ Defendant City's Memorandum of Law, Teeboom v. City of Nashua, Superior Court Docket No. 02-E-441, page 2, dated 2 January 2002.

IV STATE LAW ENCOURAGES ACCURATE DISCLOSURE TO THE VOTER

1. RSA 38:3 contains a historical annotation concerning determination of a fair market price by the PUC prior to holding the vote required under RSA 38:3. This would have allowed the voters a more informed decision as to the liability of this purchase (Exhibit V).
2. RSA 38:3 requires the election be “duly warned.” Although the acquisition was covered in the local newspaper and in a number of informational meetings sponsored by the city, this only informs those who subscribe to the newspaper or attend the meetings, a limited subset of those who vote, and is no substitute for a duly warned election. The public meetings turned more into “sales meetings” with public officials promoting, with generalities, the acquisition and soliciting a favorable vote (Exhibit VI). The availability of comprehensive and balanced information to the voter at the polling place, preferably in clearly contrasted Pro and Con positions, is the only fair and balanced way to inform each and every voter who votes on this issue. This was denied the voter.

V THE CITY FAILED TO PROVIDE SUBSTANTIAL ARGUMENT TO THE VOTERS WHY THE ACQUISITION OF PWW IS IN THE PUBLIC INTEREST

1. An affirmative vote under RSA 38:3 creates a “rebuttable assumption” that the acquisition is in the public interest. Nothing the city presented in either the enabling Resolution or in the information provided to the voter supports the assumption that this is in the public interest.
2. The city failed to provide to the voter with a clear analysis of why public acquisition is in the public interest.
3. The city failed to provide to the voter with information or argument that management and operation of the local water supply by Pennichuck has resulted in poor quality water or been hazardous to the safety of Nashua citizens.¹⁰
4. The Rizzo report, which considers the acquisition of benefit to the public based strictly on a financial “own vs. buy” argument with the premise that this may lead to lower rates assumes the acquisition to take place under friendly negotiations. However, Rizzo Associates recommended additional study, presumably to support its public ownership argument, most notably an appraisal and financial analysis of the impact of acquisition and capital improvement costs on water rates. None of this information was provided to the voter.

VI THE CITY FAILED TO INFORM THE VOTERS OF OPERATING AND FINANCIAL LIABILITIES

1. The city ignored the makeup complexities of a Regional Water District (not yet authorized by the State on the date of the RSA 38:3 citywide vote), including cost

¹⁰ Pennicuck Corporation has derived substantial windfall profits from the conversion of conservation land to commercial development through its subsidiary, Southwood Corporation, but no presentation was made that this conversion has affected the quality or safety or cost of the local drinking water.

distribution and management implications if not all member communities who are currently served by PWW agree to join the Regional Water District.

2. The city ignored any consequential damages to be awarded under RSA 38:33 should only a part of PWW be acquired to serve the City of Nashua, under Eminent Domain process legal restrictions and PUC directive.
3. The city ignored the financial liability if PWW did not agree to the acquisition, causing the process to devolve to an Eminent Domain taking and expenses incurred in connection of evaluation under RSA 38:13 and Consequential Damages under RSA 38:33
4. The city stated that if the "price were not right" it could pull out of the acquisition without liability, (presumably under the RSA 38:13 ratification requirement) ignoring any consequential legal action and damages awarded to PWW that would have to be born by the ratepayers.
5. The City has no prior history or experience with running a water company. The City failed to provide argument why ownership of the waterworks by the government would result in a more economical operation and a safer and higher quality supply of local water than is currently provided under private ownership.¹¹
6. The city ignored the question of who would manage and operate the waterworks after acquisition, under vague promises that all extant Pennichuck employees would remain employed with the operation and management.
7. The City failed to inform voters that public ownership would result in elimination of PUC oversight over future rate increases.
8. The city failed to inform the voter that irrespective of whether the acquisition is successful, legal and ancillary expenses related to the Eminent Domain procedure would be born by the ratepayers and the taxpayers of Nashua.

VII CONCLUSIONS

The City failed to provide adequate information to the voter to enable an informed decision concerning the RSA 38:3 vote. Public meetings were more sales presentation than an analysis of the benefits and liabilities. The expediency or public interest for acquiring all or parts of PWW, stated in the ballot question and in information provided to the voter, was not supported with fact.

Therefore, Nashua has not properly followed the voting requirements of RSA 38, nor is the citywide vote consistent with the requests made in the Petition.

¹¹ There is a great deal of historical evidence that operation of utilities by the government, not being motivated by profit and usually encumbered with public employee union contracts that create inefficiencies and extra expenses, without regulatory oversight, will result in much higher, not lower, expenses to the ratepayer.

VIII RECOMMENDATION

We recommend that PUC concentrates on the “rebuttable assumption” that the acquisition is in the public interest. Finding none, under authority of RSA 38:11 order the acquisition be terminated without the additional expense (which must be ultimately borne by the ratepayers and taxpayers of Nashua) to establish a valuation.

Exhibit I

**Sample Ballot Question
For the Special Election on 14 January 2003**

The City of Nashua, NH

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Sample Ballot

City Clerk's Office

[City Seal](#)

[Dog Licenses](#)

[Elections](#)

[Polling Places](#)

[Sample Ballot](#)

[Voter's Guide](#)

[Ward Street Changes](#)

[Genealogy](#)

[History of Nashua](#)

[History of NH Clerks](#)

[Information](#)

[Licenses & Permits](#)

[Ordinances & Charter](#)

[Records](#)

[UCC](#)

[Vital Records](#)

SPECIAL MUNICIPAL ELECTION – SAMPLE BALLOT CITY OF NASHUA, NH JANUARY 14, 2003

INSTRUCTIONS TO VOTERS:

To vote, make a cross (X) in the square to the right of the answer you desire to give. If you wrongly mark, tear, or deface this ballot, return it to an election official and obtain another.

“Shall the resolution of the Board of Aldermen adopted on November 26, 2002 determining that it is expedient for the City to establish a water works system and, in order to establish such water works system, to acquire all or a portion of the water works system currently serving the inhabitants of the City and others be confirmed?”

YES

NO

*

City Clerk's Office
Administrative Services Division
229 Main Street P.O. Box 2019 Nashua, NH 03061-2019
Phone: 603-589-3010 Fax: 603-589-3029
Email: cityclerk@ci.nashua.nh.us
Hours: 8:00 a.m. - 5:00 p.m. Monday - Friday
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Exhibit II

**Analysis by Corporation Counsel Relative to Voter Information
Regarding the Special Election to be Held on 14 January 2003**

LEGISLATIVE YEAR 2002

RESOLUTION:

R-2002-148

PURPOSE:

Relative to voter information regarding the special election to be held January 14, 2003

SPONSOR(S):

Mayor Bernard A. Streeter
David Rootovich, President of Board of Aldermen
Alderman Brian McCarthy, Ward 5
Alderman-at-Large Frederick Britton
Alderman-at-Large Paula Johnson

**COMMITTEE
ASSIGNMENT:**

ANALYSIS

This resolution would authorize the distribution of basic information to the voters regarding the issue being presented at the special election to be held on January 14, 2003.

The special election being held January 14, 2003 is called for by RSA 38:3. Bond counsel has drafted the language for the ballot question using the language of RSA 38:3 itself.

* Some types of ballot measures (e.g. initiative petitions and referenda under charter section 98-108); charter amendments under RSA 49-B:6; and state constitutional amendments under RSA 663:3-a) expressly call for voter information. RSA 38:3 is silent. The secretary of state and bond counsel have said that voter information in this case is permitted, though not required.

Approved as to form:

Office of Corporation Counsel

By: Dorothy Clarke

Date: December 23, 2002

Exhibit III

**Voter Information for the
Special Election on 14 January 2003**



City of Nashua

Office of the City Clerk

Paul R. Bergeron
City Clerk

Patricia Lucier
Deputy City Clerk

229 Main Street
P.O. Box 2019
Nashua, NH 03061-2019

(603) 589-3010
Fax (603) 589-3029
E-Mail: cityclerk@ci.nashua.nh.us

VOTER INFORMATION FOR SPECIAL ELECTION TO BE HELD JANUARY 14, 2003 CONCERNING ACQUISITION OF PENNICHUCK WATER SYSTEM BY THE CITY

On January 14, 2003 polls will be open from 6:00 a.m. to 8:00 p.m. for a special election to determine whether or not the City should acquire all or a portion of the Pennichuck water system. The procedure for a city to acquire a privately owned water system is controlled by Chapter 38 of the New Hampshire Revised Statutes. The Board of Aldermen has voted by the required two-thirds majority to acquire all or a portion of the Pennichuck water system. RSA 38:3 calls for a special election to see if the voters will confirm that action by majority vote. The ballot question, based on the language of RSA 38:3, is as follows:

“Shall the resolution of the Board of Aldermen adopted on November 26, 2002 determining that it is expedient for the City to establish a water works system and, in order to establish such water works system, to acquire all or a portion of the water works system currently serving the inhabitants of the City and others be confirmed?”

A “YES” vote means that the City may continue to pursue acquisition of the Pennichuck water system under the procedures outlined in RSA 38.

A “NO” vote means that the City may not acquire the water system now, and the issue may not be submitted to the voters again for at least two years.

Exhibit IV

**Nashua's Memorandum of Law
In Opposition to Petition for Writ of Mandamus
Superior Court Docket No. 02-E-441**

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTHERN DISTRICT

SUPERIOR COURT
DOCKET NO. 02-E-441

Fred S. Teeboom

v.

City of Nashua

**DEFENDANT CITY'S MEMORANDUM OF LAW IN OPPOSITION TO PETITION
FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF OR, IN THE ALTERNATIVE
A WRIT OF MANDAMUS**

Introduction

The single issue in this case is whether Section 108 of the Nashua City Charter, mandating publication of voter information in a "pro and con" format for a referendum authorized under city charter section 102 also applies to a referendum required under RSA 38:3 relative to municipal acquisition of a water supply and distribution system. The plaintiff, an individual resident and taxpayer, claims a right to have such information published. The City, with guidance of the secretary of state and bond counsel, claims that section 108 does not apply, and the Board of Aldermen has decided to publish basic voter information in a different format.

Following the announcement of the proposed sale of the Pennichuck water utility serving Nashua to a large Pennsylvania-based holding company that owns water companies in various parts of the United States, the City studied its options, including public ownership. RSA 38 sets forth the comprehensive procedure for municipal acquisition of privately owned water works. The first formal step is a two-thirds vote of the board of aldermen that it is expedient to establish a water system. RSA 38:3. The second step is a "confirming vote" of "the qualified voters at a regular election or at a special meeting duly warned" Id. The third formal step, to be taken

only if the voters confirm the board of aldermen's initial decision, is for the board of aldermen to determine what plant and property the city wants to acquire and to formally notify the utility. RSA 38:6.


After consultation with Secretary of State Gardner and bond counsel, Palmer and Dodge (who would be called upon to issue an opinion as to the regularity of proceedings if bonds are ultimately issued to acquire the water system under RSA 38:13), it was determined that the "special meeting" under RSA 38:3 is properly treated as a special election with a ballot question posed as a "yes" or "no" proposition. It was further determined that the ballot measure under RSA 38:3 is not a referendum of the type identified in Nashua charter section 102 and, therefore, not controlled by the initiative and referendum procedures of charter sections 98-108. Finally, it was determined that, RSA 38:3 being silent, publication of voter information is optional.

Resolution 02-127, drafted in consultation with bond counsel, adopted by the board of aldermen on November 26, 2002, furnished the requisite two-thirds of the board of aldermen; formulated the question for the confirming vote; and scheduled the special election for January 14, 2003. For voter information, Resolution 02-148, adopted by the board of aldermen on December 23, 2002, presents a simple explanation of the consequences of the somewhat archaic language of RSA 38:2 and 3 used in the ballot question. This approach was preferred by the board of aldermen to the problematic alternative of trying to formulate a comprehensive, neutral summary of complicated, contentious issues. These issues have been receiving a great deal of press coverage, have been discussed at numerous public meetings and hearings and will be discussed even more intensively at public informational meetings, in the press and by interest groups in the days leading up to January 14, 2003. *

Respectfully submitted,

THE CITY OF NASHUA
By its Attorneys,
Office of Corporation Counsel

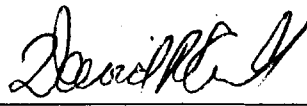
Dated: January 2, 2003



David R. Connell, Esquire
Corporation Counsel
229 Main Street - P. O. Box 2019
Nashua, New Hampshire 03061-2019
(603) 589-3250

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the foregoing Defendant City's Memorandum of Law in Opposition to Petition for Declaratory Relief, Injunctive Relief or, in the Alternative a Writ of Mandamus to be given in hand to Fred S. Teeboom, pro se, this 2nd day of January, 2003.



David R. Connell, Esquire

Exhibit V

**Historical Annotation to RSA 38:3
Determination of Fair market Value Prior to the Vote**

38:3 By Cities.

Any city may initially establish such a plant after $\frac{2}{3}$ of the members of the governing body shall have voted, subject to the veto power of the mayor as provided by law, that it is expedient to do so, and after such action by the city council shall have been confirmed by a majority of the qualified voters at a regular election or at a special meeting duly warned in either case. Such confirming vote shall be had within one year from the date of the vote to establish such a plant, and if favorable, shall create a rebuttable presumption that such action is in the public interest. If the vote is unfavorable, the question shall not be again submitted to the voters within 2 years thereafter.

HISTORY

Source. 1997, 206:1, eff. July 1, 1997.

Option for Municipalities Purchasing Certain Electric Facilities. 2000, 249:5 provides:

"Municipalities which seek to purchase PSNH hydro-electric small-scale electric facilities, as defined in RSA 374-D:1, may with the consent of the governing body, prior to October 1, 2000, petition the commission pursuant to RSA 38:9, prior to holding the vote of qualified voters provided for in RSA 38:3, RSA 38:4, or RSA 38:5, for a determination of the fair mar-

ket value of the facility in the event that the municipality and PSNH are unable to agree to a price to be paid for the facility. The cost of the determination shall be at the expense of the requesting municipality. The commission should select an independent, qualified asset valuation specialist to conduct the asset valuation process. If this option is chosen, all votes required by RSA 38:3, RSA 38:4, or RSA 38:5 must be held prior to the expiration of the time limit required for the ratification vote under RSA 38:13."

LIBRARY REFERENCES**West Key Number**

Municipal Corporations ⇨272.
Waters and Water Courses ⇨183.

Westlaw Topic

WESTLAW Topic Nos. 268, 405.

CJS

C.J.S. Municipal Corporations § 1052.
C.J.S. Waters §§ 228, 235.

AmJur

56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 567 et seq.

ALR

Water works system as "public utility" which city may purchase. 9 ALR 1034, 35 ALR 592.

ANNOTATIONS**Majority vote 1****1. Majority vote**

The confirming vote required is a majority of those voting, though less than a

majority of those qualified to vote. *Laconia Water Co. v. City of Laconia* (1955) 99 N.H. 409, 112 A.2d 58 (Decided under former RSA 38:4.)

Exhibit VI

**Telegraph Article Tuesday 2 January 2003
Marketing campaign by the City to Buy Pennichuck**



The Telegraph **ONLINE**

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE



Photo by Kathy Seward MacKay

Ward 5 Alderman Brian McCarthy disputes a newspaper ad by Pennichuck Water Works that appeared in Monday's Telegraph.

2 marketing campaigns under way

Tuesday, January 07, 2003

By ANDREW NELSON, Telegraph Staff, nelsona@telegraph-nh.com

NASHUA - On the same day Pennichuck Corp. began its marketing campaign in opposition to the upcoming referendum, city leaders began their own marketing campaign as residents consider whether it makes sense for the city to buy Pennichuck Water Works.

Questions ranging from employee retirement benefits and concerns about the water utility becoming a political football to "socialism" replacing free-market capitalism were bandied around at the first in a series of ward meetings, leading up to the city-wide vote next week.

A skeptical Tom Potter, of 20 Kennedy Drive, had heard all the good things to come out of months of study, but wanted to go deeper.

"I know there has to be some cons," said Potter, his loud voice carrying across the lunchroom, as he read a list of pointed questions from a small slip of paper.

Ward 5 Alderman Brian McCarthy, who also leads the ad hoc aldermanic committee overseeing the Pennichuck-acquisition issue, answered the questions, often talking in generalities.

On the issue of personnel cost, McCarthy said the city's consultants based a city-run water company expenses on the same expenses Pennichuck currently has.

And the income from the operation of the company, plus the savings from operating Pennichuck as a public water company, would allow the company to continue to supply water and the ratepayers would be its owners, he said.

The financial picture is not based on solid figures, McCarthy said, but "based on some guesses that are fairly close."

It would be locally owned, locally managed, and serve the "best interest of the ratepayer, not the shareholder," he said during the discussion.

Even with his questions, Potter said he still believed having the water company based here, instead of a division of Philadelphia Suburban Corp, which is proposing to buy Pennichuck, would be the best.

"I'd would like to see us retain control," he said, before sitting down.

Nearly 50 people filled half the lunchroom at the Elm Street Junior High.

A signal of the high interest in the topic was clear with close to half of the city's 15 aldermen attended. The meeting was recorded and will be aired on local municipal TV Channel 16 on Thursday at 7 p.m. and repeated Sunday at noon.

Other information sessions are scheduled today through Friday.

A week from today, city voters will go to the polls to decide whether City Hall leaders should begin negotiating with Pennichuck Corp. executives to purchase the water company.

McCarthy and Mayor Bernie Streeter took aim at a Pennichuck advertisement that ran in Monday's Telegraph.

The half-page ad questioned the priority of the city and whether schools, roads and other more typical municipal concerns would be ignored if the city took over the water company.

"There is not one dollar that can be spent on roads and schools that will be spent on the water company," McCarthy said, holding up a clipping of the advertisement.

Streeter called the ad "absolutely false."

He repeated his position that the public ownership of the company is a good step for the city and "savings will automatically accrue."

Both said the borrowed money would be repaid with revenue from ratepayers, not property taxes of city residents.

During the question-and-answer session, critics argued the private sector would be more efficient than government in running the water company.

James Miller, of 5 Columbine Drive, hit on some local controversies, such as the conflict between the new Nashua High School North and nearby neighborhoods, as he raised questions of unintended consequences of a city-run waterworks.

"They don't run our city half-decently," Miller complained.

Zach Janowski, of 16 Eldorado Circle, said water governance would become "complex political" problems, instead of business problems.

"They are doomed to be problematic," he said.

Maurice Arel, president of Pennichuck, sat in the back, scribbling notes on a yellow legal pad.

"I was very impressed by the questions that were asked tonight that were not answered," said Arel, who added many of the issues surrounding a city takeover remain unknown.

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