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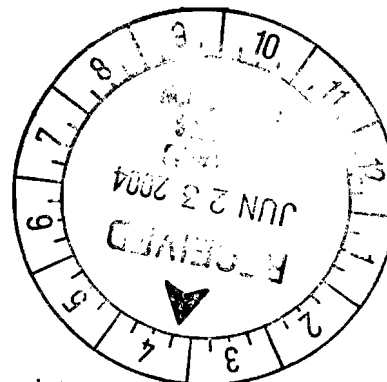
FIFTEEN NORTH MAIN STREET • CONCORD, NH 03301-4945
TELEPHONE (603) 226-0400 • FACSIMILE (603) 230-4448

STEVEN V. CAMERINO
Internet: steven.camerino@mclane.com

June 23, 2004

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

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



Re: DW 04-100; Merrimack Valley Regional Water District

Dear Ms. Howland:

I am writing on behalf of Pennichuck Water Works, Inc., Pennichuck East Utility, Inc. and Pittsfield Aqueduct Company, Inc. (the "Pennichuck Utilities") to follow up on a copy of a letter to the Commission that I obtained earlier this month. The letter was dated May 5, 2004 and was sent to the Commission by counsel for the Merrimack Valley Regional Water District ("District").

As a result of reviewing the Commission's website earlier this month, I learned for the first time that the Commission had received a copy of the District's charter from the District's legal counsel and that the Commission opened a docket on June 4, 2003 to consider the charter's compliance with RSA Ch. 53-A. Although the District was well aware of the interest that the Pennichuck Utilities, their customers and other members of the public might have in the Commission's review of the charter, it appears from the District's letter that no one other than the Commission was sent a copy of the filing. Given that the Pennichuck Utilities are specifically referred to in the District's charter and their service territory and customers are the central subject matter of the charter, it would have been normal practice to make some effort to serve a copy of the filing on the three utilities or their counsel.

By this letter, I am requesting that I be added to the Commission's service list in this docket and that copies of any filings with the Commission and any Commission order and other communications also be sent to me on behalf of the Pennichuck Utilities. I also request that appropriate notice be given of any meetings that occur between the Commission's staff and the District's legal counsel, so that interested parties can be aware of these communications.

With regard to the substance of the charter submitted to the Commission for its review, the Pennichuck Utilities agree with the concerns expressed by the Commission in its June 4 letter to the District's legal counsel as well as the concerns expressed by the Commission staff in its June 3 letter to the Commission in this matter. In addition, the Pennichuck Utilities believe that the following issues may be relevant to the Commission's consideration of the charter and the communities considering participating in the District.

1. Voting Power of Nashua; Definition of Customer

Under the District's charter, the definition of the word "customer" is critical to the balance of power among the District's members because votes relating to critical issues—rates, capital improvements and bond issuances—are all decided based on the number of customers in each member municipality, rather than on the number of directors (i.e., one) from each municipality. Because Nashua has the overwhelming majority of customers in the District, matters that are decided based on the number of customers will always be dictated by Nashua. Assuming that such an imbalance of voting authority was intended by the parties that negotiated the charter's terms, it is still unclear how the number of customers in each municipality will be determined. (The term "customer" is defined in Section 3(f) of the charter.) For example, the charter does not make clear whether member towns that own their own water systems but are provided with water on a wholesale basis (e.g., Milford) will be allocated one vote when voting is conducted on a per customer basis or whether their voting power will be based on the total number of homes and businesses served by that town's water system. Similarly, the charter is unclear regarding whether towns that own their own water systems and contract with the District to operate the system (e.g., Hudson) are entitled to a single vote or whether their vote will be based on the total number of customers actually served within the town. In addition, the charter is unclear as to whether towns such as Milford and Hudson will be required to turn over ownership of their water system assets in order to become members of the District and have a vote at all.

2. Withdrawal from District

The process by which a member may withdraw from the District is very confusing, and appears to give the District the ability to prevent or unduly delay a community's ability to withdraw. Although Section 5(c) of the Charter states that "[a]ny Member may voluntarily withdraw from District membership upon a vote of its Governing Body," the charter prohibits withdrawal if PUC approval would be required. While such a provision may seem simple enough, it effectively gives the District the ability to obstruct a municipality's efforts to withdraw. This is because, as the Commission noted in its letter to the District, the District is required by law to obtain PUC approval before serving non-member communities. Because the District will own the water system assets of most or all of its members, the members will be unable to withdraw unless the District agrees to seek PUC approval to serve the withdrawing town or voluntarily turns the water system assets over to the withdrawing town so that the town can either form its own municipal utility or seek service from another municipality or public utility. Although it is possible that the District could ultimately be pressured through the efforts

of the Governor, the Legislature or State regulators to relent in its efforts to block a member from withdrawing, such a process is likely to be time consuming, complex, expensive and uncertain. It is unlikely that the parties negotiating the charter intended such a difficult process when they contemplated that "[a]ny member may voluntarily withdraw."

3. Loss of Right to Take Assets Needed to Provide Water Service

Under Section 5(d) of the charter, District members relinquish their statutory right to take the water utility assets needed to serve them that are owned by the District. It is highly questionable whether a municipality has the authority to give up a statutory right of this nature. Moreover, by giving up the right to take those assets, the charter creates an additional obstacle to a member's right to withdraw from the District. Specifically, if the District owns the assets necessary to provide water service within a town and the town cannot take those assets by eminent domain prior to withdrawing from the District, then the town will have no choice but to obtain service from the District upon withdrawal. (In other words, no other municipal or public utility will be able to provide service because the District will control access to the pipes and other assets needed to serve the withdrawing community.) Thus, the following scenario could occur. If Bedford were to decide that it wanted to withdraw from the District and be served by a privately owned utility or by a municipal utility such as Manchester Water Works (which already serves other portions of Bedford), the District could refuse to turn over its Bedford assets to the town or it could insist on an unreasonable price, thereby making it impossible for Bedford to transfer its system to another provider. If Bedford sought simply to withdraw from the District, the District could take the position that the Town was prohibited from withdrawing because the District cannot continue to serve the town after withdrawal without PUC approval, an approval that the District either cannot or will not try to obtain. (See item 2 above and Section 5(c) of the charter.) While a scenario such as this may seem unlikely, in an adversarial situation these are viable arguments that one can assume would be asserted and will, at a minimum, lead to significant disputes, expense, delay and loss of freedom for a town to pursue its desires.

4. Quorum and Voting

Under the charter's voting provisions, Nashua controls the vote on the most significant issues of concern to the member communities and their citizens. Specifically, for those matters where voting is by customer, Nashua will be able to force passage of (or block) any matter regardless of the view of the other member communities because (1) Nashua acting alone can make or break a quorum (under Section 6(j) of the charter a quorum requires the presence of board members representing at least 60% of the customers when a matter requiring voting based on customers is at issue) and (2) Nashua will always have sufficient voting power to carry a vote on matters determined by the number of customers because it will represent more than 70% of the District's customers. (As noted above, the exact percentage that Nashua would control in a vote based on customers would be affected somewhat depending on how many votes are allocated to which communities ultimately are allowed or choose to join the District, but Nashua will retain a majority of customers regardless. The actual percentage could be well in excess of 70%.) Key matters that are decided on a vote based on the number of customers and over which

Nashua would have absolute control are (1) approval of the Capital Improvements Plan (which will effectively determine whether, where and when system expansion will occur), (2) the issuance of bonds (which provides a second mechanism for restricting capital spending) and (3) establishment of rates, charges and tariff provisions (which means that Nashua alone will determine the cost and conditions on which service will be provided in all member communities).

5. Surplus Revenue Credits

Article 13 of the Charter deals with net income generated from operations of the District, i.e., the excess revenues remaining after all operating costs, debt service and capital expenditures have been covered. The provision is internally contradictory because it says that the Surplus Revenue Credits will be divided based on the number of customers, but then says that this proportion is determined by taking the revenues from each member town and dividing them by the total revenues of the entire District. The difference between allocating these net revenues by number of customers and by each town's share of total revenue is particularly important for a community such as Merrimack, where there are relatively few customers, but one of those customers (Anheuser-Busch) generates more revenue than any other customer currently served by any of the Pennichuck Utilities. According to Article 13, the Surplus Revenue Credits will be held by the District for each member and are to be spent for capital improvements in that town only. This means that a member with relatively few customers (e.g., Milford, Bedford or Hollis) will generally have no meaningful access to these surplus funds and will be able to have capital improvements made to its portion of the system only if the Board of Directors votes to include the improvements in the Capital Improvements Plan. Because the Capital Improvements Plan is approved based on a vote by number of customers, however, that determination will be entirely driven by the City of Nashua. Thus, if a major new business wants to come into Bedford, Hollis or Milford (and, in all likelihood, any other town), the City of Nashua will be able to block any necessary main extension or other capital improvement needed for that purpose.

6. Office of Consumer Affairs

Article 15 of the charter establishes an Office of Consumer Affairs. Rather than creating rights for the protection of customers, however, this provision actually deprives customers of their right to seek legal redress of their complaints. Specifically, Article 15 provides that there is no appeal to any court from a determination of the Office of Consumer Affairs. There are no exceptions, no matter how egregious the error. ("Nothing in this Article 15 shall confer any rights upon any Consumer with respect to a water bill, bill for other services or otherwise and the decision of the Office of Consumer Affairs to take or not to take any action upon a Consumer's complaint shall not be appealable to any court.") In addition, the charter makes clear that customers themselves are granted no rights under the charter, and therefore if a customer believes that he or she has been unfairly or improperly treated, the customer cannot assert any rights under the charter document. See Article 22 ("[N]o Customer, Water Company or non-Member municipality shall have any right to enforce or otherwise claim the benefit of any provisions of this Charter.") As the Commission is aware, under traditional public utility


regulation, an unsatisfied customer's first step may be to complain to the utility's customer service department, but if that process is insufficient to resolve the complaint the customer may submit the complaint to the PUC (which includes the right of appeal to the State Supreme Court) or to the State's District or Superior Courts (again with an ultimate appeal to the State Supreme Court if necessary). It is also worth noting that it is unclear what authority a town has to give away a utility customer's right to seek satisfaction before the PUC or a State court if the customer's complaint about a bill or the quality of service received is not adequately addressed, regardless of whether the utility providing the service is a regional water district or a privately owned utility.

7. Rate Setting Issues

Pennichuck shares the concerns expressed by the Commission's staff regarding how rates are set by the District. Although the Pennichuck Utilities and other public utilities in New Hampshire are prohibited from charging customers for costs associated with capital additions that do not yet and may never be needed to provide service to the public (sometimes called CWIP), capital additions contributed by third parties (referred to as CIAC or contributions in aid of construction) or imprudently incurred costs resulting from poor management or other negligence on the part of the utility, there is nothing to prohibit the District from including such costs in its rates. In fact, it appears likely that, in one way or another, all three of these types of costs are certain to be included in the District's rates over time. While the District may unfortunately have the right to charge customers in member communities for such costs, Pennichuck does not believe that the District may properly charge customers in non-member communities for these costs.

As the Pennichuck Utilities conduct a more detailed review of the District's charter, other issues of concern may come to light. The items set forth above are intended to provide an initial list of issues of concern that the Commission may wish to consider in this or any future docket.

Sincerely,



Steven V. Camerino

cc: F. Anne Ross, Esq.
Stephen J. Judge, Esq.
Dom S. D'Ambruoso, Esq.
William R. Drescher, Esq.
Robert Upton II, Esq.