

DW 04-048

CITY OF NASHUA

Petition for Valuation Pursuant to RSA 38:9

Order Addressing Motion to Limit Data Requests

ORDER NO. 24,485

July 8, 2005

I. INTRODUCTION

The New Hampshire Public Utilities Commission (Commission) opened this docket upon the March 25, 2004 filing by the City of Nashua, New Hampshire (Nashua) to take the utility assets of Pennichuck Water Works, Inc. (PWW), Pennichuck East Utility (PEU) and Pittsfield Aqueduct Company (PAC) (collectively the Pennichuck Companies), pursuant to N.H. RSA 38:9. The Pennichuck Companies opposed the petition and challenged Nashua's interpretation of the reach of RSA Chapter 38:9. The Commission determined that RSA 38 authorized Nashua to pursue the taking of PWW, but not PEU or PAC, in Order No. 24,425 (January 21, 2005). The case is now in the discovery stage and is scheduled for hearing in September 2006. For the full procedural history and procedural schedule, see Order No. 24,457 (April 22, 2005).

The issue addressed in this order is whether the Commission should impose limits in each round of discovery over the number of data requests submitted to another party. Nashua filed a motion to this effect on May 24, 2005.

II. POSITIONS OF THE PARTIES AND STAFF

A. Nashua

Nashua states that PWW filed 173 data requests on Nashua in the first phase of discovery. In Nashua's view, the requests are "overbroad and unduly burdensome and appear intended to frustrate the City's Participation in the orderly conduct of the proceeding by requiring it to devote an unreasonable amount of staff and consultant time to respond." In support, Nashua states that PWW's requests are double the number submitted by Staff or Nashua. Further, "nearly all" of them contain sub-parts and requests for documents, admissions and other information. The true "requests" therefore are in excess of 173. Nashua notes State and Federal limits on interrogatories of 50 and 25 respectively, though acknowledged that this case warrants greater discovery than the Federal and State limits. Nashua proposed limits of 100 requests in the first round, 50 in the second round and 50 after the final capstone and rebuttal testimony, if any. Nashua asserts that without limits on discovery, the process will be abused and Nashua's resources will be depleted.

B. Parties in Support of Nashua's Motion

According to Nashua, the towns of Amherst, Pittsfield and Raymond support Nashua's Motion, as does the Merrimack Valley Regional Water District (District) and Nashua resident Barbara Pressley.

C. PWW's Opposition

PWW filed an Objection to Nashua's Motion, arguing that Nashua should have made such a request during the negotiations over the procedural schedule, before the order approving the schedule was issued, or in the form of a rehearing request after the Commission

approved the schedule, and not after PWW's data requests were served. PWW asserts a duty to fully explore the details of Nashua's proposed taking in order to protect its shareholders and customers. Finally, PWW notes that Nashua's Motion does not state that any particular data request is irrelevant, but instead argues that responding will require an unreasonable amount of time.

D. Parties in Support of PWW's Opposition

The Town of Merrimack filed an Opposition to Nashua's Motion. According to Merrimack, the requests are indeed voluminous but "fairly relate" to the public interest inquiry, claims made in Nashua's testimony, and the background and credibility of Nashua's witnesses. They also relate, according to Merrimack, to the financial aspects of the transaction and whether the Merrimack Valley Regional Water District, which Merrimack describes as the "ultimate acquirer" will be able to provide "economical and effective water service."

E. Commission Staff

Commission Staff (Staff) objected to Nashua's Motion, noting the Commission's procedural rules provide a process by which parties may object to data requests and there has been no showing that the existing safeguards are inadequate. If at some point those safeguards should prove to be inadequate, Staff offered to discuss setting limits on further discovery with the Parties.

III. COMMISSION ANALYSIS

Nashua's allegation in this dispute is essentially that the discovery process is being abused. The argument, in so many words, is that the requests have been propounded not so much to explore or clarify technical issues but to overtax Nashua's resources.

In any case before us, the Parties and Staff have a responsibility to act reasonably and in good faith in pursuit of their positions. Those who find particular questions inappropriate have an opportunity to object. Ultimately, a discovery dispute will be ruled on by the Commission, upon receipt of a Motion to Compel and responses thereto.

The requests thus far, though extensive, do not demonstrate an abuse of the process. Consequently, we do not find a basis to conclude that PWW is using discovery as a means to overtax Nashua's resources. Complex cases such as these are highly time- and resource-intensive and often yield burdensome discovery phases. Nevertheless, the bounds of discovery are subject to reasonable limitations. In that regard, we are mindful of the burdens and if we see signs of abuse of the process, either in the requests or responses, we will take appropriate action.

We remind the parties and Staff that the purpose of discovery is to develop and explore the facts at issue in a case. Discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence in determination of Nashua's petition to take property of PWW pursuant to RSA 38:9. We will address in a separate order Nashua's objections to specific data requests.

Based upon the foregoing, it is hereby

ORDERED, that the Motion to Limit Discovery filed by the City of Nashua is
DENIED.

By order of the Public Utilities Commission of New Hampshire this eighth day of
July, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary