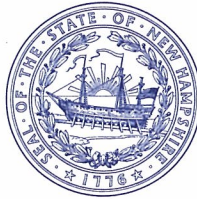


THE STATE OF NEW HAMPSHIRE

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August 6, 2008

RE: DW 04-048, City of Nashua
Order No. 24,878

To the Parties:

Enclosed are revised pages 1, 59 and 63 of Order No. 24,878 (July 25, 2008). On page 1, "Sarah W. Knowlton" has been changed to "Sarah B. Knowlton". On page 59, on line 10, "RSA 326:4, III-a." has been changed to RSA 362:4, III-a." On page 63, Roman numeral "IV." has been changed to "VI." All other portions of this order remain unchanged.

Please substitute the enclosed revised pages to your copy of Order No. 24,878.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Debra A. Howland".

Debra A. Howland
Executive Director and Secretary

Enclosures
cc: Service List
Docket File

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 04-048

CITY OF NASHUA

RSA 38 Proceeding re Pennichuck Water Works

Order Approving Taking and Determining Value

ORDER NO. 24,878

July 25, 2008

APPEARANCES: Upton and Hatfield, L.L.P. by Robert Upton II, Esq. and Justin C. Richardson, Esq. for City of Nashua; McLane, Graf, Raulerson & Middleton, P.A. by Steven V. Camerino Esq., Sarah B. Knowlton Esq., and Thomas J. Donovan, Esq. and Baker, Donelson, Bearman, Caldwell & Berkowitz, P.A. by Joe A. Conner, Esq. for Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., Pittsfield Aqueduct Co., Pennichuck Water Service Corp. and Pennichuck Corp.; Ransmeier & Spellman, P.C. by Dom S. D'Ambruoso, Esq., Daniel J. Mullen and John T. Alexander, Esq. for Anheuser-Busch, Inc.; Eugene F. Sullivan III, Esq. for Town of Bedford; Boutin Associates, P.L.L.C. by Edmund J. Boutin, Esq. for Town of Merrimack; Waidleigh, Starr, and Peters, P.L.L.C. by Stephen J. Judge, Esq. for Merrimack Valley Regional Water District; Brown, Olson & Gould, P.C. by Bryan K. Gould Esq. and E. Maria Reinemann, Esq. for Town of Milford; Barbara Pressly, pro se; Claire McHugh, pro se; Office of the Consumer Advocate by Meredith A. Hatfield, Esq. and Rorie Hollenberg, Esq. on behalf of residential ratepayers; and Marcia A.B. Thunberg, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. INTRODUCTION

RSA 38 authorizes a municipality, with the approval of the Commission and at a value set by the Commission, to take public utility property for the use of its citizens and others. The City of Nashua (Nashua) has invoked RSA 38 in an effort to municipalize its local water utility, Pennichuck Water Works, Inc. (PWW) and certain affiliates. In this order, based on an extensive evidentiary record developed over twelve days of hearings, we grant Nashua's petition, solely as to PWW, with conditions, and provide our valuation of the assets to be taken by the municipality.

water systems but on what best serves the approximately 3,000 customers of the satellite systems. As with the non-Nashua customers of the core system, we find that the customers of the satellite systems are better served by remaining part of the PWW system for purposes of rate and service continuity and because they will retain the protections of state regulation pursuant to RSA 362:4,III-a(b), which means that Nashua may not increase these customers' rates unless Nashua can prove that an increase is justified on the basis of reasonable and prudent costs.

Opponents to the taking argue that customers of PWW that are not constituents of Nashua's elected officials would have no recourse if those officials treated them less favorably than customers within Nashua. Such concerns appear to be based on a misunderstanding of the extent of the Commission's authority pursuant to RSA 362:4, III-a. Furthermore, Nashua addresses any such concerns by proposing that the Commission condition approval of the taking on the continued use of a consolidated rate design whereby "core" rates are applied to all retail customers, regardless of their location. Nashua agrees to apply its water ordinance, including the main extension policy in the ordinance, in a manner that does not discriminate between customers inside and outside of Nashua. We find the proposed conditions to be reasonable. Finally, RSA 38:11 grants the Commission broad content to set conditions.

Additionally, Nashua agrees that service quality issues should remain subject to the Commission's oversight pursuant to RSA 374 and that the Commission should have jurisdiction relative to any service quality complaints, and that it should not sell, lease or otherwise transfer its franchises without prior Commission approval. Nashua Post-Hearing Brief at A-1 and A-2. We acknowledge Nashua's commitments, but we do not agree with its underlying premise that the Commission lacks jurisdiction in these regards. To the contrary, RSA 362:4 clearly provides that all municipal corporations serving outside their corporate boundaries are not exempt from

Accordingly, it is our determination that the appropriate method for resolving the public interest issues that concern PEU and PAC is to treat the effects as remediable through a mitigation fund established as a condition pursuant to RSA 38:11. Payments from such a fund should be payable for the benefit of PEU and PAC customers pursuant to our ongoing authority over these utilities as discussed in Section VII.

7. Conclusion

In summary, the opponents of municipalization have not rebutted the presumption that Nashua's planned municipalization of Pennichuck Water Works as it applies to customers within the municipal boundaries of Nashua is in the public interest pursuant to RSA 38:3. Furthermore, in light of the conditions we will set pursuant to RSA 38:11, the taking as it applies to PWW customers outside the boundaries of Nashua and customers of PEU and PAC is in the public interest. Accordingly, we turn to the question of valuation.

VI. VALUATION

Pursuant to RSA 38:9, the Commission is charged with determining the price "of the plant and property lying within or without the municipality that the public interest requires the municipality to purchase." Constitutional principles require just compensation for the property taken. *Opinion of the Justices*, 131 N.H. 504, 510 (1989). Just compensation is defined as fair market value. *Id.* It is "the price which in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, taking into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining." *Edgecomb Steel Co. v. State*, 100 N.H. 480, 487 (1957). Furthermore, the condemnee is entitled to a valuation "for the most profitable purpose, or advantageous use, to which [the property] could be put on the day it was taken." *Opinion of the*

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Docket #: 04-048 Printed: August 06, 2008

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