

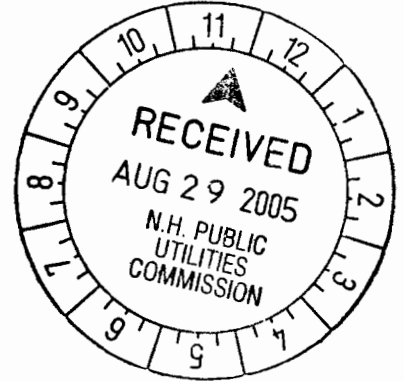
BOUTIN ASSOCIATES, P.L.L.C.
Attorneys At Law

Edmund J. Boutin

August 26, 2005

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DW 04-048
City of Nashua – Pennichuck Water Works, Inc.



Dear Ms. Howland:

The pleading filed on August 24, 2005, by the Town of Merrimack was mistakenly filed only regarding Order No. 24,489. That pleading is withdrawn and refiled in this case to reflect that the Town of Merrimack's response applies to Pennichuck Water Works, Inc.'s Motions for Clarification, Reconsideration and/or Rehearing Regarding Order No. 24,488 and Order No. 24,489.

For the convenience of the parties, the pleading is refiled in its entirety herewith.

Sincerely,

A handwritten signature in cursive script that reads "E.J. Boutin".

Edmund J. Boutin

EJB/alm
Enclosures

cc: Service List (Attached)

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

City of Nashua: Taking of Pennichuck Water Works, Inc.

Docket No. DW 04-048

**TOWN OF MERRIMACK'S RESPONSE TO PENICHUCK WATER WORKS,
INC. MOTIONS FOR CLARIFICATION, RECONSIDERATION AND/OR
REHEARING REGARDING ORDER NO. 24,488 AND ORDER NO. 24,489**

Now comes the Town of Merrimack, by and through its Attorneys, Boutin & Associates, P.L.L.C., and responds to the Motions for Clarification, Reconsideration and/or Rehearing Regarding Order No. 24,488 and Order No. 24,489, filed by Pennichuck Water Works, Inc. ("PWW") on August 15, 2005 as follows:

1. From the outset of this proceeding, the Town of Merrimack has reserved judgment about whether the taking of PWW's assets by the City of Nashua is in the public good.
2. Merrimack is a Town directly served by PWW and has an abiding interest in whether any resulting action by the Commission considers the interests of Merrimack and parties similarly situated.
3. One of the primary issues of concern to Merrimack is whether rates will remain fair to Merrimack ratepayers, including its largest employer, the Anheuser-Busch Company.
4. The question of future rates involves both the acquisition price to be paid by Nashua and future capital investment plans that these rates could support.

5. Because of this, the Town of Merrimack can only make a judgment as to whether it will support or oppose Nashua's application on the issue of public good if it has some sense of what the valuation of PWW's assets will be.

6. At present, PWW has submitted pre-filed testimony on the issue of future rates which contains the lowest possible assumptions on the issue of acquisition price and Nashua's cost of capital (especially when there may be revenue requirements related to set asides that may be required in order to satisfy bond holder security requirements). See Pre-filed testimony of George Sansoucy and Steven A. Adams filed on November 19, 2004.

7. Nashua has also declined to address what post acquisition rates will be, after almost one year of litigation in this proceeding. See Nashua's response to Staff Public Interest Data Request 2-2.

8. In deposition testimony, the City of Nashua has inferred that there is some price at which Nashua would withdraw its petition and/or not complete the purchase. No witness to date has been able to say what this number is, only that one exists. Therefore, towns like Merrimack are in the position of spending substantial sums in a proceeding that may be futile; and the Commission will be in the position of having to determine the public good without knowing whether Nashua and/or the District will proceed. See excerpt from deposition of Brian McCarthy, attached as Exhibit A.

9. The Town of Merrimack is also concerned that it be able to learn as much as possible about the ability of Nashua and/or its offspring, the Merrimack Regional Water District ("District") to manage the PWW assets prudently.

10. Nashua has responded to numerous data requests about the proposed acquisition and its ability to manage the system by simple statements that the District will be managing the utility and third parties will subcontract its operation and maintenance. See Nashua's response to Staff Public Interest Data Requests 1-3, 2-4, 2-5, 2-6, 2-8, 2-9, 2-10, 2-11 and 2-12.

11. The District has no present plans about managing the utility, except to echo Nashua's assurances that it will hire qualified operators. However, managing these operators is still an issue of primary importance and Nashua's ability to manage its own utility operations are directly pertinent to whether it can manage the subcontractors. The District has no prior management experience and has no mechanism in place to assure that it can do such management.

12. This requires that Merrimack be allowed to continue, as it has, to participate in the discovery process, including the examination of witnesses at deposition.

13. This also requires that there be as broad a discovery as is reasonable concerning pre-filed testimony already received on the issue of valuation and management of the PWW assets to be acquired.

14. In Merrimack's view, the Commission's order for which reconsideration is sought places unreasonable limits on this discovery. The result is that the Commission may have a truncated record upon which to decide the issue of public good.

15. Merrimack recognizes that the limitations placed on discovery of matters prior to November 2002, concerning Nashua's activity related to the Pennsylvania Suburban offer to purchase, are matters between PWW and Nashua and takes no position

on this portion of PWV's Motion for Reconsideration and/or Rehearing Regarding Order No. 24,488.

WHEREFORE, the Town of Merrimack now prays that the Commission:

A. Reconsider and/or clarify its order to recognize that discovery on the issue of valuation and Nashua's past ability to manage proprietary functions should be allowed; and

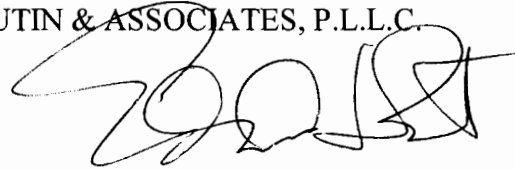
B. Grant such other and further relief as shall be deemed reasonable and just.

Respectfully submitted,

TOWN OF MERRIMACK

By Its Attorneys,

BOUTIN & ASSOCIATES, P.L.L.C.



Date: August 26, 2005

By, _____

Edmund J. Boutin
P.O. Box 1107
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(603)432-9566

CERTIFICATE OF SERVICE

I, Edmund J. Boutin, Esquire, hereby certify that I made service of the foregoing by mailing a copy of the same, postage prepaid, to all parties on the service list.

Date: August 26, 2005



Edmund J. Boutin

STATE OF NEW HAMPSHIRE
PETITION FOR VALUATION PURSUANT TO RSA 38:9

CITY OF NASHUA

Docket No. DW-04-048

DEPOSITION of BRIAN S. MCCARTHY

Taken by Notice at the offices of the Nashua City Hall, 229 Main Street, Nashua, New Hampshire, on Wednesday, July 20, 2005, commencing at 9:44 in the forenoon.

Court Reporter: Marcia G. Patrisso,
Certified Shorthand Reporter
NH CSR No. 83 (RSA 331-B)
Registered Professional Reporter
Certified Realtime Reporter

1 having a presentation from USFilter.

2 Q. Or jog your memory with respect to any
3 other contractor?

4 A. No.

5 Q. Is there a top price that Nashua's
6 willing to pay to acquire the Pennichuck assets
7 through the Public Utilities Commission process?

8 MR. UPTON: Objection.

9 You can answer it if you want.

10 A. Ultimately there must be.

11 Q. And what must it be?

12 A. The price at which it no longer makes
13 economic sense to do this.

14 Q. And what is that price?

15 A. I do not know.

16 Q. Do you have a range?

17 A. No, I don't.

18 Q. Is the -- if the --

19 MR. UPTON: I want to make sure I have
20 a continuing objection to this line of questioning.

21 Q. If the results of the purchase price
22 is that the rates of the city or of the water
23 district would have to be at -- or be higher than

1 rates that are contemplated through Pennichuck,
2 would that be an indication that it is too high a
3 price that does not make economic sense?

4 A. You're asking with regard to the
5 instantaneous rate at the time of the transfer of
6 assets or the aggregate rate over time?

7 Q. Both.

8 A. I think that the second is the more
9 driving factor of that equation; the first needs to
10 be considered, as well.

11 Q. In other words, as I understand what
12 you're saying, long-term higher rates would
13 certainly be -- from an economic standpoint would
14 not make sense?

15 A. Yes.

16 Q. But an initial short-term higher rate
17 from an acquisition would be something that perhaps
18 could be tolerated under the circumstances?

19 A. It would depend on the performance of
20 the long-term rates.

21 Q. And what do you mean by "economic
22 sense"?

23 A. All other things being equal, if the

1 rate-payers will pay more under one model than the
2 other, that is my definition of "economic sense."
3 If, in fact, under continued ownership by Pennichuck
4 or its successors, the rates would be lower over
5 time, then I believe it makes sense to put the
6 utility into public ownership. If that could not be
7 sustained over time, then it does not.

8 Q. I want to share -- make sure I
9 understand the does and does not. So you're saying
10 if over the long term, rates would be lower under
11 Pennichuck or private ownership, it doesn't make
12 economic sense to have the system municipalized; is
13 that right?

14 A. Yes.

15 Q. But if over the long term the rates
16 would be lower through public ownership, then it
17 would make sense to municipalize Pennichuck?

18 A. Yes.

19 Q. One of your data request responses
20 deals with the issue of severance damages. Do you
21 have an understanding of what severance damages is?

22 A. Yes.

23 Q. And what are they?

SERVICE LIST

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION Docket No. DW 04-048

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