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Please respond to the Portsmouth office

December 15, 2006

Via Hand Delivery

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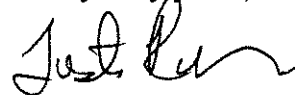
RE: City of Nashua: *Petition for Valuation Pursuant to RSA 38:9*
Docket No. DW 04-048

Dear Ms. Howland:

Enclosed please find an original and seven copies of the *City of Nashua's Memorandum in Support of Petition for Valuation Pursuant to RSA 38:9* for filing in this proceeding, as well as an electronic copy on compact disc. A copy of the foregoing is being provided to all parties on the service list by electronic mail, and to Ms. Claire McHugh by first class mail.

If you have any questions concerning this filing, please contact me.

Very truly yours,



Justin C. Richardson

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JCR/sem

Enclosure

cc: Official Service List DW-04-048

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

City of Nashua: Petition for Valuation Pursuant to RSA 38:9

DW 04-048

MEMORANDUM IN SUPPORT OF PETITION
FOR VALUATION PURSUANT TO RSA 38:9

NOW COMES the City of Nashua (“Nashua”) and, in accordance with the procedural schedule, respectfully submits the following brief in support of its Petition for Valuation of the assets of the Pennichuck Water Works, Inc.

I. INTRODUCTION

Nashua initiated this proceeding under the “comprehensive process” established by RSA 38 which allows municipalities to acquire assets of regulated public water utilities by petition to the Public Utilities Commission (the “Commission”). *Appeal of Ashland Elec. Dept.*, 141 N.H. 336, 339 (1996). The evidence will show that, in the years prior initiating this proceeding, citizens in Nashua and surrounding communities had become concerned about Pennichuck’s “growing real estate operations and what some believe is its failure to protect the watershed” as well as other concerns regarding the company.¹

In 2002 the announcement of Pennichuck’s proposed merger with the Philadelphia Suburban Corp., set into motion a series of events that resulted in widespread public support for local control and the acquisition the water system assets of

¹ November 22, 2004 *Direct Testimony Brian S. McCarthy*, Page 2; see also May 19, 2006 *Reply Testimony of Barbara Pressly* (high rates; poor water quality; inadequate service and disregard for public sentiment compared to Manchester Water Works); May 22, 2006 *Reply Testimony of Allan Fuller, Phd.*, (poor watershed management); *Id.*, Pages 11-12 (poor watershed stewardship resulted in public desire to purchase PWW); *Id.*, at Pages 31-32 (financial mismanagement); *Id.*, at Page 33 (Pennichuck’s incentive to run up costs).

Pennichuck Corporation's three regulated companies operating out of its Nashua headquarters: the Pennichuck Water Works, Inc (PWW), Pennichuck East Utilities (PEU) and the Pittsfield Aqueduct Corporation (PAC).

As set forth in Nashua's March 24, 2006 Petition, Nashua followed the statutory steps to obtain local authority by vote of the Board of Aldermen in November 2002 as well as a confirming vote by referendum on January 14, 2003 (RSA 38:3) to acquire the water supply and distribution plant and property of the three regulated water utilities owned by the Pennichuck Corporation. As noted in Order No. 24,425, by an overwhelming majority of 6,505 in favor to 1,867 opposed, qualified voters confirmed the Board of Aldermen's decision to acquire the utility assets of Pennichuck Corporation pursuant to RSA 38.²

Nashua first attempted to reach agreement for purchase of the assets by agreement as anticipated by RSA 38:8, as representatives of Pennichuck led the City to believe such an agreement was achievable. At the same time, the City participated in the formation of a regional water district under Laws 2003, Chapter 281, intended ultimately to own and operate water supply and distribution systems currently owned by the Pennichuck water utilities. On January 27, 2004, Pennichuck abruptly terminated negotiations with the City and on February 4, 2004, filed a action for declaratory judgment against the City in Superior Court.

On March 24, 2004, Nashua filed its *Petition for Valuation Pursuant to RSA 38:9* seeking a determination from the Commission that Nashua's acquisition of Pennichuck's regulated utilities was consistent with the public interest and a determination of their value. Since filing its petition, the Commission should be mindful that this proceeding

² Order No. 24,425, page 5.

has pushed discovery to its very limits. Nashua has received over 651 data requests in this proceeding,³ made numerous witnesses available for multiple rounds of depositions,⁴ and submitted multiple rounds of testimony on November 22, 2004, January 12, 2006, May 22, 2006, July 20, 2006 and November 14, 2006. Pennichuck has waged a monumental \$5.7 million legal and public relations campaign in an effort to remove Nashua officials from public office and even influence the Commission's impartiality.⁵

None of these facts are directly relevant to the determinations of public interest and valuation to be made by the Commission in this proceeding. They do illustrate, however, an important point underlying Nashua's Petition. Nashua's decision to initiate and pursue a proceeding of this magnitude to its conclusion cannot be explained by self-interest alone. Rather, Nashua's decision to pursue the acquisition of its water system for the benefit of generations to come can only be explained in terms of the desire to pursue a greater benefit to the *public interest*. This fundamental pursuit of the public interest by municipalities reflects the foundation upon which RSA 38 is built.

II. NASHUA'S PETITION PROMOTES THE PUBLIC INTEREST

A. RSA 38 REFLECTS THE NH LEGISLATURE'S DETERMINATION THAT THE ESTABLISHMENT OF A MUNICIPAL UTILITY WILL PROMOTE THE PUBLIC INTEREST

RSA 38:2, I, authorizes Nashua to "[e]stablish ... in accordance with the provisions of this chapter, one or more suitable plants for the manufacture and distribution of ... water for municipal use, for the use of its inhabitants and others, and for such other purposes as may be permitted, authorized, or directed by the commission."

The fact that RSA 38 authorizes Nashua to *establish* a municipal water utility for the use

³ See Nashua's July 31, 2006 *Objection to Motion to Compel*, Pages 1-2 & Exhibit A.

⁴ July 31, 2006 *Objection to Motion to Compel*, Page 2.

⁵ See May 22, 2006 *Reply Testimony of Mayor Streeter, et al.*, Pages 24-26.

of its inhabitants and others where none previously existed is itself significant. Nothing in RSA 38 suggests that in order to establish a municipal water utility Nashua was required have in place all of its technical and managerial qualifications prior to filing its Petition.

To read a requirement that Nashua must describe its operations with certainty prior to establishing a water utility in this proceeding would effectively impose a standard that no municipality served by an existing investor-owned utility could meet. It would require Nashua to establish an existing water department before filing its RSA 38 Petition with the Commission. Such a requirement is not contained in RSA 38 and would conflict with what RSA 38:2 expressly allows, that Nashua may establish a water utility by filing a petition under RSA 38.

Much of Pennichuck's arguments and testimony in this proceeding fail to recognize this distinction. The fundamental argument Pennichuck advances in this proceeding is that because it is unknown exactly how Nashua will operate its water system, the Commission should assume that all of the purported benefits of Pennichuck's operations would be lost to the State of New Hampshire. These arguments, as pointed out in the May 22, 2006 Reply Testimony of Mayor Streeter et al., reflect a deeply cynical view that municipalities act only in their own self interest and ignores the many examples in the State of New Hampshire where municipal officials cooperate to provide public water, public education, public safety and other essential public services to promote the greater public good. Even more importantly, Pennichuck's arguments ignore the fact that the purpose underlying Nashua's Petition is the promotion of the public good by protecting a watershed that provides drinking water not only to the City of Nashua but

also surrounding communities, and acquiring the assets of Pennichuck Water Works in order to ultimately establish a regional water district.

Pennichuck's position that the purported benefits of its operations would simply disappear as a result of Nashua's petition, if accepted at face value by the Commission, simply begs the question as to why the legislature authorized a municipality to *establish* an entirely new water system within an existing utility franchise if it intended that a municipality answer all of these questions in advance. In other words, had the legislature intended to require that Nashua or any other municipality establish and address all questions concerning its qualifications, operating and management parameters, and other concerns prior to filing its petition to the Commission, it could have imposed such a standard.

In fact, the legislature did very nearly the opposite. Under RSA 38:3, the legislature established a procedure whereby a confirming vote of a 2/3rds majority of the qualified voters in Nashua establishes a rebuttable presumption that transfer of an investor-owned, profit driven utility to a municipally owned utility is consistent with the public interest. By Order No. 24,425, the Commission determined that Nashua fully complied with the voting requirements of RSA 38:3 and is therefore entitled to a rebuttable presumption that its petition is consistent with the public interest.⁶

As a result, it is not enough for Pennichuck to argue that Nashua's petition is uncertain, or to speculate that damages to the public interest, or Pennichuck's affiliates or shareholders, may result. Pennichuck bears the burden to affirmatively rebut the presumption that Nashua's petition is inconsistent with the public interest. To the extent that Pennichuck's arguments in this proceeding are based on a nameless suspicions

⁶ Order No. 24,425, Pages 18-21.

concerning the “usual inter-municipal jealousies”⁷ or other arguments lacking proof and analysis supported by facts, they should be rejected because they simply reflect Mr. Correll’s cynical view of what public policy should be, as opposed to the public policy actually established by the legislature in RSA 38.

Even more importantly, however, Nashua has not stood by motionless awaiting the Commission’s determination that public ownership of New Hampshire’s drinking water supplies is preferable to ownership by private companies that develop watershed lands. Rather, the City has negotiated and agreements for the operation and oversight of the water system with Veolia Water and R.W. Beck, industry leaders in their respective fields, in order to provide the Commission with details concerning Nashua’s operations, its technical and managerial qualifications and to describe how Nashua’s Petition will promote the public interest. Nashua has further proposed a Water Ordinance and made a number of commitments to ensure that concerns related to the operation of satellite systems, wholesale contracts, and other concerns are addressed in order to prevent harm to customers of the system.⁸

The evidence will show that Nashua has pursued its acquisition of Pennichuck’s assets with diligence, even entering into detailed agreements for the operation and oversight of water system prior to approval by this Commission. However, because of factors such as: (1) Pennichuck’s refusal to allow Nashua the opportunity to perform due diligence of its water system; (2) Pennichuck’s refusal to allow Nashua to contact its existing employees regarding the terms and conditions of employment; (3) errors in Pennichuck’s costs reported to the Commission for costs such as energy, fuel and

⁷ January 12, 2006 *Testimony of Donald Corell*, Page 14.

⁸ See generally May 22 & July 20, 2006 *Reply Testimony of Mayor Streeter et al.*

chemicals; and (4) for other good reasons, it is impossible for Nashua to describe with absolute certainty the operation of the water utility to be established by this proceeding. As a result, Nashua's proposal under RSA 38 cannot be measured with the same yardstick as would be to measure an existing water utility. Rather, the evidence will show that, in light of the uncertainties created by Nashua's limited access to information concerning the water system, Nashua has achieved phenomenal results.

The New Hampshire legislature recognized that public ownership of New Hampshire's water resources is in and of itself consistent with the public good. For this reason RSA 38:2, I, not only authorizes Nashua to establish its own municipal water system where none previously existed, but upon a confirming vote from a 2/3 majority vote of its citizens, the legislature created a rebuttable presumption that the establishment of a municipally owned water utility is consistent with the public interest. In short, the evidence will show that Nashua's Petition satisfies the public standard, and equally important, Nashua has established a mechanism that will allow Nashua to improve upon its proposal to further benefit the public interest following establishment of its own municipally owned regional water utility serving the public.

B. THE PUBLIC INTEREST

The term "public interest" denotes the various interests of consumers, investors, other interested parties and the general public that must be considered and balanced by the Commission. The New Hampshire Supreme Court has not yet construed RSA 38's use of the term "public interest". However, it is clear that the Commission's evaluation of the "public interest" is typically broad. Certain principles have been enunciated:

- The primary concern is ensuring acceptable service at reasonable rates. Appeal of Conservation Law Foundation, 127 N.H. 606, 615 (1986).
- The respective advantages and disadvantages of ratepayers within and without the area in question must be balanced. Parker-Young, Co. v. State, 83 N.H. 551. 563 (1929).
- The general welfare of the utility itself may predominate where insolvency is threatened. Appeal of Legislative Utility Consumers' Council, 120 N.H. 173, 174 (1980).

The meaning and scope of “public interest” under RSA 38 has been addressed in decisions of the Commission:

- In Petition for Valuation of J. Brodie Smith Hydro-Electric Station, DE-00-211, Order No. 24,086, the city sought to acquire hydro-generating facilities from PSNH. The Commission posed the public interest question as a balancing of public goods and public harms. The factors presented for the Commission were the statutory presumption created by the favorable city referendum vote; the city’s projected reliable supply of reasonably priced electricity; the adverse impacts on the PSNH ratepayers outside Berlin; and the effects on the PSNH workers whose jobs were likely to be affected.
- In Petition of Town of Ashland, DE-03-155, Order No. 24,214, the town sought to acquire plant and property of the NH Electric Cooperative to serve Ashland residents. Arguing that the “public interest” test was a “no net harm” standard, the town claimed that rates would be lowered for the Ashland customers, while

the Cooperative pointed to the adverse cost-shifting to other Cooperative ratepayers elsewhere in its system.

The evidence will show that a balance of these considerations favors Nashua's acquisition. As set forth in the testimony, data responses and other evidence, Nashua's acquisition of the assets of the Pennichuck Water Works, Inc., will reduce customer rates resulting in substantial savings to customers of the system;⁹ will provide for watershed management and water conservation that will protect water quality, environmental conservation and the long-term supply of the water system;¹⁰ will make the resources of the world's largest contract operator available to customers of the system;¹¹ will provide highly professional oversight of that operation,¹² as well as providing significant other benefits to the public; and ultimately will establish the foundation for a regional water district as contemplated by the legislature.

The evidence will also show that Nashua has made taken significant steps to prevent potential harm to the public. For example, Nashua has committed to providing service to all customers at core rates and to continuing to honor the terms of existing supply agreements.¹³ Nashua has committed to operating its system and evaluate the acquisition of new systems under the terms of its proposed Water Ordinance that will not discriminate on customers regardless of their location, and to provide service outside its borders subject to the Commission's jurisdiction.¹⁴ Nashua makes this commitment both because it believes it is consistent with New Hampshire law under the principles set forth

⁹ See Testimony of George Sansoucy, P.E. and Glenn Walker filed on January 12, 2006 and May 22, 2006.

¹⁰ May 22, 2006, *Reply Testimony of Katherine Hersh et al.*

¹¹ January 12, 2006 and May 22, 2006 *Testimony of Philip G. Ashcroft et al.*

¹² January 12, 2006 *Testimony of Steven Gates et al.*

¹³ May 22, 2006 & July 20, 2006 *Reply Testimony of Mayor Streeter et al.*

¹⁴ May 22, 2006 & July 20, 2006 *Reply Testimony of Mayor Streeter et al.*

in RSA 38:14, RSA 362:4, and the Commission's decision in *Warner Village District*,¹⁵ and because it believes it is an appropriate condition for the Commission to impose under RSA 38:11.

Nashua firmly believes that the evidence will show what Pennichuck has tried so firmly to deny in this proceeding. That Nashua's petition to acquire the assets of Pennichuck Water Works is rooted in the desire to provide service to the public consistent with public interest.

C. THE REBUTTABLE PRESUMPTION OF PUBLIC INTEREST APPLIES TO ALL ASSETS OWNED BY THE PENNICHUCK WATER WORKS

The City seeks to acquire all the assets of PWW (originally all three Pennichuck regulated utilities) because the City believes it would promote the interests of all customers/ratepayers, the general public, the employees of Pennichuck and, indeed, the owners of Pennichuck. The will of Nashua voters would be implemented; the goals of the Merrimack Valley Regional Water District, organized under Laws 2003, Chapter 281, would be promoted; rates would be lower over time; service would remain adequate; water supplies would come under long range public control; continued employment of Pennichuck operation and maintenance personnel would be reasonably accommodated; and Pennichuck owners would receive fair value for their assets.

The statute makes clear that the Commission is to determine how much plant and property situated outside the municipality the public interest requires the municipality to acquire. RSA 38:2; 38:6; 38:9 I; 38:14.

¹⁵ Order No. 24,649.

In Order No. 24,567, however, the Commission read into the provisions of RSA 38 a separate requirement, that Nashua must separately obtain franchises under the provisions of RSA 374:26 and RSA 362:4, III-a. The Commission stated that:

We do not agree with Nashua's assertion that such a franchise requirement is inconsistent with the rebuttable presumption of RSA 38:3. The rebuttable presumption extends only to the public interest analysis for Nashua itself, as only voters of Nashua had a voice in the vote that gave rise to that presumption. For service beyond Nashua's municipal bounds, Nashua must obtain a franchise.¹⁶

In effect, the Commission determined that because Nashua did not produce evidence that it conducted a confirming vote under RSA 38:3 in each of the communities in which Pennichuck Water Works operates, Nashua is not entitled to a rebuttable presumption in those other communities.

The Commission's decision conflicts with the express provisions of RSA 38. RSA 38:2 expressly authorizes Nashua to establish a water system "for the use of its inhabitants *and others*". RSA 38:3 sets forth the procedure for Nashua to follow and requires that Nashua conduct a confirming vote by "by a majority of the qualified voters at a regular election or at a special meeting duly warned in either case." Nothing in RSA 38:3 or its counterpart in RSA 38:4 suggests that Nashua was required to hold special elections in each of the communities in which Pennichuck provides service. Indeed, the fact that RSA 38:3-a (adopted after Nashua's confirming vote) specifically requires that Regional Water Districts hold such separate elections in each municipality strongly

¹⁶ Order No. 24,567, Page 5.

suggests that the legislature could have required Nashua to follow the same procedure but it declined to do so.

Order No. 24,567 departed from the plain meaning RSA 38:3 which states that a confirming vote by Nashua's qualified voters "shall create a rebuttable presumption that such action is in the public interest." Order No. 24,567 reads into this clear and unmistakable language a limitation that fundamentally changes the nature of the rebuttable presumption, as if RSA 38:3 stated the confirming vote by Nashua's qualified voters "shall create a rebuttable presumption that such action is in the public interest *only in the municipality holding such a vote.*"

Such a fundamental change to the express statutory provisions of RSA 38 should be made only by the New Hampshire legislature, and not through interpretation or the addition of provisions that the legislature clearly could have added but declined to adopt. Cf. "we will not consider what the legislature might have said or add language that the legislature did not see fit to include.") *Hinsdale v. Chesterfield*, ____ N.H. ____ (2005) quoting *Woodview Dev. Corp. v. Town of Pelham*, 152 N.H. 114, 116 (2005).

The Commission's determination that a separate franchise approval under RSA 374:26 also conflicts with the express provisions of RSA 38:9, I and RSA 38:14. First, In the case of RSA 38:9, I, the statute authorizes a municipality to petition the Commission to determine "how much, if any, of the plant and property lying within or without the municipality the *public interest* requires the municipality to purchase" (emphasis added). RSA 38:9, I, makes no reference to a separate approval under RSA 374. Second, in the case of RSA 38:14, the statute states that a municipality that has "so acquired the plant, property, or facilities of a public utility in any other municipality, may operate within

such other municipality as a public utility with *the same rights and franchises* which the owners of such outlying plant, as purchased, would have had such purchase not been made.” (emphasis) Thus, RSA 38:14 expressly provides that a municipality that has “so acquired” a utility serving customers outside its borders as a result of the RSA 38 public interest determination, automatically acquires the same rights and franchises, unless the Commission makes a determination that it is not in the public interest to do so.

The New Hampshire Supreme Court’s decision in the *Appeal of Ashland Electric Department*, 141 N.H. 336 (1996), is closely on point. In *Ashland Electric*, the Court reviewed an order from this Commission determining that a municipality was required to submit an RSA 38 Petition to operate within an electric utility’s service territory within its own municipal borders. The Court in *Ashland Electric* reviewed the “comprehensive process”¹⁷ under RSA 38 and concluded that “construction of distribution lines in territory served by a public utility may only take place after the municipality has followed the procedures *set forth in RSA chapter 38.*”¹⁸ (emphasis added).

Nothing in *Ashland Electric* even remotely suggested that the Commission, in addition to determining the public interest under RSA 38, was then required to engage in a second, entirely redundant, franchise approval for which there is no rebuttable presumption. In fact, the “comprehensive process” under RSA 38 requires the opposite conclusion. Under RSA 38:2, I, Nashua has the authority to establish a municipal water system “for the use of its inhabitants and others ... as may be permitted, authorized, or directed by the Commission.” The statute further provides that, under RSA 39:9, I, the Commission has the authority to determine “how much, if any, of the plant and property

¹⁷ *Ashland Electric* at 339.

¹⁸ *Ashland Electric* at 340.

lying within or without the municipality *the public interest* requires the municipality to purchase” (emphasis added). RSA 38 makes no reference to a separate requirement for a franchise approval for which there is no rebuttable presumption.

The Commission’s review under the public interest standard under RSA 38 is broad and provides the Commission with all of the necessary regulatory authority to evaluate Nashua’s Petition. As set forth in this Memorandum, Nashua firmly believes that the evidence will show that its Petition will further promote the public interest. The Commission should not unduly complicate the determinations to be made in this proceeding by reading into the provisions of RSA 38 an entirely new requirement to seek franchise approvals when the legislature has clearly declined to do so.

III. NASHUA’S OPERATION OF ITS WATER SYSTEM AS A PUBLIC-PRIVATE PARTNERSHIP WITH VEOLIA WATER WILL PROMOTE THE PUBLIC INTEREST

A. RSA 38:2 Expressly Authorizes Nashua to *Establish* a Water System by Filing A Petition under RSA 38:9

For historical reasons,¹⁹ Nashua has not had its own water utility, but rather relied on the Pennichuck Water Works to provide service. Nashua does not, however, simply rely on the express statutory authorization to establish a water system under RSA 38:2. Rather, in order to provide the best possible service to the public, without any interruption, Nashua committed in public statements at the outset of this proceeding, and its November 19, 2004 direct testimony that it would “employ contractors to perform the

¹⁹ Discussion of the historical reasons is beyond the scope of this brief. However, Nashua notes that intervenor Ms. Barbara Pressly has submitted testimony on April 22, 2005 and May 19, 2006 contrasting Pennichuck’s operations to that of the Manchester Water Works. See, e.g., *Testimony of Alan S. Manoian*, entitled *An Historic Retrospective of the Business & Political Relationship Between Pennichuck Water Works Company & the City of Nashua, NH (1853-1982)*.

day-to-day operation and maintenance of the system and to exercise certain management oversight.”²⁰

Nashua used a competitive bidding process to obtain proposals for both the operation and oversight of the water system to be established as a result of this proceeding, as documented in the October 10, 2005, *Affidavit of Brian S. McCarthy* submitted with Nashua’s *Objection to Pennichuck Water Works, Inc.’s Motion for Summary Judgment*.²¹ The process resulted in the selection of two of the most qualified companies for operation and oversight of its water system: Veolia Water N.A. (operations) and R.W. Beck, Inc (oversight). The evidence in this proceeding will demonstrate that Nashua’s selection of Veolia Water and R.W. Beck will benefit the public interest by bringing technical expertise and qualifications to the operation of Nashua’s water system that exceeds that currently provided by the Pennichuck Water Works, Inc.

B. Technical and Managerial Qualifications: Veolia Water North America – Northeast LLC.

Nashua’s water system will be operated by Veolia Water North America – Northeast LLC (“Veolia Water” or “the Northeast LLC”).²² Nashua’s selection of Veolia Water brings significant technical and managerial advantages over a small investor owned utility such as Pennichuck Water Works.

As explained in the January 12, 2006 *Direct Testimony of Philip Ashcroft et al.*,²³

²⁰ November 19, 2006 *Testimony of Brian S. McCarthy*, Page 10 (as revised on February 10, 2006 pursuant to PUC Order No. 24,555).

²¹ See generally, Pages 2 through 14.

²² Nashua uses the term “Veolia Water” to refer to the Northeast LLC.

²³ Page 2.

- Veolia Water North America – Northeast LLC is a wholly owned subsidiary of Veolia Water North America, which in turn is a wholly owned subsidiary of Veolia Water a division of Veolia Environnement.
- In the United States, Veolia Water North America is the largest water services partnership company and provides service in over 600 communities. It has annual revenue of \$530,000,000 and serves approximately 1.4 million customers. It manages approximately 7,400 miles of water distribution mains with average daily water production of 656 MGD and has 3,150 employees, of which approximately 1,200 are licensed operators and 400 are licensed water operators.
- Veolia Environnement is the largest water service provider in the world with 55,000 employees serving 110,000,000 people.
- The Northeast LLC is one of four regional wholly owned subsidiaries of Veolia Water North America. The Northeast LLC operates in all 6 New England states and New York and has approximately 560 operations and maintenance and support employees. It provides services to 36 municipal/government clients and 5 industrial/private clients. It operates 11 municipal water plants, 30 municipal waste water plants, 2 industrial waste water plants and 1 industrial water plant.

Nashua's selection of Veolia Water as its operator brings the knowledge, expertise and qualifications of an industry-leader and the largest water service provider in the world.²⁴ Veolia Water's experience will benefit the public interest by making Veolia Water's skills, experience and qualifications available to customers of the water

²⁴ January 12, 2006 *Testimony of Philip Ashcroft, et al.*, Page 2.

system. Thus, customers will on one hand benefit from having access to the experience of over three thousand employees in North America, they will avoid the cost to maintain that experience using only the assets of Pennichuck.

By comparison, the Pennichuck Water Works, Inc., is a small utility owned by one of the smallest publicly traded water companies in the United States. For example:

- **Employee Expertise.** Pennichuck Water Works employs only 93 persons²⁵ compared to the Northeast LLC's 560 operations and maintenance support employees and 3,150 persons employed by Veolia Water North America. As a result, Pennichuck has less than 17% of the employees of the Northeast LLC, and less than 3% of Veolia Water North America's employees, even without taking into account the number of employees performing tasks such as financial reporting, accounting and other tasks unrelated to the operation of water systems.
- **Revenue.** Annual revenues for Pennichuck Water Works and its parent Pennichuck Corporation for the year ending 2005 were \$17 and \$22.8 million,²⁶ respectively, compared to \$530 million for Veolia Water North America for the same period.
- **Customers Served.** The Pennichuck Corporation, including both its regulated and unregulated companies, serves according to its testimony approximately 47,000 customers,²⁷ and of these customers only 24,485 are served by the Pennichuck Water Works, Inc.²⁸ customers. As a result, Pennichuck Corporation

²⁵ January 12, 2006, Testimony of Donald Correll, Page 10.

²⁶ Pennichuck Water Works, Annual Report to the NH Public Utilities Commission for the Year Ending 12/31/2004, and SEC Form 10-K for the year ending 12/31/2004.

²⁷ January 12, 2006 Public Interest Testimony of Donald Ware, Page 7.

²⁸ January 12, 2006 Public Interest Testimony of Donald Correll, Page 6.

in total serves less than 4% of the 1,400,000 customers served by Veolia Water North America.

Pennichuck's limited size and scope of operations relative to Veolia Water impose significant restrictions as well as risks related to service to the public. Its small size makes it susceptible to the loss of institutional knowledge held by management and employees. For example, in 2006, the Pennichuck Corporation replaced its Chief Executive Officer with an interim CEO, Hannah McCarthy, followed by Duane Montopoli, neither of whom had significant prior experience related to the operation of water utilities. In addition, the company's small size means that its labor operating costs also fluctuate significantly from year to year due to departures. For example, according to its 2005 Annual Report to the Commission, Pennichuck's Water Works production labor costs increased by 22.9% due to the hiring of a single employee.²⁹

By contrast, Nashua's public-private partnership with Veolia Water will make the resources of the world's largest contract operator of public water systems available to customers of the system. Nashua will be able to call upon the resources of Veolia Water to develop solutions to problems facing the water industry at large, or particular to the operation of the Nashua core or satellite systems. By making these resources available on demand, Nashua avoids the high overhead costs associated with developing that expertise in house.

Nashua's public-private partnership with Veolia Water will also substantially reduce the overhead that customers currently pay in Pennichuck rates for functions

²⁹ Pennichuck Water Works, Inc., May 12, 2005, Annual Report to the NH PUC for the Year Ending 12/31/04.

unrelated to the operation of water systems. For example, many of Pennichuck's employees perform functions unrelated to the operation water systems such as such compliance with financial reporting requirements of Sarbanes Oxley, personnel and accounting, income tax reporting and other functions.³⁰ As a result, the number of Pennichuck Water Works employees dedicated to the actual operation of the water system serving customers is only a fraction of the total number of Pennichuck Water Works employees.

C. Nashua's OM&M Agreement with Veolia Water

On January 12, 2006, Nashua submitted its proposed Operations, Maintenance & Management Agreement (OM&M) with Veolia Water North America – Northeast LLC attached as Exhibit B to the Testimony of Philip Ashcroft, David Ford, P.E., Robert Burton and Paul Noran, P.E. The OM&M Agreement is a “proposed” agreement because Nashua intends to modify the Agreement to reflect any terms and conditions imposed by the Commission as a result of this proceeding. However, the OM&M Agreement is binding because Nashua and Veolia Water have entered into Memorandum of Understanding that requires that, following approval by the Commission, Nashua and Veolia Water enter into a final “definitive agreement” based on substantially the same terms as the OM&M Agreement.³¹

As with any agreement, all of its provisions are important and Nashua encourages the Commission to review it in full. However, Nashua's OM&M Agreement contains certain fundamental provisions that are worth highlighting here.

³⁰ Ibid.

³¹ Memorandum of Understanding, Para. 1.

- **Structure of the Agreement.** Article 1 contains several provisions describing the structure of the Agreement. In particular, Section 1.1 states that approval by this Commission and ratification by the Nashua Board of Aldermen pursuant to RSA 38:13 is a condition precedent to the Agreement, and a pre-condition to the issuance of a Notice to Proceed by Nashua.
- **Categories of Service.** Section 1.1 sets forth the basic categories of services provided by Veolia Water under the OM&M Agreement. These include:
 - (1) **Services Provided for the Annual Fee** include the basic operations, maintenance and management services provided for the annual fee described in Appendix D;
 - (2) **Repair Renewal and Replacement Maintenance Services (RRRM)** correspond generally to recurring maintenance items described in Appendix H that have a useful life of greater than one year;
 - (3) **Transition Services** relate primarily to those services necessary to transfer operations from the Pennichuck Water Works to the City of Nashua;
 - (4) **Capital Improvement Services** relate to the completion of capital improvements as a result of a capital improvements plan as set forth in Appendix G.
 - (5) **Supplemental Services** generally correspond to engineering and other services related to new construction, specialized studies as set forth in Appendix E.

- **Performance Standards.** Providing high quality service in full compliance with regulatory requirements is a key component of Nashua’s OM&M Agreement. Article V, Section 5.1 requires that Veolia Water operate the system in compliance with all regulatory requirements, including those imposed by the New Hampshire Department of Environmental Services and this Commission.
- **Letter of Credit.** Veolia water has committed to provide, at Nashua’s request, a letter of credit in an amount equal to 25% of the Annual Fee to secure the performance by it of the OM&M Agreement.
- **Changes Recommended by the Commission.** Nashua OM&M Agreement is not intended be inflexible. The Agreement requires that Veolia Water operate the system in compliance any conditions imposed by the Commission as well as any other “Applicable State, Federal or local laws and regulations, including all applicable permits, authorizations, licenses or other requirements”.³² Under Nashua’s Memorandum of Understanding with Veolia Water, Nashua will incorporate recommendations and conditions imposed by the Commission in this proceeding pursuant to RSA 38:11, into a final Definitive Agreement with Veolia Water.

D. Estimate of Savings Resulting from Nashua’s Partnership with Veolia Water

As described in more detail in Section V of this Memorandum, Nashua does not simply alleged that savings for ratepayers will result from approval of Nashua’s *Petition for Valuation*. On January 12, 2006 Nashua submitted its public interest and valuation testimony of George E. Sansoucy, P.E., and Glenn Walker. Their January 12, 2006 direct

³² OM&M Agreement, Article V, Section 5.1.2., Page 9.

testimony estimated that, over the 30 year life of the bonds used to acquire the assets in this proceeding, Nashua's ownership will produce \$292 million in savings to customers of the system.³³ On May 22, 2006, Mssrs. Sansoucy and Walker provided Reply Testimony further explaining the basis for these savings.³⁴ In their November 14, 2006 Update Testimony, Mssrs. Sansoucy and Walker updated their testimony based on Pennichuck's 2005 financial reports, and concluded that Nashua's ownership of the system will result in a reduction of annual operating costs of nearly four million dollars, and total savings in excess of \$361 million.³⁵

Pennichuck does not dispute that savings will result. In fact, its own expert testimony is premised upon the conclusion that Nashua could afford to pay as much as \$248 million, later increased to \$270 million, for the assets of Pennichuck Water Works, far in excess of their market value, without having to increase rates.³⁶

Nashua's use of a public-private partnership brings significant advantages to customers because it exposes both the cost and quality of service to competitive market forces. Unlike an investor owned utility in which customers have no ability to select the entity that provides service, Nashua proposes to operate its water system by using market forces to provide high quality service at competitive prices.³⁷ The details of Nashua's proposal are set forth in the Operations, Maintenance and Management Agreement (the OM&M Agreement) included as Exhibit B to the January 12, 2006 Direct Testimony of Philip Ashcroft, David Ford, P.E., Paul Noran, P.E., and Robert Burton.

³³ January 12, 2006, *Testimony of George E. Sansoucy, P.E., and Glenn C. Walker*, Page 6.

³⁴ May 22, 2006 Reply Testimony of *George E. Sansoucy, P.E. and Glenn C. Walker*, Pages 32-43.

³⁵ November 14, 2006 *Update Testimony of George E. Sansoucy, P.E. and Glenn C. Walker*, Page 9.

³⁶ See e.g., November 14, 2006 *Testimony of George E. Sansoucy, P.E. and Glenn C. Walker*, Page 10.

³⁷ See, e.g., Alderman Brian McCarthy's Supplemental Response to PWW Data Request 3-51.

**E. Veolia Water’s Experience Operating the Indianapolis Water Systems
Confirms the Benefits to the Public Interest that Nashua’s Proposal will
bring to Customers in the State of New Hampshire.**

In 2002, the City of Indianapolis, Indiana acquired its drinking water system serving 1.2 million people from its local investor-owned utility. As discussed in the May 22, 2006 *Reply Testimony of Philip G. Ashcroft et al.*, contrary to the unsubstantiated allegations made in the testimony of Donald Correll, Veolia’s experience in Indianapolis demonstrates the benefits that its public-private partnership with Veolia Water will bring relative to service by a regulated investor-owned monopoly like the Pennichuck Water Works. As noted in their Reply Testimony, the Indianapolis partnership with Veolia Water has resulted in the substantial benefits to the public:³⁸

- Enabling the city to initiate a five-year freeze on water rates.
- A significant decrease in taste and odor complaints, *down from 501 in 2001 (prior to Veolia’s operations) to 26 in 2004!*
- Customer satisfaction levels that routinely exceed national averages for utilities.
- ISO 9001 and 14001 Certification resulting in assurance of compliance with all heightened quality and environmental processes.
- Development of a comprehensive watershed management program.
- Creation of a 24/7 customer call center.

³⁸ May 22, 2006 *Reply Testimony of Philip G. Ashcroft, et al.*, Pages 6-7.

- Implementation of a successful MBE/WBE program, achieving a 31% participation rate in 2004 – far beyond the city’s expectations.
- Administering a water education program aimed at primary schools throughout central Indiana.

F. Regulatory Compliance

In an effort to maintain its monopoly Pennichuck has tried to exploit uncertainties in the Agreement. Pennichuck’s arguments focus on the fact that the precise costs for future capital improvements, supplemental services, energy and fuel are not set forth in the Agreement. Accordingly, Pennichuck believes that customers under Nashua’s ownership of the system will bear all of the risk related to those expenses. Ironically, this criticism that Pennichuck levels at the City of Nashua, describes perfectly the risks born by customers under Pennichuck’s regulated monopoly status.

The benefits of Nashua’s ownership of the water system and its operation through a public-private partnership are not the direct result of specific contract provisions, but more generally the result of the competitive forces. In the *highly unlikely* event that Veolia Water failed to operate, maintain and manage the system in accordance with the provisions of the OM&M Agreement,³⁹ the various operating and maintenance “plans generated in conformity with [the OM&M] Agreement,⁴⁰ all Applicable State, Federal or local laws and regulations, including all applicable permits, authorizations, licenses or other requirements,⁴¹ all applicable State and Federal water quality standards,⁴² Prudent

³⁹ OM&M Agreement, Article V, Section 5.1.1.

⁴⁰ OM&M Agreement, Article V, Section 5.1.1.

⁴¹ OM&M Agreement, Article V, Section 5.1.2.

⁴² OM&M Agreement, Article V, Section 5.1.3.

Industry Practice,⁴³ and where appropriate and consistent with the above, manufacturer's instructions and warranty requirements related to the water system,⁴⁴ Nashua will have several options available that customers of Pennichuck Water Works do not currently possess, including the right to not renew its Agreement, and the right to exercise the termination for convenience provisions of the contract, or even to consider terminating the OM&M agreement for cause.⁴⁵ As a result, Veolia Water has an even greater incentive to operate the system in accordance with the highest industry standards, an incentive that does not currently exist under Pennichuck's ownership as a regulated utility.

Pennichuck has tried its best to argue that Veolia Water's operation will result in operational deficiencies or environmental violations. In fact, the evidence will show that the opposite is true. In response to Pennichuck's Data Request 3-1, Nashua has identified all fines or penalties for environmental or safety violations throughout the entire United States. In spite of the Veolia Water North America's operation of both water *and wastewater* systems with annual revenues of more than \$500 million per year, and water systems serving more than 1.4 million customers (compared with Pennichuck's total regulated and unregulated revenues of \$22 million per year for service to only 47,000 customers), Nashua's response demonstrates how successful Veolia's operations have been. In a \$500 million plus annual business of operating wastewater *and water systems* in the United States, only 9 fines or penalties have been imposed for violation of environmental or safety standards during the period from 1998 to 2005.⁴⁶

⁴³ OM&M Agreement, Article V, Section 5.1.4.

⁴⁴ OM&M Agreement, Article V, Section 5.1.5.

⁴⁵ OM&M Agreement, Article XIII, Section 13.2.

⁴⁶ This figure excludes operations of US Filter.

The evidence will show that Pennichuck's operations do not approach this standard. As a result of its comparatively small New Hampshire operations, Pennichuck has received a number of letters of deficiency for violations drinking water standards by the New Hampshire Department of Environmental Services related to its water system operations. These violations include violations of primary drinking water standards for contaminants such as arsenic, bacteria, radon, uranium (including the Glenn Ridge system viewed by the Commission on December 6, 2006), organics and other violations of drinking water and environmental or safety standards. These violations demonstrate that, contrary to Donald Ware's testimony that Pennichuck has met the challenges of operating its water systems, the company's operation of a scattered network of water system operations, its burgeoning administrative responsibilities, and its need to pursue shareholder revenues from its real estate, have caused it to lose focus on operating a drinking water system serving the public.

G. Nashua and Veolia Water will provide more efficient customer service of the same if not better quality, at less cost to the ratepayers.

The evidence will be that PWW employs nine full-time staff and two part-time staff to handle incoming customer calls. The volume of calls has averaged approximately 1,862 calls per month.⁴⁷ To provide the same service Nashua will provide a team of eight full-time employees consisting of six current full-time employees and two new employees. The six current employees in the City Treasurer/Tax Collection Department are cross trained for property tax and sewer bills and would be trained for water bills as well in order that all employees will be available to back up one another in periods of peak activity for each type of bill. The six current employees, the evidence will

⁴⁷ May 22, 2006 Reply Testimony of Philip Ashcroft, David Ford, P.E., and Paul Noran, P.E., , pp. 9-10

be, do an excellent job handling 56,000 property tax bills, 72,000 residential sewer bills and 13,000 commercial/industrial sewer bills per year.⁴⁸

In addition, Veolia Water will provide two customer service representatives who will only handle water system operating issues such as water quality questions and field service inquiries.⁴⁹

The evidence will also be that it should not require the nine full-time employees utilized by PWW, let alone an additional two part-time employees, to address 1,862 calls per month. Veolia Water uses a benchmark of one customer service representative (CSR) per 10,000 customers; resulting in a requirement of less than three full-time employees to service the Nashua customer base. Veolia Water's Indianapolis operations serve as a real-life validation of Nashua and Veolia Water's proposed staffing level. In 2005, Veolia Water Indianapolis's twenty-seven, full-time, customer service representatives handled 614,027 calls (or 51,169 calls per month on average with a peak month of 58,849 calls). In other words, each customer service representative in Indianapolis handled 1,859 calls per month, roughly the same volume as the entire PWW customer service staff.⁵⁰

Not only will the Nashua and Veolia Water service be more efficient and cost less, the evidence will be that it will be superior to that provided by PWW. For example, Veolia will improve overall customer service by performing the following:

1. Integration and Delineation of Responsibilities.

- Integration of the office and field customer service functions;

⁴⁸ May 22, 2006 Reply Testimony of Carol Anderson and Ruth Raswyck, p. 2

⁴⁹ May 22, 2006 Reply Testimony of Ashcroft, et al., p. 10

⁵⁰ Reply Testimony of Ashcroft, et al., p. 10

- Providing “One and Done Customer Service” by assigning responsibility for follow through to the customer service representative receiving the call; and
- Utilizing customer service process charts to identify the responsibilities between Nashua and Veolia Water.

To provide a smooth transfer of information between the departments, Nashua and Veolia Water will document processes for the customer service office and field operations. Work flows will be documented using step-by-step procedures for each individual and his/her respective scope of responsibility. Veolia Water will utilize call logs and work orders to: (a) track work that has been transitioned to other divisions or entities, (b) ensure completion of any necessary follow up tasks, and (c) update the database of completed work. This system will ensure that all divisions will have access to the most recent status of the work which, in turn, will allow the agents to provide quality customer service to the Nashua community.⁵¹

2. Training.

Nashua and Veolia Water will provide training for all new agents and on-going training for existing agents that are associated with the functions of billing, collections, field operations, and water quality. In addition, all agents will be provided with refresher training throughout the year for seasonal information. There will be weekly meetings between managers and supervisors of office and field customer service.⁵²

3. Work Order System and Prioritization.

All field customer services to be provided will have a work order. The work

⁵¹ Reply Testimony of Ashcroft, et al., p. 8

⁵² Reply Testimony of Ashcroft, et al., p. 9

orders will be prioritized. A high priority work order would be a customer with a water quality problem. Field personnel will have a computer to generate and complete work orders. The work orders will have detail for labor, materials and equipment used. A representative sampling of the customers provided field services will get a post card to measure the customer satisfaction on the services provided.⁵³

As the testimony of Mesrs. Ashcroft, Ford, and Noran explains in detail, Veolia's plans for operating the Nashua water system are based on its vast experience elsewhere and the advanced technology and capability available to it through its extended regional and national organization.⁵⁴ The resources will be concentrated immediately on Nashua to achieve the efficiency goals set by its contract with the City.

IV. NASHUA'S OVERSIGHT CONTRACT WITH R.W. BECK AND TETRA TECH WILL FURTHER PROMOTE THE PUBLIC INTEREST

In addition to the technical and managerial qualifications of Nashua's operator, Nashua proposes that the operation of its system will be managed in cooperation with its oversight contractor, R.W. Beck, Inc. The use of R.W. Beck as an oversight contractor brings a high level of independent engineering expertise to the operation and management of Nashua's water system. R.W. Beck specializes in "engineering-based management consulting services associated with municipal utility creation and operations" and that it is "broadly recognized in the water industry for [its] expertise advising owners of water systems on procurement, contract development, negotiations and contractor oversight, and for a wide variety of

⁵³ Reply Testimony of Ashcroft, et al., p. 10

⁵⁴ Reply Testimony of Ashcroft, et al., pp. 10 et seq.

services related to operations, maintenance and management.”⁵⁵

In the words of R.W. Beck:⁵⁶

R. W. Beck is renowned as an Independent Engineering advocate for municipalities and recognized nationwide for *saving utilities money through innovative funding, contracting, operating, and business process strategies*. By company mission, we are committed to providing objective, independent engineering reviews and we do not regularly perform contract operations or complete design/build projects for clients. This standing is unique, and others cannot make such definitive ‘no conflicts’ declarations.

Our approach provides the highest value because we expertly leverage the power of the free market to find the best, most valuable ideas and services for our clients through effective procurement, contracting and oversight.

The evidence will show that R.W. Beck will act similar to department head overseeing and auditing nearly all aspects of the water system in order to ensure that the water system is operated consistent with key standards and customer expectations. These standards include the following:⁵⁷

- Compliance with all applicable laws, regulations, water quality standards, permits and other requirements, including conditions imposed by the Commission;
- Compliance with Nashua’s OM&M Agreement with Veolia Water;
- Compliance with Nashua’s Water Ordinance;
- Compliance with Prudent industry practice and other industry standards;
- Monitor operations to ensure that variable costs incurred services as capital projects, RRRM and supplemental services, and energy and fuel costs are reasonable.

⁵⁵ January 12, 2006 *Testimony of Stephen Gates, et al.*, page 2.

⁵⁶ January 12, 2006 *Testimony of Stephen Gates, et al.*, page 3 (emphasis added).

⁵⁷ OM&M Agreement, Article V.

R.W. Beck will have a number of tools at its disposal. For example, as the owners representative R.W. Beck will have the authority to audit and review all charges for services submitted to the City of Nashua.⁵⁸ If necessary, R.W. Beck will have the authority to initiate the dispute resolution mechanisms under the OM&M Agreement.⁵⁹ R.W. Beck will also have the ability to negotiate amendments to the OM&M Agreement, for example, to provide incentives for Veolia Water to reduce energy, fuel and chemical costs, planned or unplanned maintenance or improve finished water quality that will benefit customers of the system and the public interest. An investor's own utility, by contrast, simply passes these costs to its customers with little financial incentive for customers or the utility to reduce costs.

R.W. Beck's continued oversight of the system will bring significant benefits to customers of Pennichuck's regulated utilities have never had. In the *highly unlikely event* that Veolia Water failed to high quality service at competitive rates, R.W. Beck will have the option to renegotiate the terms and conditions of service provided by Veolia Water, advise the City of Nashua not to renew its contract, or, if necessary, solicit competitive proposals for the operation of the water system from other water system operators and exercise the Termination for Convenience provisions of Nashua's OM&M Agreement.⁶⁰

Finally, the evidence will show that R.W. Beck and its oversight partner Tetra Tech, Inc., have specialized expertise in areas such as watershed management, engineering, capital project oversight that may be called upon to benefit customers as a supplemental service. Overall, as the oversight manager for the system, R.W. Beck will

⁵⁸ OM&M Agreement, Article I, Section 1.1 (E) & (F).

⁵⁹ OM&M Agreement, Appendix K.

⁶⁰ OM&M Agreement, Article XIII & Appendix L.; *see also* Alderman Brian McCarthy's supplemental response to Pennichuck Data Request 3-51.

play a role analogous to the oversight played by the Commission but without the limitations imposed by regulation. While the Commission has the authority to enforce its regulations to ensure that service and rates are just and reasonable and has done so successfully, R.W. Beck will have the ability to leverage Nashua's ownership of the system to ensure that Nashua's water system is managed to provide service to the public that meets the highest levels of quality at competitive prices and in full compliance with customer expectations and regulatory requirements.

V. VALUATION AND RATES

One of the most important issues in the public interest determination is whether, under Nashua's ownership, customers will be afforded the service to which they are entitled at reasonable rates. Appeal of Conservation Law Foundation, 127 N.H. 606, 615 (1986). This is consistent with RSA 374:1 (service shall be safe and adequate and just and reasonable) and RSA 378:7 (Commission determines just and reasonable rates). As set forth herein, the evidence will show that the service provided by Nashua using its will equal or exceed that provided under continued PWW ownership at rates below those currently charged by PWW.

In this section, Nashua discusses the comparison of revenue requirements under the City's ownership and the revenue requirements it estimates will be required under continued PWW ownership. Because one of the primary variables in the revenue requirement calculation is the price the City will pay for the PWW assets based on a determination of fair market value by the Commission, the first inquiry will be into the value of PWW's assets.⁶¹

⁶¹ See Nashua's March 8, 2005 *Memorandum Regarding Bifurcation*.

A. The fair market value of the PWW assets Nashua seeks to acquire will be \$139,000,000 as of December 31, 2007

Nashua's valuation experts, George E. Sansoucy and Glenn C. Walker submitted testimony concerning the value of the PWW assets on November 24, 2004, January 12, 2006, May 22, 2006 and November 14, 2006. The evidence will be that the value of the assets of PWW as of December 31, 2004 was \$85,000,000. Property additions made by the Company subsequent to December 31, 2004 should be added to that amount measured by the change in rate base. Sansoucy and Walker's testimony demonstrates that the change in rate base between December 31, 2004 and December 31, 2007 will be \$54,000,000. Their opinion of the fair market value of the PWW assets as of December 31, 2007 is \$139,000,000.

B. The valuation performed by Sansoucy and Walker is correct and accurately reflects the fair market value of the PWW assets.

Sansoucy and Walker employed all three generally accepted appraisal methods to value the assets that comprise the PWW system. These include the cost, sales comparison, and income capitalization approaches to value. Sansoucy and Walker estimated a value for the PWW assets using each of the three methods, and reconciled these to a final determination of fair market value by relying on the sales comparison and income capitalization methods which were determined to be the most reliable methods for this property.

Sansoucy and Walker properly gave the cost approach no weight in their analysis because the amount derived would have been higher than the revenue potential that the PWW system could generate as a result of its rates being regulated by the NH PUC which

limits the earning potential of the system. Had Sansoucy and Walker employed the cost approach, they would have had to include a deduction for economic obsolescence associated with this limited income potential of the system and/or the value of the system in the market as determined by either the sales comparison or income capitalization approach. In other words, the economic obsolescence would have reduced the cost approach value to an amount equal to those derived by the sales and income methods.

The use of the sales comparison approach by Sansoucy and Walker is proper and accurately reflects the motivation of investors, buyers and sellers in the marketplace. In their January 12, 2006 valuation testimony, they identified 28 sales or potential offers to buy and/or sell water systems that formed the basis of their opinion. From these 28 sales, the City's experts correctly analyzed the size and earning potential of these systems to determine the systems most comparable to the PWW system. There were ultimately nine transactions that Sansoucy and Walker relied on to develop market-based ratios they believed would be the best indicators of the value of the PWW assets. These ratios were the sale price to net plant less Contribution In Aid of Construction (CIAC)⁶² and the sale price to Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). Using these ratios, Sansoucy and Walker determine a range of values for the PWW assets under the sales comparison approach of between \$82 million and \$96 million, which they reconciled to \$89 million as of December 31, 2004.

The City's experts then confirmed the accuracy of their conclusions using this method by analyzing the 2002 offer by Philadelphia Suburban Corporation to purchase all of Pennichuck Corporation and by utilizing a stock and debt approach to estimate the value of Pennichuck Corporation in its entirety. In 2002, Philadelphia Suburban entered

⁶² The net plant minus CIAC was used as it more accurately reflects rate base than simply net plant.

into an agreement under which it would purchase Pennichuck Corporation for approximately \$106 million. The Philadelphia Suburban offer is supportive of Sansoucy and Walker's conclusion in 2004 that the PWW assets are worth approximately \$90 million. In addition, the experts utilized a stock and debt approach which measures the value of the outstanding equity interest in a company and the outstanding debt that would be assumed in a purchase to estimate the value of the entire company. As of December 31, 2004, this approach indicated that all of Pennichuck Corporation had a value of approximately \$105 million of which PWW would represent approximately \$90 million. Therefore, these two additional methods establish a maximum value for all of Pennichuck Corporation and support the estimate arrived at using the sales comparison approach for only the PWW assets of \$90 million.

Sansoucy and Walker also utilized the income capitalization approach to develop a value for the PWW assets, based on its earning potential and the corresponding risk associated with operation of a water system, such as that owned by PWW. The income capitalization approach is a method which estimates the future earning potential of a system and capitalizes this earning or income into a value, based on the expected discount rate or rate of return necessary to attract both debt and equity capital to this type of investment. The City's experts based the income potential of the PWW system on the revenues less expenses sought in NH PUC Docket No. 05-056. The experts then capitalized the cash flows available to satisfy debt and equity by a market-based rate which assumed no future earning growth, absent rate increases by the NH PUC. This resulted in a value for the PWW assets of approximately \$80 million.

The City's experts correctly employed a "typical buyer" when developing the income capitalization approach as opposed to the not-for-profit or special buyer used by PWW's expert which has certain benefits or synergies available to it that a "typical buyer" would not. These benefits or synergies would include the ability to utilize tax exempt debt and to avoid certain types of taxes and other expenses. The availability of these benefits to a not-for-profit buyer are not attributes of the property being acquired nor are they subsequently transferable by the not-for-profit buyer unless it also sells to another not-for-profit buyer. Rather, they are attributes that are unique to the buyer and impact the buyer's investment decision. They may have a huge impact on what the buyer can afford to pay for the property but ability to pay is not the same as fair market value.

Sansoucy and Walker then reconciled the sales comparison and income capitalization approaches to arrive at a final value estimate of \$85 million as December 31, 2004 which was the valuation date established by the Commission. As noted above the experts trued up this value to account for the additions to rate base made by PWW subsequent to December 31, 2004 and concluded that the value of PWW's assets as of December 31, 2007 would be \$139,000,000. Their reasoning for this type of adjustment was that most of the property added would be new and represent rate base growth and additions to the system.

C. The valuation testimony of PWW's expert, Robert Reilly is unreliable.

The Reilly valuation is unreliable and erroneous because the assumptions he used about the "typical buyer" of the PWW assets does not result in an estimate of fair market value, but instead an estimate of value to a "particular buyer" which is investment value. Reilly assumes that the hypothetical buyer for the PWW assets is a not-for-profit entity,

including any New Hampshire municipality. His analysis fails for several reasons. First, a not-for-profit or special buyer such as a municipality has certain benefits or synergies available to it that a “typical buyer” would not. As described above, these include the ability to utilize tax exempt debt and to avoid certain types of taxes and other expenses. These unique synergies give the not-for-profit or municipal buyer the ability if it becomes necessary as a part of its investment decision, to pay more for the property. They do not, however, impact fair market value. Ability to pay, the evidence will be, is not the same as fair market value.

An example of this would be Bill Gates as a buyer of residential property listed for \$100,000. Because of his wealth Bill Gates could afford to pay considerably more than the listed price and might if there was something about the house that particularly attracted him and he wanted to make sure he bought it. If he did, however, that would be investment value to him rather than fair market value. The fair market value of the house would be determined by what “typical buyers” would pay for similar property in the marketplace. By using a not-for profit buyer, Reilly has developed an investment value that uses the synergies of such a buyer to artificially inflate the value of PWW’s assets.

Reilly’s assumption that a not-for-profit or municipal buyer would influence the fair market value of the PWW assets is not supported by any evidence and is a manufactured assumption used to artificially inflate his fair market value estimate. Reilly has provided no evidence that when not-for-profits purchase water systems they pay a premium relative to for-profit entities. If his assumptions were true, then a review of sales in the market place should demonstrate that not-for-profit entities cluster to the upper end of the range, while for-profit entities cluster to the bottom of the range. The evidence

will show that analysis of water system sales comprising of not-for-profit and for-profit entities which does not follow this pattern.

In addition, if not-for-profit entities were expected to pay a premium of almost twice what a for-profit would pay, Pennichuck Corporation's financial advisor, S.G. Barr Devlin would likely have relied on "Reilly theory" when it was charged with selling Pennichuck Corporation. It did not because such premiums are not paid by not-for-profits unless it is driven by an investment decision and S.G. Bar Devlin did not view not-for-profit entities as different than any other purchasers.

Finally, the Reilly analysis does not satisfy the highest and best use requirement that a use must be legally permissible. His value is dependent upon his erroneous conclusion that any New Hampshire municipality could acquire the PWW assets. Under RSA 38, as determined by the Commission in Order No. 24,425, a municipality can only acquire the assets of the utility providing water service in the municipality. Since PWW does not provide water service to Manchester or Concord, for example, they are not municipalities that could acquire the PWW assets. When the list of communities that are provided service by PWW are examined, it is difficult to realistically consider any, other than Nashua, as a buyer. Because his conclusion based on the assumption that other municipalities are not legally permissible or practicable for that matter, Reilly's valuation is not reliable.

The evidence before the Commission will be that the valuation set forth by Mr. Reilly experts assumes erroneous earning growth for the PWW system. The Reilly income analysis assumed that the cash flows available to satisfy debt and equity growth at a rate of 2% which Reilly justifies by assuming it accounts for "inflation only and no

growth.” This growth assumption is contrary to rate regulations and testimony by PWW’s rate expert, John Guastella, that in order for growth to occur in a regulated utility, rate base must grow. Since neither Reilly, Guastella, or Pennichuck Corporation have assumed rate base growth after 2008, it would be impossible for earning growth to occur at a rate of 2%. Therefore, the 2% earning growth is erroneous and makes the Reilly conclusion of value unreliable.

Reilly’s November 14, 2006 testimony using his same unreliable hypotheses concludes a valuation estimate for PWW assets of \$270 million. This value is more than twice the enterprise value of PWW’s parent Pennichuck Corporation and the recent offer by Philadelphia Suburban to purchase it. It defies logic that a buyer would pay more than twice what it would cost to buy the parent and acquire not only the assets of the subsidiary but also all the other assets held by the parent and any other subsidiaries owned by the parent. As noted above, the evidence will show that the only way Reilly can establish a value for the PWW assets that is over two times the value of its parent company is by utilizing erroneous assumptions and hypotheses and dismissing the relevant market data.

As an example, the dismissal of the sales comparison approach out of hand by Reilly is one of the ways that he is able to justify the substantial premium over the actual market value that they are advocating in front of the Commission. Had he analyzed water system sales, either between not-for-profit or for-profit entities, he would have had to conclude market values substantially below those set forth in their appraisal. However, by conveniently dismissing water system transactions, he has been able to create estimates or figures without any actual market data or transactions that would establish much lower

value estimates than those set forth in their appraisal. The absence of any actual market transactions for market guidelines that he used makes his value of \$270 million not only unreliable but also erroneous.

D. Under Nashua's ownership ratepayers will pay rates during the period from 2007 to 2036 that are \$364,631,000 less than the rates likely to be charged by PWW.

In GES Exhibit 2-7- Revised 11/14/2006, Sansoucy and Walker have performed a comparison of the revenue requirements for PWW and Nashua using the same methodology required by the Commission for rate cases. The Nashua requirements are largely driven by the cost of its acquisition bonding and the cost of operation by Veolia, which the evidence will show is significantly lower than PWW's cost of operation. Because of this lower cost of operation and such other factors as its lower cost of debt, its lack of cost for equity, and the fact that it does not pay income and other taxes or other corporate costs such as dividends and regulatory compliance costs, as shown in revised GES Exhibit 7, the savings are immediate and grow every year to a total of \$364,361,000. Savings of this magnitude are clearly in the public interest.

PWW has performed a similar revenue requirements analysis, although for a different purpose. Mr. Guastella has testified that at a purchase price of \$270,000,000, as determined by Mr. Reilly, Nashua and PWW will have essentially the same revenue requirements. The obvious purpose for such an analysis was to try to demonstrate to the Commission that Nashua can pay the absurd value determined by Reilly and not raise rates. The analysis, however, demonstrates something more important. What it shows is that at any value determined by the Commission that is less than the value which results

from Reilly's fictional assumptions, there will be immediate and growing savings to ratepayers under Nashua's ownership. In other words, the Guastella analysis demonstrates that at any value less than \$270,000,000, the acquisition will be in the public interest.

E. Any harm to PEU, PAC and PWSC Is illusory.

PEU, PAC and PWSC, as intervenors, have asserted that if Nashua is permitted to acquire the assets of PWW, PEU and PAC will require rate increases in excess of 60% to continue to provide service and PWSC will operate at a loss. The basis for these claims, the evidence will show, is the corporate structure created by Pennichuck Corp., in which PWW owns and provides all of the property, equipment and personnel necessary for the operation of PEU, PAC and PWSC. The evidence will show that these intervenors have failed to consider alternatives to prevent or mitigate harm to customers such as eliminating or reducing their administrative overhead, using proceeds from the sale of the assets of Pennichuck Water Works to acquire replacement property, and merging with another investor-owned utility to expand its operations. Nor has Pennichuck considered or addressed Nashua's continued willingness to pursue its original proposal to acquire all of the assets of Pennichuck's three regulated utilities. Pennichuck has not seriously considered or evaluated these approaches because it hopes to present the Commission with no alternatives to refute its arguments concerning the public interest.

Under this structure the services provided by PWW are paid for pursuant to an expense sharing agreement which according to PWW is supposed to fairly compensate it. If this expense sharing arrangement will result in rate increases in excess of 60% of PEU and PAC are required to obtain the services provided by PWW elsewhere, the evidence

will be that PEU and PAC have not been paying their fair share of the cost of such services. The culprit for any harm to PEU and PAC is not the acquisition by Nashua but rather the self-created and self-perpetuated corporate structure of Pennichuck Corp., which has not properly allocated cost among its entities.

Nashua's evidence will further demonstrate that the harm to PEU and PAC has been overstated and even though self-created could be easily mitigated by *inter alia*:

- a) contracting for their operation and maintenance with a cost-efficient operation such as Veolia Water;
- b) leasing equipment as necessary;
- c) contracting for engineering services;
- d) eliminating administrative overhead;
- e) selling or merger of its operations with a larger regulated utility; and/or
- f) using proceeds from the sale of assets in this proceeding to expand its operations.

Nashua asserts, and its evidence will be, that harm to PWSC, one of Pennichuck's unregulated subsidiaries, even if it exists, should not be considered by the Commission. If as a result of the acquisition, PWSC will operate at a loss, it is obvious that it has been subsidized by PWW. PWSC, as an unregulated subsidiary, should stand alone and receive no benefits from the regulated subsidiaries, which are paid for by the ratepayers. In essence, if there is harm to PWSC, it means that PWW's ratepayers have been providing a benefit to Pennichuck's shareholders. If PWSC cannot operate profitably without PWW there is an improper subsidy.

Finally, Nashua urges the Commission in its consideration of the impact of any alleged harm to PEU, PAC and PWSC on the public interest not to lose sight of the clear

legislative intent in RSA 38 that municipalities should be able to obtain the benefits of municipal operation for their ratepayers by meeting the requirements of the chapter. The argument of PWW and Staff is that because of the alleged harms that would occur to PEU, PAC and PWSC, all of which are caused by the **corporate structure** set up by Pennichuck Corp., it is not, and can never be, in the public interest for Nashua to acquire the assets of PWW. What this argument essentially asks the Commission to conclude is that because of the way Pennichuck has organized itself and created its operations model, the ratepayers of Nashua can never obtain the demonstrated benefits of municipalization. Nashua submits that such a result would be an improper subversion of a very clearly stated legislative policy.

VI. NASHUA'S ACQUISITION WILL PROTECT AND CONSERVE NEW HAMPSHIRE'S WATER SUPPLY FOR FUTURE GENERATIONS

A. WATERSHED PROTECTION

Nashua's evidence demonstrate that Pennichuck Water Works has largely failed to implement, and even opposed, measures necessary for the long-term protection of its water supply when those measures threatened the ability of its affiliate, the Southwood Corporation to develop approximately 1500 acres of land originally set aside for watershed protection. In essence, the evidence will show that PWW placed its own interest, i.e. profit from its development activities, ahead of its duty to protect the watershed, *i.e. the public interest*.

Nashua will present evidence on watershed issues through a panel of three witnesses, Katherine Hersh, Director of the Community Development Division, Brian McCarthy, a member of Nashua's Board of Aldermen, and John M. Henderson, P.E., a

Senior Project Manager for Tetra Tech Inc. In addition, the Commission will hear evidence concerning Pennichuck's failure to protect its water supply development, including from Southwood's development operations, from Allan Fuller, Ph.D., Chairman of the Pennichuck Brook Watershed Council who is also actively involved in a volunteer monitoring program for the New Hampshire Department of Environmental Services.

Nashua's evidence is replete with examples of watershed problems caused by the development within the watershed, which was not opposed by and in many instances approved by PWW. In addition, Nashua's testimony and other evidence demonstrates the extraordinary steps Nashua has taken to protect the watershed, including the acquisition of nearly 500 acres of high-yield aquifer for water supply protection (land formerly owned by that Pennichuck had proposed to develop) and the enactment of the Water Supply Protection District, opposed by PWW, that regulatory agencies including the New Hampshire Department of Environmental Services have used as a model for water supply protection from storm-water pollution.

Examples of PWW's opposition to watershed protection measures include:

- a. Opposition to HB 1289 before the NH Senate in April, 2006. HB 1289 would have implemented setbacks and buffers of 400 and 200 feet for the surface waters and tributaries. HB 1289 had strong public support from the NH DES and other resource management agencies. However, rather than work to ensure that the final bill achieved the protections recommended by its own consultants, the company and its lobbyists worked behind the scenes arguing that the bill would result in "the

taking of over 500 acres of land that could have been developed” that resulted in the Senate finding the bill inexpedient to legislate.

- b. The failure to implement the setback/buffer recommendations within its own watershed regulations under its authority under RSA 485:23 & 24 into Env-Ws 386 regulations.
- c. The failure to follow the recommendations of its own consultant, CEI, to require a 300 foot setback from all tributaries to the chain pond system, including the ponds themselves and to restrict development within the watershed because of the excess levels of phosphorus resulting from the “overwhelming detriment of development.”

These and other examples included in Nashua’s testimony demonstrates that as the watershed have become more developed, the impervious area is increased leading to increased stormwater flows and intensity and reductions in groundwater recharge have dramatically reduced both the supply and quality of water. Because of Pennichuck’s dual role as a real estate developer and supplier of public drinking water, Pennichuck Water Works failed to provide leadership in areas such as land conservation and the strengthening of its own water supply protection regulations because of the adverse impact it would have on its role as a real estate developer. Approval of Nashua’s Petition will end this conflict and establish a water utility committed to the protection of the future of its water supply for future generations. Nashua submits that such an approach is fully consistent with the public interest.

**B. NASHUA WILL PROMOTE THE PUBLIC INTEREST BY
IMPLEMENTING CONSERVATION MEASURES CONSISTENT WITH
ORDER NO. 24,243.**

Nashua has presented testimony and will demonstrate to the Commission that that the yield of the Pennichuck Brook ponds for drinking water supply have decreased dramatically under Pennichuck's ownership. Despite this decline, Pennichuck has continued to pursue its real estate development ventures in areas important for the water supply protection and failed to adopt important water conservation measures, even when ordered to do so by the Commission.

The Commission has recognized that water conservation is extremely important to the future of the State's water supply, and therefore, the public interest. In its August 2001 report to the NH Legislature, prepared in cooperation with the NH Department of Environmental Services entitled *Regulatory Barriers to Water Supply Regional Cooperation and Conservation in New Hampshire* (the "Regulatory Barriers Report"), the Commission stated that:

In communities across New Hampshire, particularly in the southern tier as noted in Section 4, the *available water supply is becoming more limited with increased growth and with greater regulation to resolve potentially competing uses*. Water resources are increasingly stressed and the regulatory requirements for new source development continue to become more complex as the right balance is sought between existing and future water supply needs for different purposes and environmental concerns. Consequently, demand-side management of public water suppliers through

water conservation and efficient water usage will become increasingly important with time.

(emphasis added). Water conservation is particularly important because of its ability to reduce peak water consumption. By adopting water conservation measures, a water utility can reduce both capital and operating expenses by delaying the need for capital facilities to provide supply.⁶³ As noted by Staff in the *Regulatory Barriers Report*, “summer lawn watering constitutes the single largest contributor to water usage spikes. Particularly in smaller systems, these short-lived usage spikes drive the design needs of the overall system.”⁶⁴

The Commission has recognized the public interest benefits of conserving water resources, and stated that it “supports consideration of conservation rate structures in proceedings designed to evaluate a utility’s overall rate design.”⁶⁵ The Commission has further recognized that “a number of rate structures have the potential to promote water conservation by utility customers.”⁶⁶ In fact, as a result of its *Investigation into Water Conservation* in DW01-253, the Commission issued the following order to all of its regulated utilities, including the Pennichuck Water Works:

FURTHER ORDERED, that all water utilities that make filings for rate increases after the date of this order include with such filings information concerning their water conservation *efforts as well as a proposal for a rate design that will incent conservation by customers.*

⁶³ Order No. 24,243, Page 8 (“Rate instability can be mitigated when the reduction in expenses and the potential cost savings associated with delayed capital facilities are weighed against a potential reduction in water revenues.”).

⁶⁴ Order No. 24,243, Page 2.

⁶⁵ Order No. 24,243, Page 9.

⁶⁶ Order No. 24,243, Page 6.

Order No. 24,253, Page 13 (emphasis added).

Despite the Commission's clear order, Pennichuck Water Works has failed to propose any real conservation rate structures in two filings for rate increases on May 28, 2004 in DW04-056 and its most recent schedules and testimony for a rate increase in Docket No. DW06-073 submitted on June 16, 2006 of this year. Instead, Pennichuck states simply that it recommends that conservation rates be "studied" at some time in the future after the company has completed "evaluating its entire system to facilitate radio reads at which time it will become economical for the Company to begin billing monthly" and after it has completed a full cost of service study.⁶⁷

Pennichuck's failure to even begin *studying* water conservation illustrates a key difference between investor and municipally owned water utilities. As the Commission recognized: "Traditional ratemaking for PUC-regulated utilities provides strong financial incentives to promote greater water usage, rather than water conservation or efficiency that would reduce water use."⁶⁸ Not only does an investor owned utility realize greater revenues by selling greater volumes of water, it also earns a return on investments made to meet such a demand.

Municipally-owned water utilities, by contrast, derive no financial benefit from maximizing water use in order to generate revenues. Nashua notes that the water conservation measures implemented by the municipally owned Manchester Water Works, and the investor-owned Hampstead Area Water Company, have been described as

⁶⁷ June 16, 2006 Testimony of Bonalyn Hartley in Docket No. DW06-073.

⁶⁸ Joint Report of the NH Public Utilities Commission and the NH Department of Environmental Services, Regulatory Barriers to Water Supply Regional Cooperation and Conservation in New Hampshire (August 2001), Page 11.

models.⁶⁹ Measures such as Hampstead's⁷⁰ and the Merrimack Village District's⁷¹ use of an odd/even lawn watering restriction, could be easily implemented by Pennichuck on a system-wide basis. Pennichuck's continued failure to evaluate and propose conservation measures in its rate design (several years after being ordered to do so) illustrates how Pennichuck's role as an investor-owned utility conflicts with the greater public interest.

The evidence in this proceeding will show that, as a municipally owned utility, Nashua will encourage and promote water conservation practices. From the outset, Nashua has incorporated water conservation measures into its proposal to acquire the Pennichuck Water Works. As set forth in Nashua's January 12, 2006 Testimony, Nashua will implement water conservation practices as follows:

- Under Nashua's OM&M Agreement, within eighteen (18) months after the Service Commencement Date, Veolia Water is required to provide a Conservation Plan "on measures that can be implemented to conserve water and water resources within the Managed Assets."⁷²
- Nashua's OM&M agreement with Veolia Water requires that Veolia Water develop a Conservation Plan "detailing measures that can be implemented by [Nashua] to conserve water and water resources within the water utility."⁷³
- The Conservation Plan as set forth in Veolia Water's Technical Proposal to Nashua,⁷⁴ using the Environmental Protection Agency guidelines for water

⁶⁹ Order No. 24,253, Page 3.

⁷⁰ Order No. 24,002, Page 2

⁷¹ See Response to Pennichuck Data Request 5-6 ("by implementing an odd/even outdoor water use restriction [the Merrimack Village District] has been able reduce demand from 35 million gallons per week to 25 million gallons per week. This reduction has allowed the District to avoid the need to consistently use its interconnection with the Pennichuck Water Works, Inc., since 1995.").

⁷² January 12, 2006 *Testimony of Philip Ashcroft et al.*, Exhibit B (OM&M Agreement), Appendix Q, Para. 9.

⁷³ January 12, 2006, *Testimony of Philip Ashcroft et al.*, Exhibit B, Appendix A, Para A.9.

conservation measure and will include conservation measures for both the core and satellite systems.

- On an on-going basis as part of the Annual Fee paid by Nashua, Veolia Water will provide “supply information and support [Nashua] in development and implementation of its public partnership for education programs, including areas of water conservation and pollution prevention.”⁷⁵

Nashua’s use of conservation measures to promote the public interest will reduce operating costs by deferring or eliminating the capital costs associated with the development of new supplies or storage systems. As a result, in addition to conserving New Hampshire’s valuable water resources, Nashua’s implementation of conservation measures will produce savings for customers above and beyond those already set forth in the Testimony of George Sansoucy, P.E. and Glenn Walker. These savings could be used to either reduce customer rates or for other public purposes such as land conservation, capital projects to improve the system or other public purposes.

VII. CONCLUSION

RSA 38 is a unique eminent domain statute limited to the acquisition of utilities. Its provisions call upon the Commission not only to be the arbiter of fair value but also to make determinations regarding the public interest, a more traditional regulatory concept. Because of the impact of value on rates and the impact of rates on public interest, the two functions are intimately intertwined.

⁷⁴ See Nashua’s Objection to Pennichuck Water Works Motion for Summary Judgment, Affidavit of Brian S. McCarthy, Exhibit 1.5 (Technical Proposal), Volume I, Section 1, Pages I.1.30 to I.1.31.

⁷⁵ January 12, 2006, Testimony of Philip Ashcroft et al., Exhibit B, Appendix A, Para A.9.

Not only Nashua has met all the requirements of RSA 38, entitling it to a presumption that its acquisition is in the public interest, but the evidence will show that Nashua has gone to great lengths to promote the public interest. Approval of Nashua's petition, upon such conditions as the Commission determines to be reasonable and appropriate, will results in significant rate savings to customers and in all likelihood improve the quality of service provided to customers as well as advance other important public benefits such as land and water conservation.

After careful review of the evidence, Nashua urges the Commission to find that its acquisition of the assets of Pennichuck Water Works is consistent with and will promote the public interest and to determine that the fair value of such assets is \$139,000,000.

WHEREFORE Nashua respectfully requests that the Commission:

- A. Approve Nashua's *Petition for Valuation pursuant to RSA 38*; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted,

CITY OF NASHUA

By Its Attorneys

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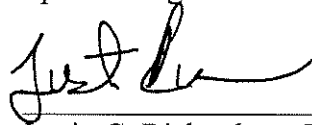
Nashua, NH 03061-2019

Date: December 15, 2006

CERTIFICATION

I hereby certify that a copy of the foregoing was this day forwarded to all persons on the Commission's official service list in the above proceedings.

Date: December 15, 2006

A handwritten signature in black ink, appearing to read "Justin C. Richardson", written over a horizontal line.

Justin C. Richardson, Esq.