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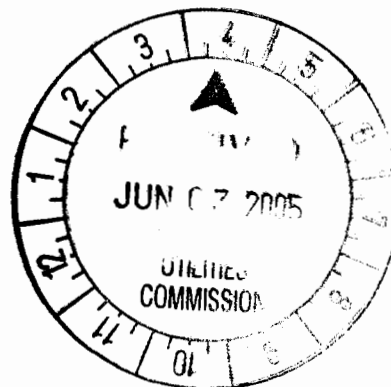
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June 3, 2005

By Hand Delivery

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



Re: DW 04-048; City of Nashua—Taking of Pennichuck Water Works, Inc.

Dear Ms. Howland:

Enclosed for filing with the Commission are an original and eight copies of Pennichuck Water Works, Inc.'s Objection to the City of Nashua's Motion to Limit Data Requests. We will file an electronic copy of the pleading with Ann Guinard.

If you have any questions, please do not hesitate to call.

Sincerely,

Thomas J. Donovan

cc: Service List
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Docket #: 04-048-1 Printed: June 03, 2005

FILING INSTRUCTIONS:

WITH THE EXCEPTION OF DISCOVERY (SEE NEXT PAGE) FILE 1 ORIGINAL & COVER LETTER, PLUS 8 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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

Docket No. DW 04-048

**PENNICHUCK WATER WORKS, INC.'S OBJECTION TO CITY OF NASHUA'S
MOTION TO LIMIT DATA REQUESTS**

Pennichuck Water Works, Inc. ("Pennichuck") objects to the City of Nashua's ("Nashua") Motion to Limit Data Requests. In support of this objection, Pennichuck states as follows:

1. On April 8, 2005, the parties in this docket met for a lengthy technical session to discuss a procedural schedule for this case. After considerable discussion during and after that session, the parties agreed upon a procedural schedule, which the Commission approved in its entirety in Order No. 24, 457, issued on April 22, 2005 (the "Order"). The Order established a complex schedule for discovery, beginning on May 6, 2005 and ending on July 17, 2006, and allows for at least five opportunities to serve parties with data requests.
2. In accordance with the Order, on May 6, 2005, Pennichuck, along with other parties, served data requests on Nashua.
3. Almost twenty days after receiving those data requests, and more than a month and a half after the Commission approved the procedural schedule, Nashua now seeks to limit the amount of discovery that can be taken in this matter. The Commission should deny Nashua's belated effort to change the agreed upon terms for discovery in the procedural schedule.
4. Nashua had ample opportunity to raise any concerns about the number or scope of data requests before the Commission approved the procedural schedule. For example, Nashua

could have easily raised its concerns about limits on data requests at the technical session where the procedural schedule was first created, but it did not. It also could have raised those concerns after the proposed schedule was filed with the Commission, but it did not. It even could have raised its concern after the Commission issued the Order by filing a motion for rehearing within thirty days of its issuance, but it did not. Instead, Nashua waited to raise those objections until it was faced with the obligation of responding.

5. It is hard to imagine that Nashua did not anticipate receiving a substantial number of data requests given that the procedural schedule – to which Nashua agreed – provides for at least five opportunities for a party to submit data requests, and by Nashua’s own admission, this case is highly technical in nature, necessitating complex discovery. Nashua Motion, ¶ 4. After all, Nashua seeks to take *the entirety of the assets* of a water company that serves tens of thousands of customers through millions of miles of pipe throughout the southern part of this State. That the Staff of the Commission, which is not the party against which the City’s condemnation efforts are aimed, issued 68 data requests in its first round evidences the complexity of the case.

6. It is not surprising that Pennichuck – the party whose very existence is at issue in this case – submitted 173 data requests to Nashua. It is Pennichuck’s obligation, to its shareholders and customers, and its right, to understand fully why Nashua’s proposed taking is in the public interest. See Scontsas v. Citizens Insurance Co., 109 N.H. 386, 388 (1969)(a party in a legal proceeding in New Hampshire is entitled to “be fully informed and have access to all evidence favorable to his side of the issue”).

7. Moreover, as early as March 31, 2005, this Commission “strongly encourage[d] all parties to focus on the technical and financial issues raised by Nashua’s petition and make use

of testimony, technical sessions and discovery to develop their understanding of those issues.”

Re City of Nashua, Order No. 24,447 (March 31, 2005), pp. 11-12. Pennichuck’s data requests are nothing more than its legitimate effort to do so, and its efforts are not outside the norm of practice in complex cases at the Commission. See Re New England Telephone and Telegraph Co., Inc., 74 NH PUC 485 (1989)(referring to 674 data requests responded to by NET); Re Public Service Co. of N.H., 63 NH PUC 127, 129 (1978)(PSNH rate case proceeding marked by “most extensive volume of data requests ever experienced in any proceeding before this Commission”). Nashua’s suggestion that Federal Rule of Civil Procedure 33, which limits parties to 25 interrogatories, or the Superior Court limit of 50 interrogatories, clearly have no application in the context of complex cases at the Commission in light of the New England Telephone case and others.

8. Perhaps the most revealing aspect of Nashua’s Motion is its effort to evade its responsibility as the petitioner with the burden of proof. Nashua’s motion fails to give one example of a data request that it alleges is irrelevant, instead claiming that the mere obligation of responding to the data requests is “intended to frustrate the City’s participation in the orderly conduct of this proceeding by requiring it to devote an unreasonable amount of staff and consultant time to respond.” Nashua Motion, ¶ 1. Plainly put, if Nashua wants to take Pennichuck’s assets by eminent domain, it must submit to discovery that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. Re Investigation into Whether Certain Calls are Local, 86 NH PUC 167 (2001).

9. The Commission urged the parties in this case to “strive to be clear and complete in their questions and responses and be prepared to file Motions to Compel...as needed in order to maintain the [procedural] schedule.” Re City of Nashua, Order No. 24,447 at p. 12, and

Nashua should do so by responding. To do otherwise will only cause delay in an already extenuated procedural schedule.

10. For these reasons, the Commission should deny Nashua's Motion, and permit discovery to proceed in accordance with the established procedural schedule.

WHEREFORE, Pennichuck respectfully requests that the Commission:

- A. Deny Nashua's Motion to Limit Data Requests; and
- B. Grant such other and further relief as the Commission deems necessary and just.

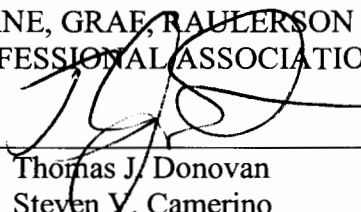
Respectfully submitted,

Pennichuck Water Works, Inc.

By Its Attorneys,

McLANE, GRAE, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: June 3, 2005

By: 

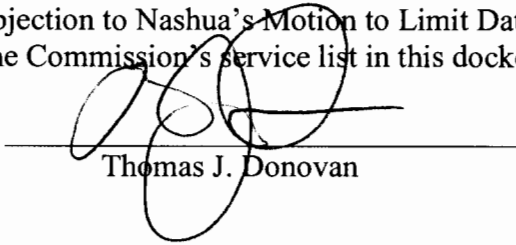
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Certificate of Service

I hereby certify that a copy of this Objection to Nashua's Motion to Limit Data Requests has been forwarded to the parties listed on the Commission's service list in this docket.

Dated: June 3, 2005



Thomas J. Donovan