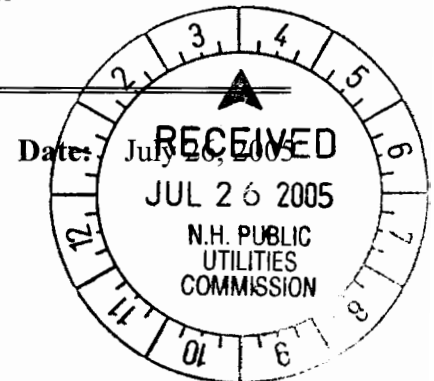


**STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
INTER-DEPARTMENT MEMORANDUM**

TO: Commissioners
FROM: Amy Ignatius, Hearing Examiner
RE: DW 04-048, Petition for Valuation



HEARING EXAMINER'S REPORT

At your request, I reviewed the pleadings associated with the Motion to Compel filed by the City of Nashua (Nashua) against Pennichuck Water Works (PWW) in the above referenced docket.

In the first set of data requests, Nashua filed 71 requests of PWW. PWW and Pennichuck Corporation (collectively, the Pennichuck Entities) objected to 11 of the requests. Nashua filed a Motion to Compel on June 20, 2005. The Pennichuck Entities objected to the Motion on June 27, 2005, but filed supplemental responses to 1-47 and 1-62. Because there are no further pleadings to the contrary, I assume these two requests are no longer in dispute. Nine data requests remain in dispute.

Nashua gave no indication of whether any party or Staff concurred or objected to the Motion to Compel. No other parties or Staff responded to the Motion or Objection, and the time for response is long since past.

Questions for which Nashua seeks to compel a response

- Q 1-59 information re: valuation, appraisal of property or stock of Pennichuck Corp or PWW 1999 to present
- Q 1-60 copy of each such valuation or appraisal
- Q 1-64 copy of valuation, appraisal by Pennichuck Corp, PWW or debt finance provider
- Q 1-66 identify "expert witness you have consulted, will have testify or have available to testify"
- Q 1-67 copy of valuation, appraisal by experts identified in 1-66
- Q 1-68 background of experts identified in 1-66
- Q 1-69 copies of articles, lectures, of experts identified in 1-66
- Q 1-70 cases in which experts identified in 1-66 have testified
- Q 1-71 identify those experts retained but not expected to testify

The Pennichuck Entities' Objections

First, the Pennichuck Entities argue the questions are premature, as their testimony on valuation won't be made until October 14, 2005.

The Pennichuck Entities also argue that Questions 1-66, 1-67, 1-68, 1-69, 1-70 and 1-71 call for

information regarding consultants who may not be called to testify, and that Nashua has not shown why it is entitled to the information as would be required to do under the Superior Court's discovery rules.

Finally, the Pennichuck Entities argue that questions 1-59, 1-60 and 1-64 call for information that is protected by the work product privilege, having been "created for the purpose of responding to Nashua's threatened eminent domain litigation."

Recommendation: For all of these questions, I agree that they are premature, but may be relevant when discovery on the Pennichuck Entities' valuation testimony is being undertaken. Responses may or may not be proper for other reasons of privilege. In my view, the Pennichuck Entities are overreaching a bit when they state that questions 1-66 through 1-71 are improper because they call for information on consultants who will not testify. That certainly is the case for question 1-71, but the others are not so narrowly drafted.

Because they are premature, however, I recommend that the Commission deny the Motion without prejudice and address those questions of privilege and permissible scope of discovery when that phase of the case is underway. Nashua should review the testimony of the Pennichuck Entities, to be filed October 14, 2005, and pose the questions it feels necessary and appropriate at that time. If responses to the questions remain in dispute, the Commission can rule on a Motion to Compel.

By: Amy Ignatius
Amy Ignatius, Hearing Examiner