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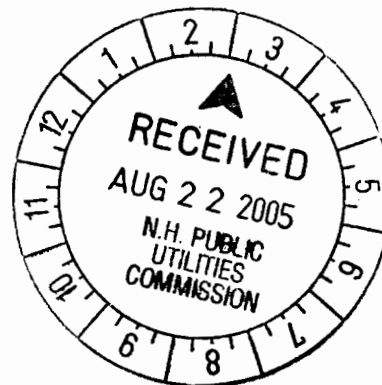
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August 22, 2005

Hand-Delivered

Deborah Howland
Executive Director and Secretary
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DW 04-048 - City of Nashua
Our File No. 45866-1



Dear Ms. Howland:

In accordance with PUC 202.07(a)(1), enclosed please find an original and eight copies of the within Objection to Pennichuck Water Works' Motion for Clarification, Reconsideration and/or Rehearing Regarding Order No. 24,489 with regard to this matter.

Additionally, pursuant to PUC 202.07(a)(2) and PUC 202.08(a) and (b), please find a computer diskette containing the within document which is being submitted electronically, all of which are provided in MS Word format.

Copies of this letter and Objection have been mailed to all parties on the attached service list and the consumer advocate in accordance with PUC 207.07(a)(3) and (4), as well as by e-mail to all parties on the attached service list.

Very truly yours,

Stephen J. Judge
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cc: Service List (attached)

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Docket #: 04-048-1 Printed: August 22, 2005

FILING INSTRUCTIONS:

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

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 04-048

City of Nashua
Taking of Pennichuck Water Works, Inc.



**OBJECTION TO PENNICHUCK WATER WORKS' MOTION
FOR CLARIFICATION, RECONSIDERATION AND/OR
REHEARING REGARDING ORDER NO. 24,489**

NOW COMES the Merrimack Valley Regional Water District ("District"), by and through its attorneys, Wadleigh, Starr & Peters, P.L.L.C., and objects to Pennichuck Water Works' ("PWW") Motion for Clarification, Reconsideration and/or Rehearing Regarding Order No. 24,489. In support of this Objection, the following is submitted:

I. Introduction.

In Order 24,489, the Commission denied PWW's Motion to Compel the District to answer Data Requests because, under long standing Commission practice and pursuant to PUC 204.04(2) Data Requests are only to be used regarding a party that has filed a petition, application, or testimony. Data Requests are not available against the District because it has filed no petition, application, or testimony. Moreover, the interpretation of PUC 204.04(2) urged by PWW would chill the ability of parties with limited resources, such as the District, which would be contrary to the public policy of allowing the participation of such parties.

The Motion for Rehearing should be denied because the Commission has correctly interpreted PUC 204.04(2); PWW must be prevented from engaging in economic warfare against the District in order to chill its participation in the docket; the due process argument of PWW was

not raised in the Motion to Compel and has been waived; and, the information sought in the Data Requests is premature and irrelevant to the issue presented by the case at bar.

II. Background.

The need for Nashua to acquire Pennichuck's assets and for the formation of the District was prompted by Pennichuck's precipitous effort to sell the water company to Philadelphia Suburban in June, 2002, barely three years ago. Faced with this sale, Nashua and other effected towns created a Charter Commission, a District Charter and ultimately the District. At the same time, Nashua has sought to acquire Pennichuck's assets.

The City of Nashua filed a Petition in March, 2004 seeking the assets of PWW, Pennichuck East Utilities, Inc., and the Pittsfield Aqueduct Company, Inc. pursuant to RSA 38:9.

In the Petition, Nashua referenced its "present intention" to transfer the acquired assets to the District. The specific request in the Petition, however, is for the Commission to determine the fair market value of the assets, find that the acquisition of the assets by the City is in the public interest, and to allow the City to acquire the assets.

The District filed a Motion to Intervene which was objected to by the utility, but granted by the Public Utilities Commission ("PUC") on October 1, 2004. PWW makes the absurd argument that it has been foreclosed from conducting discovery on the "numerous factual allegations" in the "Petition" to Intervene. The Motion to Intervene was based largely on legal issues, the enactment of statutes, approval of the District Charter, and the terms of the Charter. The Motion was granted almost one year ago. While PWW's argument is absurd, this argument and the Motion for Rehearing highlight the steps that PWW will take to chill the District's support for Nashua's Petition.

To illustrate, of all the Motions to Intervene that were filed, PWW objected only to the District's Motion to Intervene. PWW filed Data Requests with the District despite the fact that the District has not filed a Petition, an application, or testimony. The Data Requests propounded to the District by PWW were unnecessary because they are virtually identical to the Data Requests propounded to Michael Scanlon, the Chairman of the District, who has filed testimony on behalf of another party, Bedford. The Data Requests are overly broad and unduly burdensome including a request for copies of all documents that reflect, refer, and/or relate to the District. PWW has been allowed to depose Karen White, interim treasurer of the District¹, is aware from Ms. White's testimony that the District has \$7,100 in a bank account and estimated receivables of \$35,000, and that the cost of filing testimony and responding to Data Requests was a major consideration in deciding not to file testimony in this proceeding. In addition, Order 24,489 addressed similar arguments raised by two Motions to Compel Responses filed by PWW, one against the District and one against the Town of Amherst. As further evidence of PWW's efforts to engage in economic warfare in order to chill the District's participation in the proceeding, PWW's Motion for Rehearing is aimed solely at the District.

III. The Commission has correctly interpreted PUC 204.04(2) and the District has a right to continue to participate in these proceedings.

The District is vitally interested in the acquisition of the assets by the City, but the District is not vital to PWW's efforts to oppose the Petition. The District reserves its right to participate in

¹PWW has deposed Ms. White as a representative of the District. PWW has also deposed Mr. Scanlon, the Chairman of the District, Mr. McCarthy, the Vice Chairman, Ms. Peterman, the Member from Amherst and Ms. Keeley, the Alternate Member of the District from Pittsfield. Incredibly, PWW alleges in its Motion that the District has avoided being subject to questioning. Motion p. 8.

the proceeding through the filing of Data Requests (none have been filed to date), cross-examinations of witnesses, the presentation of oral and written argument, the filing of briefs, and by making a public statement on the record. The District has not filed testimony and will not produce a witness subject to cross-examination and understands that the weight the Commission gives to its public statement will be adjusted accordingly. The District also has the right to appeal PUC rulings. RSA 541:3. In its Motion, PWW seeks to either bury the District with discovery² or muzzle the District and prevent it from being more than a mere spectator. There is no legal basis for either request which is evident from the PWW's failure to cite any relevant PUC precedent.

The clearest example of the flaw in PWW's argument that the District has "forfeited" its right to participate, is the argument that the District has forfeited the right to appeal Commission rulings. Motion p. 3. This argument is contrary to RSA 541:3 which provides a right of appeal not only to any party to the proceeding, but also to any person directly effected by the ruling. The District is both a party to the proceeding and will be directly effected by rulings in this case. PWW is requesting that the Commission deprive the District of its statutory right, something the Commission should not do and, in any event, has no authority to do.

The Commission's decisions to prevent PWW from inundating the District with Data Requests is consistent with its long standing interpretation of PUC 204.04(2) that Data Requests may be served only on parties that have filed a petition, an application, or testimony. In this case, Data Requests may not be served on the District because it has not filed a petition, application, or

²There is no comfort in PWW's suggestion that its overly broad and unduly burdensome discovery requests will not chill a party with limited resources. As is the case here, such a party will deplete its resources by having to object to a discovery request, being served with a Motion to Compel, objecting to the Motion to Compel, being served with a Motion for Rehearing, and objecting to the Motion for Rehearing. Motion p. 8.

testimony. At best, PWW now argues that PUC 204.04(2) is ambiguous and should be interpreted so that Data Requests may be propounded on any party even if the party has not filed a petition, application, or testimony. This argument is unavailing. As described in the Commission's Order, the rule is not ambiguous and has been consistently applied so that Data Requests have not been filed on a party that has not filed a petition, application, or testimony.

Even if the rule is ambiguous, as previously stated, it has been interpreted consistently to preclude the filing of Data Requests under these circumstances. Where an ambiguous rule has been consistently interpreted by the agency responsible for its interpretation for a period of years, the agency should not change its de facto policy without changing the rule. See Conforti v. City of Manchester, 141 N.H. 78, 80 (1996) (describing doctrine of administrative gloss). The District has relied on the long standing administrative interpretation of PUC Rule 204.04(a) in determining its level of participation in this proceeding and it would be fundamentally unfair to abandon this interpretation in an ongoing proceeding.

PWW suggests that there are different levels of intervention and that the District chose to seek full party status. Motion p. 8. If there is some level of intervention that could allow the District to participate as described above that could be accomplished by describing the District as something other than a "full party" the District would be willing to consider a new description of its status. PWW's statement that there are a variety of levels of participation, however, is unsupported and contrary to RSA 541-A:32 and PUC 203:02, neither of which distinguishes among levels of intervention.

IV. No rights of PWW have been denied by the Commission's ruling.

PWW failed to raise any constitutional arguments in its Motion to Compel and consequently, the Commission did not address a constitutional argument in its Order. Pursuant to RSA 541:3, constitutional arguments may not be raised for the first time in a Motion for Rehearing. Appeal of Campaign for Ratepayers Rights, 133 N.H. 480, 484 (1990) (Due Process argument not addressed in Commission's Order and cannot be raised for first time in Motion for Rehearing). The only issue preserved by PWW is whether the Commission is correctly interpreting PUC 204.04(2), an issue that PWW must lose. See Section III of the Objection.

Moreover, there is no constitutional right to obtain irrelevant information.

As previously stated, Nashua's Petition seeks a ruling that the Commission find that the acquisition of the assets by the City is in the public interest and allow the City to acquire the assets. If the Commission grants these requests, Nashua's present intention is to transfer the assets to the District. This transfer is not the subject of the current Petition before the PUC.

PWW is in the process of engaging in extensive discovery regarding Nashua's plan to acquire the assets and provide water service to the customers. Because the Petition does not seek an immediate transfer of the assets from Nashua to the District or indeed any transfer of the assets by Nashua, Nashua's intention to transfer as yet unidentified assets to the District at some unknown future date is not central to the City's Petition as alleged by PWW. Motion p. 9.

Nashua's intention to transfer the assets to the District in the future is contextual information about Nashua's future plans, but the Petition presents the issue of whether Nashua's acquisition of the assets is in the public interest. Whether the District's future acquisition of the assets will be in the public interest is an issue that must remain for another day because the question is premature.

Assuming, arguendo, that the long standing practice of the Commission should be ignored and that relevance of PWW's Data Requests is the appropriate issue, the District as it is presently constituted, has no relevant information.

For example, the District Charter was approved by the Commission and the Attorney General on June 4, 2004 and ratified by the initial members of the District on June 24, 2004. At the time that Nashua filed its Petition, the District did not legally exist.

The relevant inquiry is whether Nashua should be allowed to acquire the assets at this time. It is irrelevant at this time whether the District has the ability to operate a utility.

The substantive questions propounded by PWW are irrelevant. The questions seek information about the District's financial status, position on rates, regulatory oversight, and how the District would provide water service to PWW's customers. Moreover, the District can provide no relevant answers to these questions. At present, the District consists of seven towns and the City of Nashua. Nashua and two of the towns are served by PWW. PWW provides water in ten towns and the City of Nashua. Additionally, Pennichuck Corporation serves 18 towns plus Nashua all of which either currently belong to the District or are eligible to request to become members. If Nashua is allowed to acquire PWW's assets, the composition of the District is likely to change dramatically. Even if PWW's questions were relevant today and the District was able to answer them today, which it is not, the answers to these substantive questions would not be binding on the future District which may contain more than double its current membership.

The District's Charter is a public document available to PWW. The Charter provides that the existing rates of an acquired utility will remain in effect upon acquisition. Any determination in the future of a change in rates for potential District customers will require expert analysis based

on the rates in effect for the specific assets that are to be transferred to the District. Assuming the District was able to hypothesize the specific assets that would be transferred and their future established rates, it is not in a position to engage experts to advise on the appropriate level of future changed rates.

The amount of money that the District has today, \$7,100, is irrelevant. This figure is irrelevant to the level of funds that will be available to the District if assets were to be transferred from Nashua to the District in the future.

It is impossible and would be a waste of public resources to require the District to be a fully functioning entity at this time and to require it to predict an uncertain future. PWW has sufficient access to information regarding Nashua's efforts to acquire the assets to respond to Nashua's Petition.

If Nashua acquires PWW's assets and seeks to transfer the assets to the District in the future, the issues of the District's ability to provide water service will become ripe at that time in a future proceeding before the Commission. These issues are not relevant to the current proceeding.

V. Conclusion.

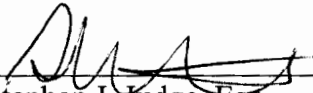
For the reasons stated herein, deny PWW's Motion for Clarification, Reconsideration and/or Rehearing Regarding Order No. 24,489.

Respectfully submitted,

Merrimack Valley Regional Water District
By and Through its Attorneys,
Wadleigh, Starr & Peters, P.L.L.C.

Dated: August 22, 2005

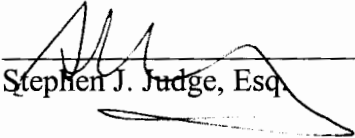
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CERTIFICATION

I hereby certify that a copy of the foregoing has been forwarded this day by first class mail and electronically to all parties on the service list.



Stephen J. Judge, Esq.