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December 15, 2005

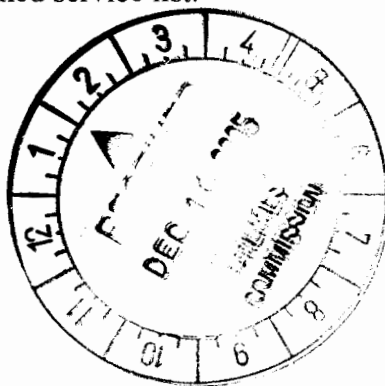
Debra A. Howland
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

Re: Docket DW 04-048
City of Nashua: Petition for Valuation Pursuant to RSA 38:9

Dear Ms. Howland:

I enclose for filing, herewith, an original and 8 copies, along with an electronic copy on a computer disk in word format, Objection to Pennichuck Water Works Inc.'s Motion to Bar Testimony and for Extension of Procedural Schedule by the City of Nashua.

A copy of this letter and the above Motion has been mailed to all persons on the attached service list.



Very truly yours,

Robert Upton, II
Robert Upton, II

RUII/dgg
Enclosure

Cc: Service List

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

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

DW 04-048

**OBJECTION TO PENNICHUCK WATER WORKS INC.'S MOTION TO BAR
TESTIMONY AND FOR EXTENSION OF PROCEDURAL SCHEDULE**

NOW COMES the City of Nashua (Nashua) and objects to the Motion of Pennichuck Water Works Inc., (PWW) to Bar Testimony and for An Extension of the Procedural Schedule. In support of its objection Nashua says as follows:

I. BACKGROUND

1. PWW has filed a motion arguing that the Commission's procedural rules and schedule forever prohibit Nashua from supplementing its original testimony submitted on November 22, 2004, in which Nashua stated that it intended to contract out the operation and management oversight of its water system to skilled operating companies.
2. This is the third time PWW has filed a motion making essentially this argument in this proceeding since September 6 of this year.¹ Its argument gains no weight by repetition however, and, as set forth herein, the

¹ See *Motion for Summary Judgment* filed September 6, 2005, and a *Motion for Leave to Respond* and *Reply to City of Nashua* filed October 18, 2005.

Commission should deny PWW's motion because it is inconsistent with the express provisions of RSA 38, the Commission's procedural rules and the Procedural Schedule.

II. PWW's ARGUMENT CONFLICTS WITH RSA 38

3. RSA 38:2 authorizes Nashua to *establish* a municipal water utility for the use of its inhabitants and others where none previously existed. 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 such a requirement into the statute would effectively require Nashua to begin its bid process, select an operator, negotiate a contract and prepare written testimony, all 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.
4. In the absence of statutory support for its position, PWW asks the Commission to read its procedural rules, specifically Puc 202.11 & 204.01, to require Nashua to have in place all of its technical and managerial qualifications included as exhibits with its Petition. As noted above, this would effectively require Nashua to either establish its own water department or complete a third-party bid process prior to any opportunity for discovery concerning PWW's water system, its property records and cost of operation and maintenance or other information. Such an argument would prohibit a

municipality from doing what RSA:38:2 expressly allows: establishing a municipal system where none previously existed by filing an RSA 38 Petition.

5. However, this is not a rate case where the party petitioning the Commission controls the information necessary for the Commission to make the rate determination. Nashua could not have known who its contractors would be when it filed the Petition. To require it to include this information in its pre-filed testimony would clearly frustrate the intent of RSA 38 and glorify procedural rules over substantive statutory presumptions and standards.
6. What should be apparent to the Commission is that PWW seeks to prevent the Commission from making the public interest determination with all the relevant information before it, or delay this proceeding in the hopes that it will accomplish at future polls what it failed to achieve in last November's elections.

III. PWW'S ARGUMENT CONFLICTS WITH PUC 204.01 (d)

7. PUC 204.01(d) provides that when "issues arise which were not reasonably anticipated by the Petitioner, the Commission shall allow the Petitioner to file supplemental testimony on the new or on anticipated issues".
8. Obviously Nashua anticipated that it would be contracting out operations and oversight when it filed its testimony on November 22, 2004. However, it certainly could not be anticipated who those entities would be, nor the terms and conditions of Nashua's operations, until the bids were submitted and analyzed and final contracts concerning those operations were negotiated.

9. As set forth in the Affidavit of Brian McCarthy submitted with Nashua's objection to PWW's motion for summary judgment, Nashua has acted diligently to pursue its contract operations and has provided timely responses to requests concerning the managerial and technical capability of its proposed contractors to PWW, staff, and the other parties. Under PUC 204.01(d) Nashua is entitled to supplement its testimony. To read the rule otherwise would render it meaningless.

IV. PWW'S MOTION CONFLICTS WITH THE PROCEDURAL SCHEDULE WHICH ALLOWS FOR ADDITIONAL TESTIMONY AND DISCOVERY CONCERNING THE PUBLIC INTEREST

10. The Procedural Schedule was established by the Commission on April 22, 2005. By this date Nashua had already filed its November 22, 2004 testimony setting forth clearly its intention to rely on the technical and managerial qualifications of its contract operators. That testimony noted that the City had already received expressions of interest for the day to day operations and maintenance of the system and its management oversight from 11 contractors, and that the City intended to have contracts in place when ownership transferred. By continuing to argue that Nashua's public interest case was complete on November 22, 2004 and that it should be barred from further testimony, PWW is attempting to deny Nashua the opportunity to present the evidence which has been contemplated since even before the Procedural Schedule was established.
11. The Procedural Schedule as revised provides for public interest testimony to be submitted at several dates subsequent to November 22, 2004 including:

October 14, 2005 (“Testimony by Nashua on ... public interest issues related to valuation”; “Testimony by Pennichuck and parties opposed to the taking, and neutral parties on technical, financial, and managerial capability and public interest”), January 13, 2006 (“Staff and OCA testimony on ... technical, financial, managerial capability and public interest”), and February 21, 2006 (“Reply testimony by PWW and Nashua on valuation and public interest”). In addition, the procedural schedule provided for “capstone testimony joining public interest and valuation issues” on May 19, 2006. These dates make it clear that testimony concerning the public interest aspects of Nashua’s Petition would continue well beyond November 22, 2004.

12. As Nashua stated in its Objection to PWW’s Motion for Summary Judgment, Nashua expects to have its operation and oversight contracts and testimony in place by January 12, 2006. The testimony will be subject to 2 rounds of data requests from any party on January 26 and February 27 and will be several months in advance of PWW’s May 22, 2006 Reply Testimony on the Public Interest and its Capsone Testimony joining Public Interest and Valuation on September 15, 2006. As a result, PWW’s motion to bar further testimony concerning the public interest concerning Nashua’s managerial and technical qualifications should be denied.

V. THE PROCEDURAL SCHEDULE SHOULD NOT BE DELAYED.

13. PWW seeks, as an alternative remedy, that the Procedural Schedule be adjusted to permit it to take discovery on Nashua’s public interest case prior to filing its own case. No delay in the Procedural Schedule is necessary.

14. As noted above, following the submission of Nashua's January 12, 2006 testimony, the parties are entitled to conduct 2 rounds of discovery concerning such testimony. Thereafter, on May 22, 2006 both parties can submit Reply Testimony on public interest and, on September 15, 2005, Capstone Testimony joining Public Interest and Valuation. The Procedural Schedule as it currently exists provides ample opportunity for PWW to conduct discovery and to submit additional testimony concerning any public interest testimony filed by Nashua on January 12, 2006.
15. The only purpose in adjusting the Procedural Schedule is to delay this Docket in the hopes that the politics of Nashua will change and the City will withdraw its Petition. The Procedural Schedule was established for the "orderly review of this Docket", Order No. 24,457. It was not intended to be used as a weapon to preclude the opportunity to present evidence or to delay and disrupt the proceeding to try to achieve some hoped for advantage.

WHEREFORE, Nashua respectfully objects to the Motion and requests

Commission:

- a. Deny PWW's Motion to Bar Testimony and For Extension of the Procedural Schedule; and
- b. Grant such other and further relief as justice may require.

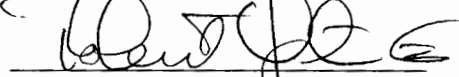
Dated: December 15, 2005

Respectfully submitted,

CITY OF NASHUA

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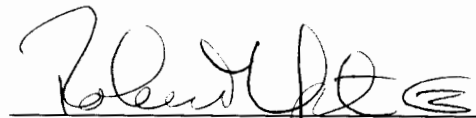
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CERTIFICATION

I hereby certify that a copy of the foregoing Objection to Pennichuck Water works Inc.'s Motion to Bar Testimony and for Extension of Procedural Schedule was this day forwarded to all persons on the attached Service List.



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Docket #: 04-048-1 Printed: December 15, 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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