

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

Docket No.: DW 04-048

MOTION TO STRIKE TESTIMONY OF DONALD WARE

NOW COMES the City of Nashua (“Nashua”) and moves to strike the testimony of Donald Ware, President of Pennichuck Water Works, Inc (“Pennichuck”) on the grounds that he has provided material false testimony concerning Pennichuck’s use of Computerized Maintenance Management Systems (“CMMS”), and in support hereof states as follows:

1. On February 27, 2007, Donald Ware filed testimony arguing that Veolia Water North America, the company selected by the City of Nashua to operate the water system to be acquired as a result of this proceeding, would gain “no operating efficiencies” as a result of its use of CMMS. Mr. Ware stated:

CMMS - In its proposal to Nashua, Veolia touted its use of a computerized maintenance management system ("CMMS") as a tool that would make their operations efficient. **PWW has used a CMMS package for over five years so Veolia will gain no “operating efficiencies” over Pennichuck’s current operations by using a CMMS.**¹

2. Nothing in Mr. Ware’s testimony suggests that he is unfamiliar with CMMS, Veolia’s proposal to Nashua, or “Pennichuck’s current operations by using a CMMS.” Rather, he fully intended that the Commission accept his testimony as true and accurate and based on his experience.

¹ Exhibit 3014, Page 6, Line 1-6.

3. His reference to Veolia's "proposal to Nashua" and the use of CMMS "to make their operations more efficient" was calculated to be a direct comparison of the CMMS program used by Veolia Water, commonly called Synergen, to Pennichuck's current CMMS capabilities.
4. Yet, when asked about Pennichuck's use of Synergen, its work order system, Mr. Ware claimed to have little or no knowledge of the system. See generally, *Affidavit of Stephen Siegfried*, filed herewith in support of this motion. Mr. Ware later would confide to Stephen Siegfried that his testimony concerning CMMS package, OPS 32, was "a mistake" that he did not intend to correct. *Id.*
5. OPS 32 does not even remotely resemble a CMMS program. It performs no maintenance analysis. Furthermore, as Mr. Ware testified on cross examination, the alleged CMMS program used by Pennichuck, whether OPS 32, MP2 or some other program, contains limited or no information related to basic maintenance costs such as labor and inventory, let alone the information required for analysis of life cycle costs, asset criticality, or other information required to implement a CMMS program comparable to that described in Veolia Water's proposal to Nashua and required under its OM&M Agreement.
6. Mr. Ware's testimony is the either result of (a) the fact that his knowledge of CMMS is so limited that he cannot even remember the name of the CMMS program used by Pennichuck, its capabilities, and the bare minimum information necessary to implement CMMS (i.e. maintenance cost information); or (b), more troublingly, his realization based on Nashua's re-direct of Veolia on September 7, 2007, that Nashua intended to cross examine him concerning a Staff Audit Report

subsequent to his testimony concluding that Pennichuck had spent over \$600,000 dollars to implement a CMMS/work order system that has failed dismally.

7. For example, the Commission staff has described Pennichuck's use of its Synergen work order system in its October 28, 2004 Audit Reports as "not being efficiently or effectively used for the purpose intended";² "does not meet all of the NH PUC Uniform System of Accounts requirements";³ contains cost information that is "in most cases meaningless";⁴ and "needs improvement".⁵ In its February 2, 2007 Audit Report, despite Pennichuck's representation that these deficiencies were corrected in October 2004,⁶ staff again concluded that "as in the prior audit, [the work order summaries in Synergen] do not reflect the information in a manner that is useful";⁷ and that "the Company should review their costs to date for the Synergen system (in excess of \$600,000) as that system does not appear to be used and useful to the extent reported or anticipated."⁸
8. Exclusion of Mr. Ware's testimony concerning CMMS is appropriate under either scenario. For Mr. Ware to argue in his February 27, 2007 pre-filed testimony that "PWW has used a CMMS package for over five years so Veolia will gain no "operating efficiencies" over Pennichuck's current operations by using a CMMS"⁹ requires that Mr. Ware actually understand the programs being used. Yet, under cross examination, he indicated that he was unqualified to offer an opinion on those efficiencies.

² Affidavit, Attachment 2, Page 6.

³ Affidavit, Attachment 2, Page 45.

⁴ Affidavit, Attachment 2, Page 45

⁵ Affidavit, Attachment 2, Pages 45 & 46.

⁶ Affidavit, Attachment 2, Page 46.

⁷ Affidavit, Attachment 3, Page 7.

⁸ Affidavit, Attachment 3, Page 7.

⁹ Exhibit 3014, Page 6, Lines 1-6.

- Q. So, Mr. Ware, your company spent over \$600,000 using Synergen. What are you using it for?**
- A. I am probably not the best person to answer that.** Mrs. Hartley is very familiar with the Synergen program. But, so, I think it would -- that would be better directed to her. I could give you --
- MR. CAMERINO: Mr. Chairman, could we just take one minute off the record, so I could confer with Mr. Upton?
- CHAIRMAN GETZ: Please.
- (Whereupon Atty. Camerino and Atty. Upton conferred and a brief off-the-record discussion ensued.)
- CHAIRMAN GETZ: Mr. Richardson.
- MR. RICHARDSON: Thank you, Mr. Chairman.
- BY MR. RICHARDSON:
- Q.** So, Mr. Ware, I just want to make sure we're absolutely clear on this. It's your opinion that the OPS32 system you've referred to is a work order system?
- A.** Yes, Mr. Richardson. The program develops work orders that our people complete in the field, and then bring it back. And, then, that information out of the OPS32 work order program that was generated out of there is then entered into Synergen for purposes of developing our final financials.
- Q. And, as the Chief Engineer, you indicated you're not familiar with how the Synergen system is being used?**
- A. That is correct.**
- Q.** And, this is a system that the Company spent over \$600,000 implementing?
- A.** Yes. We have IT staff that works with our administrative staff that oversees our IT operations and makes those decisions.
- Q.** I'm just asking you about the money. I wasn't asking you about who does what.
- CHAIRMAN GETZ: Well, I think it's fair for him to explain his answer here. Are you finished, Mr. Ware?
- THE WITNESS: Yes, I am. Thank you.

9. As shown above, despite Mr. Ware's pre-filed written testimony that Veolia Water will gain no "operating efficiencies" using Synergen because "Pennichuck has used a CMMS package for over five years"¹⁰ he apparently does not consider himself qualified to answer the question "What are you using it [Synergen] for?" and on cross examination testified that was "not familiar with how the Synergen system is being used[.]"

¹⁰ Exhibit 3014, Page 6, Lines 1-6.

10. Even more revealing, Mr. Ware testified on cross examination that the CMMS program used by Pennichuck does not contain even basic maintenance information such as the costs of labor and inventory.¹¹

Q. Mr. Ware, I want to ask you some questions about the OPS32 system. Is that a system that Pennichuck uses to produce schedules of predictive and preventative maintenance that's required?

A. Yes, it is.

Q. Okay. And, does it record the staff hours spent performing those maintenance activities?

A. No, it does not.

[...]

Q. Okay. And, does it track your inventory?

A. No, it does not.

11. As a result, his February 27, 2007 testimony that the “CMMS package” used by Pennichuck “over five years” would produce the same “operating efficiencies” is fundamentally at odds with the facts.

12. The admitted material errors and misrepresentations in Mr. Ware’s prevented the City of Nashua from fully cross-examining Mr. Ware on Pennichuck’s inability to manage maintenance costs. Had Mr. Ware testified correctly that the CMMS work order package used by Pennichuck is Synergen, or that OPS 32, MP2, or perhaps some other package, is not a functional CMMS program, Nashua expected to use this information to demonstrate that Pennichuck’s costs for unplanned maintenance are unreasonable.

13. However, by providing material and inaccurate testimony concerning Pennichuck’s \$600,000+ failure to implement a CMMS program, Mr. Ware

¹¹ September 11, 2007, Hearing Transcript, Pages 66-67; see also, generally, Affidavit of Stephen Siegfried.

denied Nashua the ability to show on the record that Pennichuck's unreasonable costs are the result of its failure to implement proper management practices such as CMMS and Synergen.

14. Whether this was done because Mr. Ware is simply unqualified to testify concerning CMMS, or because he sought to avoid scrutiny of the company's mismanagement, matters not. In either case, exclusion or disqualification of his testimony concerning CMMS is appropriate.

WHEREFORE, Nashua respectfully requests that the Commission:

- A. Grant this *Motion to Strike the Testimony of Donald Ware* concerning CMMS and strike the Testimony of Donald Ware concerning CMMS, specifically, Exhibit 3014, Page 11, Lines 1-6; and the Commission's Hearing Transcript for September 11, 2007, beginning at Page 54, Line 9 to Page 57, Line 16; or
- B. Disqualify Donald Ware as an expert qualified to testify concerning CMMS, affording his testimony no weight; and
- C. Grant such other relief as justice may require.

Respectfully submitted,

CITY OF NASHUA
By Its Attorneys
UPTON & HATFIELD, LLP

Date: September 25, 2007

By: 
Justin C. Richardson, Esq.
10 Centre St., P.O. Box 1090
Concord, NH 03301-1090
(603) 224-7791

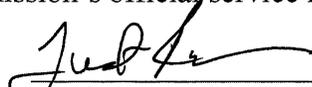
Robert Upton, II, Esq.
23 Seavey St., P.O. Box 2242
North Conway, NH 03860
(603) 356-3332

David Connell, Esq.
Corporation Counsel
229 Main Street
Nashua, NH 03061-2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent this day by e-mail and first class mail to all persons on the Commission's official service list in this proceeding.

Date: September 25, 2007



Justin C. Richardson, Esq.