

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

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

DW 04-048

**REQUEST FOR ISSUANCE OF SUBPOENAS**  
**PURSUANT TO ORDER No. 24,486**

The City of Nashua (“Nashua”) respectfully requests that the Executive Director issue subpoenas for the deposition of witnesses pursuant to the Commission’s Order No. 24,486 issued in this proceeding on July 8, 2005. In support of this request, Nashua states as follows:

1. Nashua sought depositions of certain Pennichuck witnesses as set forth in its April 25, 2006 *Request for Issuance of Subpoenas pursuant to Order No. 24,486*.

Exhibit A.

2. On May 15, 2006, Hearings Examiner Donald Kries held a technical conference at which Pennichuck offered to make available the following witnesses for deposition: Bonnie Hartley, Don Ware, Chris Stala, John Joyner, R. Kelly Myers, Eileen Pannetier, Donald Correll, Steve Densberger and Daniel Incropera. The parties further agreed to extend the date for completion of the deposition to July 28, 2006. Based on this representation, Nashua withdrew its April 25, 2006 Request. Exhibit B.

3. On May 24, 2006, Nashua provided a list of dates for depositions and asked Pennichuck to identify “who is available for depositions on any of those dates?” Exhibit C. On June 2, 2006, Nashua requested dates for Pennichuck witnesses Myers,

Joyner and Pannetier, noting that “Rob is handling the other depositions and I understand he has contacted you in that regard, though I don't know offhand the dates he has already set.” Exhibit D.

4. On June 6, 2006 Pennichuck agreed to make certain witnesses available (Pannetier and Meyers) and to produce Joyner after July 18, 2006. Exhibit D.

Pennichuck did not make available the remaining witnesses subject to the May 15, 2006 agreement (Ware, Stala, Correll and Densberger). Rather, Pennichuck’s counsel, on June 13, 2006, stated that he had “been nice in letting you dominate the depo demands for a change, but I haven’t forgotten that I still need [to depose] Ashcroft and Tomashosky. Please help me with dates.” Exhibit D.

5. Mindful of the Commission’s directive that parties cooperate concerning depositions, Nashua accommodated Pennichuck’s request for depositions and made Mr. Tomashosky and Ashcroft on August 15 and 29, respectively. In addition, Nashua made two witnesses available on July 11 to 13: George E. Sansoucy, P.E. and Glenn C. Walker.

6. As a result, pursuant to the agreement between the parties on May 15, 2006 the following depositions were conducted by Nashua:

<u>Deponent:</u>	<u>Date:</u>
Bonnie Hartley	June 20, 2006
Daniel Incropera	June 20, 2006
Eileen Pannetier	June 14, 2006 and June 26, 2006
R. Kelly Meyers	June 26, 2006

7. While Nashua has cooperated to make numerous witnesses available for deposition as set forth herein and in Exhibit A, it has not received the same cooperation from Pennichuck. On August 3, 2006, Nashua renewed its request for the five remaining

Pennichuck witnesses Pennichuck had agreed to make available. Exhibit E. However, on August 7, 2006 Pennichuck simply responded that Nashua's request was too late, despite Pennichuck's prior representation that it would make these witnesses available, and Nashua's May 24, 2006 request and its numerous telephonic requests. Ironically, Pennichuck stated that "[i]f there had been a specific deposition request from Nashua outstanding as of July 31 that I had not been able to arrange before that date, then of course I would need to cooperate with you to get it scheduled. That is not the case, however." Exhibit F.

8. By letter, also dated August 7, 2006, Nashua reminded Pennichuck of its many requests for dates to conduct the depositions which the Company had failed to provide and its agreement to produce John Joyner after July 18, 2006. Exhibit G.

9. By letter dated September 13, 2006, Nashua sought dates for the three final witnesses, based on several telephonic conferences and an off-the-record discussion during the deposition of Mr. Tomashosky that Pennichuck might make a limited number of witnesses available. Exhibit H.

10. However, on October 11, 2006, almost a month later, Pennichuck responded that it would not produce any of the witnesses, stating: "As to the deposition requests, I have checked in again with my client and our position has not changed since my August 7 letter to Rob Upton. We are not agreeable to depositions past the July 28, 2006 deadline. As to the Barr-Devlin witnesses, its team members have left the company. The correct former employee witness would be Frank J. Setian. I have spoken and written to him, but he has not responded to my requests." Exhibit I.

11. Pennichuck's refusal to produce the remaining witnesses and its argument that Nashua's request was not specific and too late are contrary to the communications between the parties and represent the latest effort by the Company to deny Nashua the opportunity to seek discovery that is relevant and the due process opportunity to obtain and present evidence concerning its Petition

12. By failing to produce the requested witnesses for deposition, and by forcing Nashua to divert its time and energy from the preparation of its case to make this Request, Pennichuck has fundamentally failed to comply with the Commission's Order No. 24,486 which urged the parties to "move forward in an amicable, cooperative manner to take the depositions of witnesses by agreement of the parties."

WHEREFORE, Nashua respectfully requests that the Commission and, as authorized by Order No. 24,486, the Executive Director:

- A. Grant this request for the issuance of subpoenas pursuant to Order No. 24,486;
- B. Order Pennichuck Water Works, Inc., to make Don Ware, Steve Densberger and Chris Stala (or Frank J. Setian ) available for depositions prior to November 17, 2006;
- C. Find Pennichuck Water Works, Inc., in violation of Order No. 24,486; and
- D. Grant such other relief as justice may require.

Respectfully submitted,

**CITY OF NASHUA**

By Its Attorneys

**UPTON & HATFIELD, LLP**

Date: November 1, 2006

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229 Main Street  
Nashua, NH 03061-2019

**CERTIFICATION**

I hereby certify that a copy of the foregoing was this day forwarded to all persons on the Commission's official service list in the above proceedings.

Date: November 1, 2006

Justin Ruhl Esq.  
Robert Upton, II, Esquire

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

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

DW 04-048

**REQUEST FOR ISSUANCE OF SUBPOENAS**  
**PURSUANT TO ORDER No. 24,486**

The City of Nashua (“Nashua”) respectfully requests that, pursuant to the Commission’s Order No. 24,486 issued in this proceeding on July 8, 2005, the Executive Director issue subpoenas for the deposition of witnesses as set forth in Exhibit A to this Request. In support of the request, Nashua states as follows:

**I. INTRODUCTION AND BACKGROUND**

1. Order No. 24,486, dated July 8, 2005, established of a procedure for the taking of depositions. In that Order the Commission urged the parties to “to move forward in an amicable, cooperative manner to take the depositions of witnesses by agreement of the parties. [...] Parties shall use the best efforts to produce for deposition, upon request witnesses employed by a party or under a contractual relationship with a party relating to this proceeding.”<sup>1</sup>
2. By agreement as contemplated by Order No. 24,486, Nashua and other parties in this proceeding have already allowed Pennichuck to conduct 16 depositions on issues related to public interest.<sup>2</sup> Pennichuck has further advised Nashua that it

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<sup>1</sup> Order No. 24,486, pages 3 & 4.

<sup>2</sup> Fifteen witnesses are identified in Nashua’s March 27, 2006 *Objection to Pennichuck’s Motion to Compel* filed in this proceeding. In addition, Nashua made Ruth E. Raswyck for a deposition in April 2006.

## EXHIBIT A

- will seek additional depositions. Nashua has fully cooperated with Pennichuck and produced the witnesses under its control.<sup>3</sup>
3. Prior to January 12, 2006 and February 27, 2006, Pennichuck had not submitted any testimony in this proceeding. Nashua had requested on May 10, 2005 that Pennichuck identify witnesses it intended to call in this proceeding. However, Pennichuck asserted that “disclosure of its expert witnesses [...] *is not yet due under the procedural schedule approved in this docket.*” See Exhibit B, Pennichuck’s Objections and Responses to Nashua’s May 10, 2005 Data Requests 1-66 through 1-71 (emphasis added). As a result, Nashua had no opportunity to discover the identity of any public interest or other witnesses that Pennichuck would call prior to its January 12 and February 27, 2006 testimony.
  4. On March 29, 2006 and April 7, 2006, Nashua requested the opportunity to depose witnesses related to Pennichuck’s public interest case, including those included in its January 12 and February 27, 2006 public interest testimony. However, rather than cooperate and produce the requested witnesses by agreement as contemplated by Order No. 24,486, Pennichuck asserted for the first time that the witnesses identified in its January 12 and February 27, 2006 public interest testimony are not subject to depositions under the Commission’s procedural schedule. See Exhibit C, attached.<sup>4</sup>
  5. As a result of Pennichuck’s objections set forth in Exhibits B and C attached hereto, Pennichuck has used objections to relevant data requests and unresponsive

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<sup>3</sup> Nashua has not agreed to allow depositions with respect to the financial models used by its operations contractor, Veolia Water North America, to set its bid price. Pennichuck has filed a motion to compel disclosure of this information that is pending before the Commission.

<sup>4</sup> A copy of the April 7, 2006 letter is attached as “Exhibit C”.

## EXHIBIT A

answers to data requests (Exhibit B) and now the procedural schedule (Exhibit C) to evade all depositions related to its public interest case.

6. Contrary to the Commission's request that the parties "move forward in an amicable, cooperative manner to take the depositions of witnesses by agreement", it in fact has not produced a single witness for deposition regarding its public interest case.
7. Because Pennichuck has failed to cooperate to produce any of its witnesses as ordered by the Commission, Nashua requests that the Executive Director issue subpoenas for the depositions of the witnesses as set forth in Exhibit A; and further that the Commission find that: (a) Pennichuck failed to cooperate to produce witnesses relative to its January 12 and February 27, 2006 testimony as required by Order No. 24,457; and (b) impose appropriate sanctions for Pennichuck's failure to comply with the Commission's order.

### **II. ISSUANCE OF SUBPOENAS BY THE COMMISSION IS APPROPRIATE BECAUSE PENNICHUCK HAS FAILED COOPERATE TO MAKE WITNESSES AVAILABLE BY AGREEMENT.**

#### **A. THE PROCEDURAL SCHEDULE IS INTENDED TO PROVIDE FOR DEPOSITIONS BASED ON THE DATES FOR FILING OF TESTIMONY**

8. The Procedural Schedule in this proceeding was originally established on April 22, 2005 by Order No. 24,457. In September 2005, Nashua and Pennichuck negotiated a three month extension of the procedural schedule, approved by the Commission by secretarial letter dated October 3, 2005. By secretarial letter dated January 11, 2006, the Commission amended the procedural schedule and expressly recognized Nashua's right to file the testimony of its oversight and operations contractors.

## EXHIBIT A

9. The procedural schedule was intended to “aid in the orderly review of this Docket”.<sup>5</sup> Nothing in Order No. 24,457 or the subsequent orders of the Commission suggests that the procedural schedule was intended to give Pennichuck the right to a particular form of discovery while denying it to Nashua.
10. The dates for completing depositions were intended to follow the dates for submission of testimony by each party. For example, in recognition of the fact that Nashua had already submitted its initial public interest testimony,<sup>6</sup> Order No. 24,457 (issued April 22, 2005) set April 22, 2005 as the date for submission of public interest testimony and required that depositions be completed on August 29, 2005 “on technical, financial, and managerial capabilities and public interest issues”.
11. Similarly, the Commission required that testimony concerning “valuation and public interest issues dependent on valuation” be submitted on October 14, 2005 but required that depositions concerning “valuation issues” be completed 175 days later on April 7, 2006.<sup>7</sup>
12. The procedural schedule established by Order No. 24,457 allowed each party to submit data requests based on the testimony submitted by each party. For example, the schedule provided that following submission of Nashua’s testimony on “valuation and public interest issues dependent on valuation” on October 14, 2005, Pennichuck could submit several rounds of data requests related to that testimony and conduct depositions related thereto.

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<sup>5</sup> Order No. 24,457, page 5.

<sup>6</sup> Nashua’s initial public interest testimony was filed on November 22, 2004. See Order No. 24,379.

<sup>7</sup> As noted above, these dates were subsequently amended, as reflected in the Commission’s October 3, 2005 secretarial letter.

## EXHIBIT A

### **B. PENNICHUCK FAILED TO IDENTIFY ITS PUBLIC INTEREST WITNESSES PRIOR TO JANUARY 12, 2006.**

13. On May 3, 2005, in accordance with the procedural schedule, Nashua submitted data requests 1-66 through 1-71 requesting that Pennichuck identify the witnesses that would testify on its behalf in this proceeding. Pennichuck objected to Nashua's request stating that, inter alia, that "PWW and PC further object on the basis that the request seeks disclosure of its expert witnesses, *which is not yet due under the procedural schedule approved in this docket.*"<sup>8</sup> (emphasis added).
14. Pennichuck did not identify any witnesses in response to Nashua's request and never identified any expert or other witnesses prior to filing its January 12 and February 27, 2006 testimony. As a result, prior to the filing of Pennichuck's testimony, Nashua has had no opportunity to discover the identity of the public interest or valuation witnesses it would use to support its case.
15. In fact, the first testimony submitted by Pennichuck in this proceeding *on any issue* was not submitted until January 12, 2006. Given Pennichuck's responses and objections that it was not required to identify its witnesses until the filing of its testimony, Nashua had no knowledge of the positions Pennichuck would take on public interest or other issues.
16. To read the Procedural Schedule to require Nashua to have completed its depositions on public interest months prior to the submission of Pennichuck's public interest testimony is both erroneous and absurd. More importantly, it has forced Nashua to file this request seeking the issuance of subpoena's by the Commission in lieu of its other obligations in this and other proceedings such as

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<sup>8</sup> See Exhibit A – Pennichuck Water Works et al, objections and responses to data requests (excerpts).

## EXHIBIT A

- preparing rebuttal testimony and data requests as set forth in the procedural schedule.
17. To use the Procedural Schedule as a substantive weapon to deny Nashua the opportunity to seek discovery that is relevant to the proceedings, or reasonably calculated to lead to the discovery of admissible evidence, would frustrate the interests of justice and the purposes of RSA 38 and more importantly deny to Nashua the due process opportunity to obtain and present evidence concerning its Petition.
  18. The depositions Nashua seeks on public interest are clearly within the scope of Superior Court Rule 35 (b)(1).<sup>9</sup> Exhibit A, attached hereto, shows that seven (7) of the public interest depositions sought by Nashua are for witnesses that have already submitted public interest testimony in this proceeding on behalf Pennichuck on January 12 and/or February 27, 2006. Seven (7) additional witnesses are sought related to Pennichuck's public interest case as set forth in Exhibit A.

### III. REMEDY

19. By first refusing to identify its witnesses prior to their testimony under the procedural schedule and subsequently arguing that depositions are not allowed under the procedural schedule, Pennichuck has fundamentally failed to comply with the Commission's Order No. 24,486 which urged the parties to "move forward in an amicable, cooperative manner to take the depositions of witnesses by agreement of the parties."

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<sup>9</sup> Order No. 24,486 incorporated the standards for depositions under Superior Court Rule 35(b).

## EXHIBIT A

20. Pennichuck has further violated Order No. 24,486 insofar that it specifically ordered that: “Parties shall use the best efforts to produce for deposition, upon request witnesses employed by a party or under a contractual relationship with a party relating to this proceeding.”<sup>10</sup>
21. The Commission should not allow procedural trickery and abuse to continue unchecked. Nashua and other parties have made some 16 witnesses available for deposition by Pennichuck related to public interest issues.<sup>11</sup> Nashua consented to the procedures set forth in Order No. 24,486 and in the procedural schedule with the understanding that it would have the opportunity to present its case at the appropriate opportunity. Pennichuck argument essentially asks the Commission to approve of tactics that are fundamentally an attempt to deny Nashua an equal opportunity to present its case through procedural trickery, rather than on the merits.
22. By forcing Nashua to prepare and file this request seeking issuance of subpoenas by the Commission in lieu of its other obligations in this and other proceedings such as preparing its case and rebuttal testimony due May 22, 2006 in accordance with the procedural schedule. Given the complexity of issues to be presented in this case, it is appropriate for the Commission to sanction Pennichuck’s failure to cooperate to make witnesses available for deposition in compliance with Order No. 24,486.

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<sup>10</sup> Order No. 24,486, Pages 3-4.

<sup>11</sup> Fifteen witnesses are identified in Nashua’s March 27, 2006 *Objection to Pennichuck’s Motion to Compel* filed in this proceeding. In addition, Nashua made Ruth E. Raswyck for a deposition in early April 2006.

## EXHIBIT A

23. Nashua therefore requests that the Commission find Pennichuck in violation of Order No. 24,486 but suspend consideration of any penalties pending Pennichuck's making witnesses available for deposition as set forth in Exhibit A.
24. Nashua further requests that the Commission grant an appropriate extension for Nashua to complete depositions based on the Pennichuck's March 27, 2006 and April 7, 2006 refusal to make public interest witnesses available.

**EXHIBIT A**

WHEREFORE, Nashua respectfully requests that the Commission and, as authorized by Order No. 24,486, the Executive Director:

- A. Grant this request for the issuance of subpoenas pursuant to Order No. 24,486;
- B. Order Pennichuck Water Works, Inc., to make the individuals available for depositions as set forth in Exhibit A;
- C. Find Pennichuck Water Works, Inc., in violation of Order No. 24,486; and
- D. Grant such other relief as justice may require.

Respectfully submitted,

**CITY OF NASHUA**  
By Its Attorneys  
**UPTON & HATFIELD, LLP**

Date: April 25, 2006

By: 

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

**CERTIFICATION**

I hereby certify that a copy of the foregoing was this day forwarded to all persons on the Commission's official service list in the above proceedings.

Date: April 25, 2006

  
Justin C. Richardson, Esquire

**EXHIBIT A**

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

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

DW 04-048

**EXHIBIT A TO NASHUA'S REQUEST FOR ISSUANCE OF  
SUBPOENAS PURSUANT TO ORDER No. 24,486**

<u>Name of Witness</u>	<u>Date of Deposition</u>	<u>Rule 35 Relevance</u>
Bonnie Hartley	May 29, 2006 or by agreement.	*
Don Ware	June 30, 2006 or by agreement.	*
William Patterson	May 29, 2006 or by agreement.	CFO. Public interest and valuation question regarding finances.
Steve Densberger	June 2, 2006 or by agreement.	Public interest, including Pennichuck's contract operations and other issues.
Maurice Arel	June 2, 2006 or by agreement.	Former CEO. Valuation and public interest, including Pennichuck's efforts to sell its stock and/or assets and other issues.
Chuck Staub	June 5, 2006 or by agreement.	Former CFO. Valuation and public interest, including Pennichuck's efforts to sell its stock and/or assets and other issues.
Chris Stala	June 8, 2006 or by agreement	SG Barr Devlin. Valuation and public interest, including Pennichuck's efforts to sell its stock and/or assets and other issues.
John Joyner	June 20, 2006 or by agreement.	*

## EXHIBIT A

R. Kelly Myers	June 7, 2006 or by agreement.	*
Greg Clukey	June 5, 2006 or by agreement.	Public interest, including Pennichuck's efforts to use Smartwater.org to create the impression that disinterested members of the public opposed Nashua's petition.
Jack Heath	June 12, 2006 or by agreement.	Public interest, including Pennichuck's efforts to use Smartwater.org to create the impression that disinterested members of the public opposed Nashua's petition.
Eileen Pannetier	June 15, 2006 or by agreement.	*
Douglas Patch	June 27, 2006 or by agreement.	*
Donald Correll	July 5-6, 2006 or by agreement.	*

### NOTES

(\*) Indicates a Pennichuck witness that has already submitted public interest or valuation testimony in this proceeding.

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Objection to City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-66

Date of Objection: May 13, 2005

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REQUEST: State the names, addresses, telephone numbers and occupations of any expert witness you have consulted, will have testify or have available to testify with respect to this docket. State the qualifications, educational background and employment for the past ten years of any expert you have consulted, will have testify or will have available to testify with respect to this docket. Identify all water companies, or water company assets which may have been appraised by any such expert and attach copies of such appraisals.

OBJECTION: See general objections. PWW and PC further object on the basis that the request seeks the disclosure of its expert witnesses, which is not yet due under the procedural schedule approved in this docket.

**EXHIBIT A**

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Objection to City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-67

Date of Objection: May 13, 2005

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REQUEST: Attach copies of any appraisal, valuation, opinion or any other document provided to Pennichuck or PWW by any of the experts identified.

OBJECTION: See objection to Request 1-66.

**EXHIBIT A**

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Objection to City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-68

Date of Objection: May 13, 2005

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- REQUEST:            If the experts listed above hold any certificates or licenses in their field of expertise, state where and when they were acquired and attach copies thereof.
- OBJECTION:        See objection to Request 1-66.

**EXHIBIT A**

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Objection to City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-69

Date of Objection: May 13, 2005

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REQUEST:            If the experts identified above have published any articles on, held any lectures on, or otherwise have intellectually or practically expounded on the subject of their expertise, state where and when and attach copies thereof.

OBJECTION:        See objection to Request 1-66.

**EXHIBIT A**

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Objection to City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-70

Date of Objection: May 13, 2005

- 
- REQUEST:           State the number of times each expert identified above has been retained as an expert in questions involving their field of expertise and the names of cases, as well as locations and dates when testimony in court has been given. Also state in each case, by whom each expert was retained.
- OBJECTION:        See objection to Rcquest 1-66.

**EXHIBIT A**

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Objection to City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-71

Date of Responsc: May 13, 2005

- 
- REQUEST: State the names and addresses of all experts who have been retained or specially employed by you and who are not expected to be called as witnesses at trial.
  - OBJECTION: See general objection.

**EXHIBIT A**

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

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Responses to  
City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-66

Date of Response: June 10, 2005  
Witness: Donald L. Correll

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**REQUEST:** State the names, addresses, telephone numbers and occupations of any expert witness you have consulted, will have testify or have available to testify with respect to this docket. State the qualifications, educational background and employment for the past ten years of any expert you have consulted, will have testify or will have available to testify with respect to this docket. Identify all water companies, or water company assets which may have been appraised by any such expert and attach copies of such appraisals.

**RESPONSE:** Pennichuck and PWW incorporate the Objections into this response.

**EXHIBIT A**

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

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Responses to  
City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-67

Date of Response: June 10, 2005  
Witness: Donald L. Correll

---

REQUEST: Attach copies of any appraisal, valuation, opinion or any other document provided to Pennichuck or PWW by any of the experts identified.

RESPONSE: Pennichuck and PWW incorporate the Objections into this response.

**EXHIBIT A**

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

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Responses to  
City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-68

Date of Response: June 10, 2005  
Witness: Donald L. Correll

---

**REQUEST:** If the experts listed above hold any certificates or licenses in their field of expertise, state where and when they were acquired and attach copies thereof.

**RESPONSE:** Pennichuck and PWW incorporate the Objections into this response.

**EXHIBIT A**

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

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Responses to  
City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-69

Date of Response: June 10, 2005  
Witness: Donald L. Correll

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**REQUEST:** If the experts identified above have published any articles on, held any lectures on, or otherwise have intellectually or practically expounded on the subject of their expertise, state where and when and attach copies thereof.

**RESPONSE:** Pennichuck and PWW incorporate the Objections into this response.

**EXHIBIT A**

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

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Responses to  
City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-70

Date of Response: June 10, 2005  
Witness: Donald L. Correll

---

**REQUEST:** State the number of times each expert identified above has been retained as an expert in questions involving their field of expertise and the names of cases, as well as locations and dates when testimony in court has been given. Also state in each case, by whom each expert was retained.

**RESPONSE:** Pennichuck and PWW incorporate the Objections into this response.

**EXHIBIT A**

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

DW 04-048

Pennichuck Water Works, Inc. and Pennichuck Corporation's Responses to  
City of Nashua's First Set of Data Requests on Valuation

Date Request Received: May 3, 2005  
Data Request No.: Nashua 1-71

Date of Response: June 10, 2005  
Witness: Donald L. Correll

---

**REQUEST:** State the names and addresses of all experts who have been retained or specially employed by you and who are not expected to be called as witnesses at trial.

**RESPONSE:** Pennichuck and PWW incorporate the Objections into this response.

**McLane**

**McLane, Graf,  
Raulerson &  
Middleton**

*Professional Association*

NINE HUNDRED ELM STREET • P. O. BOX 326 • MANCHESTER, NH 03105-0326  
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OFFICES IN:  
MANCHESTER  
CONCORD  
PORTSMOUTH

April 7, 2006

***By Electronic and First Class Mail***

Robert Upton, II, Esquire  
Upton & Hatfield, LLP  
23 Seavey Street – P.O. Box 2242  
North Conway, NH 03860

**Re: City of Nashua: Taking of Pennichuck Water Works, Inc.  
Docket No. DW 04-048**

Dear Rob:

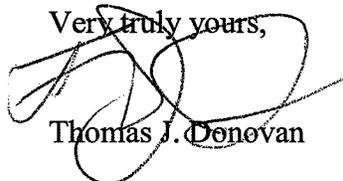
This letter is in response to your electronic mail of March 29, 2006 requesting a number of depositions of people identified with Pennichuck in one way or another.

You have asked to take the depositions of our three valuation witnesses, Messrs. Reilly, Walker, and Riethmiller, beginning with Reilly in early May. I will contact Joe Connor and those witnesses, and get back to you with dates.

Your request for fifteen other non-valuation depositions is another matter. The Commission's Order No. 24,457 approving the procedural schedule, as amended by secretarial letters dated October 3, 2005 and January 11, 2006, called for "depositions on valuation issues" to be completed by July 6, 2006. The time period for public interest depositions has long expired, except with respect to those depositions permitted to Pennichuck by way of the Commission's Order No. 24,567, dated December 22, 2005 and the continuation of prior depositions as previously noticed. Simply put, Nashua has no right to request or take public interest depositions at this point.

You also requested Mr. Guastella's deposition dealing with rates. While that is not a valuation issue *per se*, we will take under advisement your request for that deposition.

Very truly yours,



Thomas J. Donovan

TJD/dlp

**EXHIBIT B**

May 15, 2006

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

Re: Docket No. DW 04-048  
City of Nashua, RSA 38 Proceeding re Pennichuck Water Works

Dear Ms. Howland:

As directed by the Commission, I convened a discovery conference this morning in connection with the above-referenced proceeding. The subject was the pending request of petitioner City of Nashua for deposition subpoenas covering witnesses associated with respondent Pennichuck Water Works (PWW). Attending the conference were representatives of the City, PWW and Staff. Intervenor Claire McHugh also attended.

I am pleased to report that the participants were able to resolve the discovery dispute reflected in the City's request for subpoenas. Of the witnesses whose deposition the City sought (as reflected in Exhibit A to the City's written request), PWW has agreed to tender Bonnie Hartley, Don Ware, William Patterson, Steve Densberger, Chris Stala, John Joyner, R. Kelly Myers, Eileen Pennetier, Douglas Patch and Donald Correll. The City and PWW agreed to complete these depositions by Friday, July 28, 2006. The City agreed to forego the deposition of the other persons listed in Exhibit A.

Accordingly, it will not be necessary for the Commission to issue any subpoenas and you should treat the City's request for subpoenas as withdrawn. I am available at 603.271.6006 if there are any questions about the foregoing.

Sincerely,

Donald M. Kreis  
General Counsel

Cc: Service List

## EXHIBIT C

### Justin C. Richardson

---

**From:** Rob Upton  
**Sent:** Wednesday, May 24, 2006 10:03 AM  
**To:** 'tom.donovan@mclane.com'  
**Cc:** Justin Richardson  
**Subject:** depositions

Tom  
I know the valuation witnesses are not available until after the 2nd week of June so can we do some of the local people prior to that. I'm available 5/31, 6/6, 7, 13, 14, and 15. Would you check to see who is available on any of those dates? Thanks.

Rob

PS Are you going to the McLane reunion on Thursday? I'm hoping to be there.

**Justin C. Richardson**

---

**From:** TOM.DONOVAN@MCLANE.com  
**Sent:** Tuesday, June 06, 2006 3:29 PM  
**To:** Justin C. Richardson  
**Cc:** Robert Upton II; SARAH.KNOWLTON@MCLANE.com; STEVEN.CAMERINO@MCLANE.com  
**Subject:** RE: Depositions for Myers, Joyner, Pannetier

Ok. We'll do Joyner after 7/18.

-----Original Message-----

**From:** Justin Richardson [mailto:jrichardson@Upton-Hatfield.com]  
**Sent:** Tuesday, June 06, 2006 1:14 PM  
**To:** DONOVAN TOM; Justin Richardson  
**Cc:** Rob Upton; KNOWLTON SARAH; CAMERINO STEVEN  
**Subject:** RE: Depositions for Myers, Joyner, Pannetier

Tom:

1. The dates for Pannetier and Myers work for me, subject to no changes in my wife's due date (July 1).
2. I am a little concerned that the 6/28 date for Joyner is cutting things a little too close to July 1, however. I think we would be setting it up with a significant chance we would have to reschedule. Joyner's testimony gives a Bethesda Maryland address. I don't want to have him come up from Maryland only to cancel the day before or during his deposition. I suggest we do his deposition after July 18.
3. Half day for each should work, although we will need to start Ms. Pannetier no later than 1 PM to make sure we get through everything.

-Justin

Justin C. Richardson, Esq.  
Upton & Hatfield, LLP  
159 Middle Street  
Portsmouth, NH 03801  
Tel: 603-436-7046  
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jrichardson@upton-hatfield.com  
[www.upton-hatfield.com](http://www.upton-hatfield.com) <<http://www.upton-hatfield.com>>

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-----Original Message-----

**From:** TOM.DONOVAN@MCLANE.com [mailto:TOM.DONOVAN@MCLANE.com]  
**Sent:** Tuesday, June 06, 2006 11:28 AM  
**To:** jrichardson@Upton-Hatfield.com  
**Cc:** rupton@Upton-Hatfield.com; SARAH.KNOWLTON@MCLANE.com;

STEVEN.CAMERINO@MCLANE.com

**Subject:** RE: Depositions for Myers, Joyner, Pannetier

Justin, I can give you Eileen Pannetier the afternoon of Wed. 6/14; Myers the morning of 6/26; and Joyner the morning of 6/28. Can you do these all in half a day? We'll do them all here in Manchester. Tom

-----Original Message-----

**From:** Justin Richardson [mailto:jrichardson@Upton-Hatfield.com]

**Sent:** Friday, June 02, 2006 4:29 PM

**To:** DONOVAN TOM

**Cc:** Rob Upton; KNOWLTON SARAH; Justin Richardson; CAMERINO STEVEN

**Subject:** Depositions for Myers, Joyner, Pannetier

Tom:

I was not at the conference resolving the deposition issues, but I understand that Pennichuck has agreed to make Ms. Pannetier, R. Kelley Myers and Mr. Joyner available.

I can make myself available pretty much any day from June 12 to June 28. After that I will not be available until after mid-July. If you could let me know their availability I would greatly appreciate it. Rob is handling the other depositions and I understand he has contacted you in that regard, though I don't know offhand the dates he has already set.

If you have any questions, feel free to email or call me. I'll be on the road in a few minutes but in Portsmouth all day Monday.

-Justin

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**Justin C. Richardson**

---

**From:** TOM.DONOVAN@MCLANE.com  
**Sent:** Tuesday, June 13, 2006 6:33 PM  
**To:** Robert Upton II  
**Cc:** Justin C. Richardson  
**Subject:** Depos on June 20

Rob,  
Not sure that you have confirmed depositions of Hartley and Incropera for Tuesday, June 20. I assume that we are on. Also, I have been nice in letting you guys dominate the deposition demands for a change. But I haven't forgotten that I still need Ashcroft and Thomashosky. Please help me with dates.  
Tom

**Justin C. Richardson**

---

**From:** TOM.DONOVAN@MCLANE.com  
**Sent:** Thursday, June 15, 2006 9:07 AM  
**To:** Robert Upton II; Justin C. Richardson  
**Subject:** Pannetier Depo Continuation

Justin,  
Eileen is taking off on vacation soon. To get this done according to Justin's schedule, I think the only available mutual time would be on June 26th, after Kelly Myers. Can I confirm that with her?  
Tom

EXHIBIT C

Justin C. Richardson

---

**From:** Conner, Joe [jconner@bakerdonelson.com]  
**Sent:** Thursday, June 15, 2006 9:34 AM  
**To:** Robert Upton II  
**Cc:** tom.donovan@mclane.com; Justin C. Richardson  
**Subject:** RE: Walker depo

Rob, I can't do it on the 30th. Since we have July 11 and 12 for Sansoucy why don't we just do it then. I think I should be able to finish both of them over two days. If we do that, can you also reserve July 13th, just in case? I would also like to reserve some time to depose Munck and Smith. Depending on what Sansoucy and Walker say in their depositions, I may not need to depose Munck and Smith, but let's reserve some time just in case. I can stay over on the 13th and 14th. Please let me know.

Joe

-----Original Message-----

**From:** Rob Upton [mailto:rupton@Upton-Hatfield.com]  
**Sent:** Thursday, June 15, 2006 8:33 AM  
**To:** Conner, Joe  
**Cc:** 'tom.donovan@mclane.com'; Justin Richardson  
**Subject:** Walker depo

Joe

Glenn Walker just called and says he just can't be available the 29th but can do it on the 30th. Can we postpone the depo a day?

Rob

\*\*\*\*\*

Under requirements imposed by the IRS, we inform you that, if any advice concerning one or more U.S. federal tax issues is contained in this communication (including any attachments), such advice was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

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It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

\*\*\*\*\*

**Justin C. Richardson**

---

**From:** TOM.DONOVAN@MCLANE.com  
**Sent:** Tuesday, June 06, 2006 11:28 AM  
**To:** Justin C. Richardson  
**Cc:** Robert Upton II; SARAH.KNOWLTON@MCLANE.com; STEVEN.CAMERINO@MCLANE.com  
**Subject:** RE: Depositions for Myers, Joyner, Pannetier

Justin, I can give you Eileen Pannetier the afternoon of Wed. 6/14; Myers the morning of 6/26; and Joyner the morning of 6/28. Can you do these all in half a day? We'll do them all here in Manchester. Tom

-----Original Message-----

**From:** Justin Richardson [mailto:jrichardson@Upton-Hatfield.com]  
**Sent:** Friday, June 02, 2006 4:29 PM  
**To:** DONOVAN TOM  
**Cc:** Rob Upton; KNOWLTON SARAH; Justin Richardson; CAMERINO STEVEN  
**Subject:** Depositions for Myers, Joyner, Pannetier

Tom:

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If you have any questions, feel free to email or call me. I'll be on the road in a few minutes but in Portsmouth all day Monday.

-Justin

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[www.upton-hatfield.com](http://www.upton-hatfield.com)

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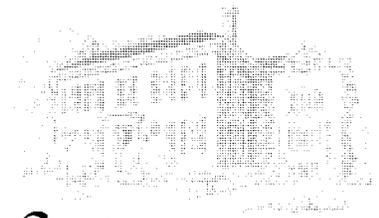
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& Hatfield<sup>LLP</sup>**  
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Margaret-Ann Moran  
Thomas T. Barry\*  
Bridget C. Ferns  
David P. Slawsky  
Heather M. Burns  
Matthew H. Upton  
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*Of Counsel*

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**Attorney At Law**  
Robert Upton, II

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Portsmouth, NH  
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603-436-7046  
Fax 603-431-7304

**Attorneys At Law**  
Russell F. Hilliard  
Justin C. Richardson

**Please respond to the Portsmouth office**

August 3, 2006

Thomas J. Donovan, Esq.  
McLane, Graf, Raulerson & Middleton, PA  
900 Elm Street  
PO Box 326  
Manchester, NH 03105

Re: City of Nashua; Petition for Valuation

Dear Tom:

I write regarding the dates and locations of the depositions of Msrs. Joseph Tomashosky and Philip Ashcroft as we discussed today and prior to the filing of Pennichuck Water Works recent Request for Appointment of Commissioners to Issue Subpoenas. I have made arrangements to have Mr. Tomashosky available on August 15 at Veolia Water North America – Northeast LLC’s regional office located in Metro South Executive Park, 1115 West Chestnut Street, Suite 102, Brockton, MA 02301. If you anticipate that you will be unable to complete the deposition within one day, please let me know as soon as possible. I also understand that you will make the necessary arrangements to have a stenographer present.

Veolia Water North America’s local counsel, Robert Arendell has asked to be present at both depositions. I learned today that he has a schedule conflict on August 24, 2006 and that you are unavailable on the 25<sup>th</sup> and 30<sup>th</sup>, the other two dates we proposed. I have asked Mr. Arendell and Ashcroft to supply me with alternate dates that I will forward to you no later than tomorrow or early next week.

Based on the foregoing, I would ask that you advise me as to whether Pennichuck intends to withdraw its request, as Nashua’s objection thereto is due next Friday. Finally, we still need to complete the depositions of several Pennichuck witnesses, including Donald Correll, Donald Ware, Steve Densberger, Chris Stala and John Joyner. If you could provide me with dates for those witnesses, I would greatly appreciate it.

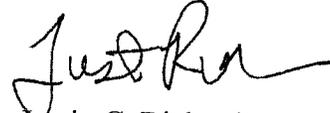
**EXHIBIT E**

August 3, 2006

Page 2

If you have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink that reads "Justin C. Richardson". The signature is written in a cursive style with a large initial "J" and "R".

Justin C. Richardson  
jrichardson@upton-hatfield.com

JCR/sem

cc: Robert Arendell, Esq.  
Robert Upton, II, Esq.  
Philip Ashcroft  
Joseph Tomashosky

**McLane**

McLane, Graf,  
Raulerson &  
Middleton

*Professional Association*

NINE HUNDRED ELM STREET • P.O. BOX 326 • MANCHESTER, NH 03105-0326  
TELEPHONE (603) 625-6464 • FACSIMILE (603) 625-5650

THOMAS J. DONOVAN  
(603) 628-1337  
tdonovan@mcLane.com

OFFICES IN:  
MANCHESTER  
CONCORD  
PORTSMOUTH

August 7, 2006

Justin C. Richardson, Esq.  
Upton & Hatfield, LLP  
159 Middle St.  
Portsmouth, NH 03801

VIA ELECTRONIC AND FIRST CLASS MAIL

Re: Nashua/Pennichuck – Depositions

Dear Justin:

Thank you for your letter of August 3<sup>rd</sup> and follow-up e-mail message of August 4<sup>th</sup> setting forth the status of the deposition scheduling for Messrs. Tomashosky and Ashcroft of Veolia. Upon confirmation from you that we are now confirmed for August 15 and 29, I will withdraw our request for appointment of commissioners with the Commission.

Your letter also seeks deposition dates for five individuals associated with Pennichuck in one way or another. Unfortunately, that request comes too late. At the discovery conference with Donald Kreis at the Commission on May 15, we made it very clear that our agreement to produce or cooperate in production of specific witnesses was tied to a limited extension – to July 28, 2006 -- of the prior July 6, 2006 procedural schedule deadline for conducting depositions. I was not happy that there would be any extension; Rob Upton was not happy that the extension was so limited. But with the assistance of Mr. Kreis, Rob and I agreed to that date. That agreement is noted in Mr. Kreis' letter to Ms. Howland of May 15. A review of my letter and e-mail correspondence thereafter shows that I have worked with you and Rob to make witnesses available within that time period. See, for instance, my e-mails of May 24, June 6,7, and 15.

As a result, I cannot agree to arrange for the production of those witnesses for depositions at this late date. If there had been a specific deposition request from Nashua outstanding as of July 28 that I had not been able to arrange before that date, then of course I would need to cooperate with you to get it scheduled. That is not the case, however.

**EXHIBIT F**

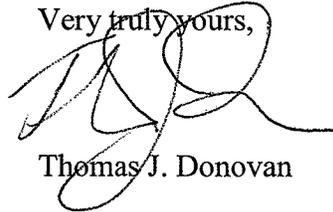
Justin C. Richardson, Esq.

August 7, 2006

Page 2

With the exception of the two Veolia depositions (that I have repeatedly sought since February), the deposition phase of the case has drawn to an end. It is time for us to prepare for the hearing in January.

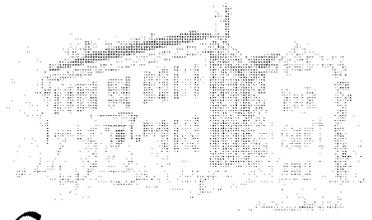
Very truly yours,

A handwritten signature in black ink, appearing to be 'TJD', written over the typed name 'Thomas J. Donovan'.

Thomas J. Donovan

TJD/t

# EXHIBIT G



**Upton  
& Hatfield** <sup>LLP</sup>  
ATTORNEYS AT LAW

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## Of Counsel

Frederic K. Upton

## Hillsborough Office

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## Attorneys At Law

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Justin C. Richardson

**Please respond to the Portsmouth office**

August 7, 2006

Thomas J. Donovan, Esq.  
McLane, Graf, Raulerson & Middleton, PA  
900 Elm Street  
PO Box 326  
Manchester, NH 03105

Re: City of Nashua; Petition for Valuation

Dear Tom:

I received your letter today concerning the remaining depositions and confirm that Mssrs. Tomashosky and Ashcroft will be available on August 15 and 29th, respectively.

I am troubled to learn that Pennichuck has again taken the position that it will not produce Mssrs. Correll, Ware, Densberger, Stala and Joyner for depositions and intends to deny Nashua the opportunity to conduct discovery concerning Pennichuck's case. You state that: "If there had been a specific deposition request from Nashua outstanding as of July 28 that had not been able to arrange before that date, then of course I would need to cooperate with you to get it scheduled." This was indeed the case.

You have perhaps forgotten that we discussed scheduling the deposition of Mr. Joyner after July 18, 2006, as evidenced in my attached emails to you. In addition, following the deposition of Ms. Pannetier and Mr. Myers at your office on June 26, we specifically discussed my concern regarding my wife's due date and whether Pennichuck would cooperate to make Mr. Joyner available after July 18th, which you assured me would happen. As of today, you still have not provided me with a date for his deposition, and now state that you will not do so.

I also understand that Rob Upton had a number of telephone discussions with you and requested dates for the outstanding witnesses, including Mssrs. Correll, Ware, Densberger or Stala. On May 24, 2006, Rob Upton asked that you "check to see who is available" of the persons that Pennichuck agreed to make available as referenced in Donald Kries's May 15, 2006 letter concerning

## EXHIBIT G

August 7, 2006

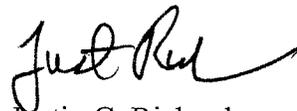
Page 2

depositions. See attached. While Pennichuck made three witnesses available (Hartley, Incropera and Patterson), Pennichuck never provided dates for Mr. Correll, Ware or Stala in response to Rob Upton's requests and your discussions with him. With the exception of Mr. Joyner, I believe Nashua has taken depositions for all of the witnesses you made available. However, to the best of my knowledge, you have not provided dates or made Mssrs. Ware, Densberger or Correll available as requested and required.

Nashua has continued to cooperate to make witnesses available but Pennichuck has provided dates for only a limited number of witnesses on its own part. Pennichuck has already once forced Nashua to a file motion in order to conduct substantive depositions concerning Pennichuck's case, while Nashua continued to make witnesses available to Pennichuck. I seriously doubt that the Commission will allow this case to be decided by a procedural schedule rather than upon its merits. In that regard, I ask that you please provide me with dates for each of the witnesses as soon as possible.

If you have any questions, please contact me.

Very truly yours,



Justin C. Richardson

[jrichardson@upton-hatfield.com](mailto:jrichardson@upton-hatfield.com)

JCR/sem

Enclosures

**EXHIBIT H**



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**Please respond to the Portsmouth office**

September 13, 2006

**Via Electronic and U.S. Mail**

Thomas J. Donovan, Esq.  
McLane, Raulerson, Graf & Middleton, PA  
900 Elm Street  
PO Box 326  
Manchester, NH 03105-0326

Re: City of Nashua; Petition for Valuation DW04-048

Dear Tom:

I have not heard back from you regarding the record requests related to the depositions of Eileen Pannetier and R. Kelly Myers as set forth in my letter of August 9, 2006. In addition, I understand that responses to the record requests from the depositions conducted by Rob Upton are also outstanding. We need to get responses to these record requests in order to prepare our updated testimony, briefs, and exhibits for trial. Please advise me at your earliest convenience as to when we can expect to receive these responses.

In addition, I also understand that Rob Upton has discussed with you dates for depositions of Msrs. Ware, Densberger, and Stala. If you could contact those witnesses and get dates for depositions, I would greatly appreciate it.

If you have any questions, please contact me.

Very truly yours,

Justin C. Richardson  
jrichardson@upton-hatfield.com

JCR/sem

cc: Robert Upton, II, Esq.



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OFFICES IN:  
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CONCORD  
PORTSMOUTH

October 11, 2006

Justin C. Richardson, Esq.  
Upton & Hatfield  
159 Middle Street  
Portsmouth, NH 03801

Re: Pennichuck Water Works—Update on Discovery Issues

Dear Justin:

This letter is a further progress report on the items set forth in your letter of September 13, 2006. Enclosed please find the documents from Eileen Pannetier's deposition. I had previously hand delivered to you the documents requested at the Guastella and Hartley depositions. I should have the Incropera documents this week and I am awaiting a telephone call back from Kelly Myers. Finally, enclosed is Eileen Pannetier's signature and errata page from her deposition.

As to the deposition requests, I have checked in again with my client and our position has not changed since my August 7 letter to Rob Upton. We are not agreeable to depositions past the July 28, 2006 deadline. As to the Barr-Devlin witness, its team members have left the company. The correct former employee witness would be Frank J. Setian. I have spoken and written to him, but he has not responded to my requests.

Very truly yours,

A handwritten signature in black ink, appearing to be "TJ Donovan", written over a horizontal line.

Thomas J. Donovan

TJD:dap  
Enclosures

