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Please respond to the Portsmouth office

April 25, 2006



Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: City of Nashua: *Petition for Valuation Pursuant to RSA 38:9*
Docket No. DW 04-048

Dear Ms. Howland:

Enclosed for filing please find an original and eight copies of the City of Nashua's *Request for Issuance of Subpoenas Pursuant to Order No. 24,486*.

The Commission's Order No. 24,486 directed parties requesting issuance of subpoenas to submit requests directly to the Executive Director, and authorized the Executive Director to issue a subpoena on the eleventh day after the request "unless an objection is made by any party or Staff". Based on discussions with Pennichuck, Nashua understands that Pennichuck intends to object to this request within 10 days as provided for by Order No. 24,486. Due to Pennichuck's opposition, Nashua has not sought concurrence of any other parties pursuant to former rule Puc 203.04(e).

A copy of the enclosed is being sent by first class and electronic mail to all persons on the Commission's official service list in this proceeding. If you have any questions, please contact me.

Very truly yours,

Justin C. Richardson
jrichardson@upton-hatfield.com

JCR/sem
Enclosure

cc: Official Service List DW04-048

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.”¹
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.² Pennichuck has further advised Nashua that it

¹ Order No. 24,486, pages 3 & 4.

² 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.

will seek additional depositions. Nashua has fully cooperated with Pennichuck and produced the witnesses under its control.³

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.⁴
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

³ 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.

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

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.

9. The procedural schedule was intended to “aid in the orderly review of this Docket”.⁵ 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,⁶ 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, 2006.⁷
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.

⁵ Order No. 24,457, page 5.

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

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

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.*"⁸ (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

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

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).⁹ 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."

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

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.”¹⁰
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.¹¹ 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.

¹⁰ Order No. 24,486, Pages 3-4.

¹¹ 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.

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.

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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(603) 356-3332

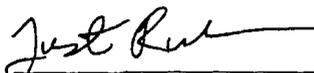
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(603) 436-7046

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.

EXHIBIT B

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

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.

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

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.

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

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.

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

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.

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 Request 1-66.

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.

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

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.

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.

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.

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

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.

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.

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.

EXHIBIT C



McLane, Graf,
Raulerson &
Middleton

Professional Association

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OFFICES IN:
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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,

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

Thomas J. Donovan

TJD/dlp