



**McLane, Graf,
Raulerson &
Middleton**

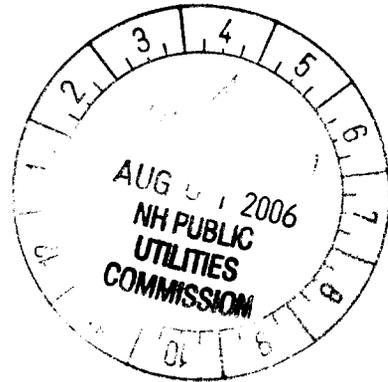
Professional Association

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SARAH B. KNOWLTON
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OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

August 1, 2006



BY HAND DELIVERY

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

Re: DW 04-048; City of Nashua—Taking of Pennichuck Water Works, Inc.

Dear Ms. Howland:

On behalf of Pennichuck Water Works, Inc., I enclose for filing in the above captioned docket a Request for Appointment of Commissioners to Issue Subpoenas to Veolia Witnesses Pursuant to Order No. 24,486. Staff concurs with Pennichuck's request.

After alerting the parties that Pennichuck intended to file this request, Nashua's counsel contacted Pennichuck last night to attempt to schedule the depositions in question. However, Nashua does not have confirmation from Veolia regarding the availability of these witnesses, and thus Pennichuck elected to file this Request given the upcoming deadlines in this docket. If Nashua voluntarily makes these witnesses available, Pennichuck will withdraw this request.

An electronic copy of the Request is enclosed and will be served via email to the parties. Thank you for your assistance with this matter. Please call me with any questions.

Very truly yours,

Sarah B. Knowlton

Enclosures

cc: Service List (by e-mail only)
Hannah McCarthy, CEO and President, Pennichuck Corporation
Donald L. Ware, President, Pennichuck Water Works, Inc.

**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 APPOINTMENT OF COMMISSIONERS
TO ISSUE SUBPOENAS TO VEOLIA WITNESSES
PURSUANT TO ORDER No. 24,486**

Pennichuck Water Works, Inc. ("Pennichuck") respectfully requests that, pursuant to the Commission's Order No. 24,486 issued in this proceeding on July 8, 2005, the Executive Director appoint commissioners to issue subpoenas for the deposition of out of state witnesses as set forth in Exhibit A to this Request. In support of the request, Pennichuck states as follows:

I. INTRODUCTION AND BACKGROUND

1. Order No. 24,486, dated July 8, 2005, established a procedure for the taking of depositions. In that Order the Commission urged the parties 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, Pennichuck has sought to depose select employees of the operations and maintenance contractor hired by the City of Nashua ("Nashua"), Veolia Water North America—Northeast, LLC ("Veolia").

3. Among those Veolia employees which Pennichuck seeks to depose is Philip G. Ashcroft, president of Veolia, based in Massachusetts. He submitted testimony on Nashua's

¹ Order No. 24,486, pages 3 & 4.

behalf on January 12, 2006 and May 22, 2006. He also submitted responses to the following data requests: 3-1-9; 3-14-15; 3-88-92; 3-95; 3-99-104; 5-55-91. Also, Pennichuck seeks to depose Veolia employee Joseph Tomashosky, based in Pennsylvania. He has been identified as the Veolia staff member most familiar with the provisions of its Nashua contract, being one of two non-lawyers on the team and the one who led the proposal development. See, Transcripts of Deposition of Paul F. Noran, pp. 22-23, Robert R. Burton, pp 74; 102; 144; David W. Ford, p. 77.

4. Mr. Ashcroft's testimony is important to inquire into Veolia's experience and capabilities in the Northeast, for which he has provided testimony, as well as Veolia's handling of corruption problems in Bridgeport, Ct. and Rockland, Ma. Mr. Tomashosky's testimony is important to inquire into the project cost and financial terms of the Veolia—Nashua contract. Both witnesses provide important information on the public interest of Nashua's requested taking of Pennichuck's assets; including Nashua's financial, technical and managerial capabilities, which capabilities are largely to be supplied through Veolia.

5. Contrary to the Commission's request that the parties "move forward in an amicable, cooperative manner to take the depositions of witnesses by agreement", Nashua in fact has not produced these witnesses for deposition regarding its public interest case. Pennichuck has requested Mr. Ashcroft's and/or Mr. Tomashosky's depositions orally and in writing many times since the Commission permitted discovery concerning Veolia by its Order No. 24,567 on December 22, 2005. Written requests include those on: February 10, 2006, February 17, 2006, February 23, 2006 and July 12, 2006. Nashua counsel acknowledged its obligation to produce those witnesses in writing by its letter dated March 16, 2006, and suggested they take place after

resolution of Pennichuck's prior motion to compel of that same date. Copies of all five letters are attached as Exhibit B.

6. Because Nashua has failed to cooperate to produce these witnesses as ordered by the Commission, Pennichuck requests that the Executive Director appoint commissioners to issue subpoenas for the depositions of the witnesses as set forth in Exhibit A; and further that the Commission find that: (a) Nashua failed to cooperate to produce witnesses as required by Order No. 24,457; and (b) impose appropriate sanctions for Nashua 's failure to comply with the Commission's order. Order No. 24,457 directs the Executive Director to appoint commissioners for out of state depositions. That order notes the Commission's general authority to order depositions and discovery under RSA 365:10 and Puc 204.4(g) (reissued on June 8, 2006 as Puc 203.09(j)), and incorporates RSA 517:15 into that authority.

II. REMEDY

7. Nashua 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."

8. Nashua 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."²

9. Nashua is forcing Pennichuck to prepare and file this request seeking appointment of commissioners to issue subpoenas by the Commission in lieu of its other obligations in this and other proceedings. Given the complexity of issues to be presented in this case, it is

² Order No. 24,486, Pages 3-4.

appropriate for the Commission to sanction Nashua's failure to cooperate to make witnesses available for deposition in compliance with Order No. 24,486.

10. Pennichuck therefore requests that the commission find Nashua in violation of Order No. 24,486 but suspend consideration of any penalties pending Nashua making witnesses available for deposition as set forth in Exhibit A.

11. Pennichuck further requests that the Commission grant an appropriate deposition schedule extension for Pennichuck to complete these two depositions based on Nashua's refusal to make these public interest witnesses available.

12. Pennichuck has contacted other parties to this docket to learn their position on this Request. To date, Town of Merrimack concurs, Barbara Pressley opposes, and other parties have not responded.

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

- A. Grant this request for the appointment of commissioners to issue subpoenas pursuant to Order No. 24,486 by issuing the order attached as Exhibit A;
- B. Order Nashua to make Philip G. Ashcroft and Joseph Tomashosky available for depositions;
- C. Find Nashua in violation of Order No. 24,486; and
- D. Grant such other relief as justice may require.

Respectfully submitted,

Pennichuck Water Works, Inc.

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: August 1, 2006

By: 

Thomas J. Donovan
Steven V. Camerino
Sarah B. Knowlton
Bicentennial Square
Fifteen North Main Street
Concord, NH 03301
Telephone (603) 226-0400

Certificate of Service

I hereby certify that a copy of the foregoing Request for Appointment of Commissioners to Issue Subpoenas to Veolia Witnesses Pursuant to Order No. 24,486 has been forwarded to the parties listed on the Commission's service list in this docket.

Dated: August 1, 2006



Sarah B. Knowlton

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

**ORDER OF APPOINTMENT OF OUT OF STATE COMMISSIONERS
TO ISSUE SUBPOENAS TO VEOLIA WITNESSES**

Pursuant to Order No. 24,486, Puc 203.09(j), and New Hampshire RSA 365:10 and 571:15, the following individuals are appointed commissioners to take the following two out of state depositions:

Charles J. Domestico, Esq., Domestico, Lane & McNamara, 161 Worcester Road, Framingham, MA 01701, to take the deposition of Philip G. Ashcroft, an employee of Veolia Water North America, 1115 West Chestnut Street, Suite 102, Brockton, MA 02301.

Kevin P. Lucas, Esq., Manion, McDonough & Lucas, 600 Grant St., Suite 1414, Pittsburgh, PA 15219, to take the deposition of Joseph Tomashosky, 2472 Matterhorn Drive, Wexford, PA 15090, an employee of Veolia Water North America, 921 Saw Mill Run Boulevard, Pittsburgh, PA 15220.

SO ORDERED.

Dated: August , 2006

Executive Director

McLane

McLane, Graf,
Raulerson &
Middleton

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OFFICES IN:
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February 10, 2006

By Electronic Mail and First Class Mail

Robert Upton, II
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 is in follow up to the depositions of Mr. Burton and Mr. Noran yesterday. At those depositions, we requested copies of the following documents:

1. The contract between Veolia Water Indianapolis, LLC and the City of Indianapolis;
2. The current collective bargaining agreement for Veolia Water Indianapolis, LLC;
3. The prior collective bargaining agreement for the NiSource water system employees working in Indianapolis;
4. Any subpoenas issued to Veolia Water Indianapolis, LLC by the U.S. Department of Justice and all related non-confidential documents;
5. The results of all annual customer surveys or questionnaires conducted by or on behalf of Veolia Water Indianapolis, LLC;
6. Any documents given to Mr. Burton to prepare for his February 9, 2006 deposition or any notes taken by him in preparation for the deposition;
7. All OSHA logs for Veolia Water Indianapolis, LLC for the past four years;
8. Any risk profile created by any Veolia entity for the Nashua contract; and
9. Any pricing model created by any Veolia entity for the Nashua contract.

Given the tight discovery schedule in this docket, I would greatly appreciate your prompt attention to this request.

Finally, the inability of these witnesses to answer certain questions concerning the Nashua contract and Veolia's experience requires Pennichuck to seek additional depositions.

Robert Upton, II
February 10, 2006
Page 2

In addition to the deposition of David Ford, whom we did not reach yesterday, we also need the depositions of Roy P. Wood and Joseph Tomashewsky (sp.). Tom Donovan is currently available to take these depositions on February 15, 22, 23 and 24.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sarah B. Knowlton", with a long horizontal flourish extending to the right.

Sarah B. Knowlton

Enclosure

cc: Thomas J. Donovan, Esq.
Marcia Thunberg, Esq.
Donald L. Correll



McLane, Graf,
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Professional Association

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OFFICES IN:
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February 17, 2006

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

**Re: City of Nashua: Taking of Pennichuck Water Works, Inc.
DW 04-048**

Dear Justin:

This is in follow up to the depositions of Mr. Doran and Mr. Henderson yesterday. At those depositions, we requested copies of the following documents:

1. Any working drafts of the contract between R.W. Beck and the City of Nashua.
2. Any communications by letter, e-mail or facsimile regarding the contract between R.W. Beck and the City of Nashua.
3. Any documents relating to, or reviewed during, the contract negotiations between the City of Nashua and Veolia, including, but not limited to, any spreadsheets relating to unit cost items.
4. Any working drafts of the contract between Veolia and the City of Nashua.
5. Any communications by letter, e-mail or facsimile regarding the contract between Veolia and the City of Nashua.
6. Any communications by letter, e-mail or facsimile regarding the contract between Tetra Tech and R.W. Beck.
7. Any working drafts of the contract between Tetra Tech and R.W. Beck.
8. A copy of the City of Nashua's Water Ordinance.
9. Any invoices submitted by R.W. Beck to the City of Nashua (directly or indirectly).
10. Any invoices submitted by Tetra Tech to the City of Nashua (directly or indirectly).

Given the tight discovery schedule in this docket, I would greatly appreciate your prompt attention to this request.

Justin C. Richardson, Esq.
February 17, 2006
Page 2

Also, this letter serves as a reminder of our requests to schedule the depositions of David Ford, Roy P. Wood and Joseph Tomashewsky.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Dutton", written over a horizontal line.

Steven J. Dutton

cc: Thomas J. Donovan, Esq.
Sarah B. Knowlton, Esq.

McLane

**McLane, Graf,
Raulerson &
Middleton**

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THOMAS J. DONOVAN
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OFFICES IN:
MANCHESTER
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PORTSMOUTH

February 23, 2006

Via Electronic and First Class Mail

Robert Upton, II
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 follows up on Sarah Knowlton's letter of February 10th and Steve Dutton's letter to Justin Richardson of February 17th. Each of those letters requested the depositions of three additional Veolia witnesses, David Ford (whom we originally noticed), Roy P. Wood, and Joe Tomashosky. I also repeat our other request for the deposition of Philip G. Ashcroft, who is also involved in the development of the Veolia contract.

Your letter of February 15, 2005 to Sarah indicates the four dates I had offered in February would not work for you or your witnesses. You requested that I come up with additional dates. Accordingly, I suggest March 1, 2, 3, 7, 8, 10, and 15. Please get back to me as soon as possible.

I appreciate your prompt response by your February 15, 2006 letter to Sarah's letter following up on document requests made during the Burton and Noran depositions. It looks like we are going to have to file a motion to compel with respect to some of those items. I await a response to our letter to Justin Richardson with respect to the Doran and Henderson deposition document requests.

Very truly yours,



Thomas J. Donovan

TJD:jls

McLane

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Raulerson &
Middleton

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THOMAS J. DONOVAN
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OFFICES IN:
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July 12, 2006

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

Re: Nashua/Pennichuck

Dear Rob:

This letter repeats with some urgency my request for the deposition of two remaining Veolia witnesses: Philip G. Ashcroft and Joseph Tomashosky. The deposition deadline is July 28, 2006. While I appreciate your willingness to be flexible in scheduling depositions, we need to complete depositions in order to complete preparation of our case and file testimony.

Let me know whether Robert Arendell, Esq. should become involved in scheduling.

Very truly yours,



Thomas J. Donovan

TJD:dap

cc: Justin C. Richardson, Esq.

MAR 17 2006



**Upton
& Hatfield**^{LLP}
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Matthew H. Upton
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Kenneth J. Barnes
Matthew R. Serge
Justin C. Richardson
Beth A. Deragon
*Also Admitted In Virginia
Of Counsel
Frederic K. Upton

Please respond to the North Conway office

March 16, 2006

Thomas J. Donovan, Esquire
McLane, Graf, Raulerson & Middleton PA
900 Elm Street
Box 326
Manchester, NH 03104

Re: City of Nashua / Petition for Valuation Pursuant to RSA 38:9
NH PUC Docket No. DW 04-048

Dear Tom:

I write to address several discovery and deposition matters currently pending.

1. You indicated that pursuant to our prior discussions Pennichuck intends to move to compel Veolia Water and North America's financial model used to generate its bid to the City of Nashua and other bids. As we have discussed by email, Nashua cannot agree to provide this information and therefore you will have to move to compel production of it. Nashua objects strongly on the grounds that it is not relevant to this proceeding. We have indicated dates for the depositions of Mssrs. Ashcroft and Tomashosky, however, as I indicated to you, we will not produce these witnesses for several rounds of depositions. Therefore, I suggest that we make Mssrs. Tomashosky, Ashcroft, and Wood available following resolution of Pennichuck's motion to compel the financial model. If you do not intend to ask any questions related to the financial model of any of the witnesses you have requested, please let me know and I will make arrangements to have those witnesses available. However, since trial is not scheduled until January of 2007, I see no reason to conduct separate depositions prior to resolving the motion to compel.

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Attorneys At Law
Russell F. Hilliard
Justin C. Richardson

2. We received Sarah Knowlton's request for a privilege log dated March 7, 2006. We are going to have to discuss arrangements concerning any privilege log before we can agree to produce them. In response to the first round of data requests, we prepared a detailed privilege log that took several weeks to prepare documenting and dating each and every document we had withheld and the grounds therefore. By contrast, after having spent over \$1,000,000.00 related to this proceeding, Pennichuck identified only three (3) documents as privileged, with dates indicating each was prepared over a several month period I believe the company did not provide us with any meaningful privilege log that would allow us to ascertain what documents were being withheld, or the grounds therefore. We are quite simply not willing to expend the vast effort required to produce a privilege log when Pennichuck has not shown that it is willing to do the same on its behalf. There was nothing, by way of further example, in Sarah's letter indicating when we would receive the Company's privilege log for the most recent discovery. We might be able to reach an agreement concerning particular areas where you have a concern, however, Nashua will not agree to provide a comprehensive privilege log without assurances as to what information will be provided and a commitment from Pennichuck that it will do the same. Moreover, I fail to see how engaging in such a vast undertaking will have any bearing on this proceeding as I am sure we can both agree that there is no dispute that the vast majority of documents are, in fact, privileged. In spite of having identified several hundreds of documents in our prior privilege log, I note that Pennichuck did not contest our designation of any of them. As a result, we cannot agree to produce a privilege log without resolving these issues at this time.

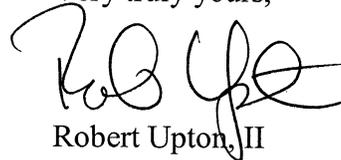
3. Finally, with respect to the deposition of David Ford, Mr. Ford has notified me that he is available that he is available for a deposition on the following dates:

March: 22, 24, 28

April: 4, 5, 6

If you have any questions, please contact me.

Very truly yours,



Robert Upton, II

RUII/sem