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July 20, 2006

**VIA FEDERAL EXPRESS/OVERNIGHT**

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:

Enclosed for filing with the Commission are an original and seven copies of Pennichuck Water Works, Inc.'s Motion to Compel the City of Nashua to Respond to Pennichuck Water Works, Inc.'s Fifth Set of Data Requests in the above docket. I have served all parties on the service list by e-mail and first class mail.

Thank you for your assistance with this matter. Please call me with any questions.

Very truly yours,

Thomas J. Donovan

TJD:dap  
Enclosures

cc: Service List  
Hannah McCarthy, CEO and President  
Ann Guinard, Librarian (by e-mail only)

NHPUC JUL 21 '06 11:31

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

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

**Docket No. DW 04-048**

**MOTION TO COMPEL THE CITY OF NASHUA  
TO RESPOND TO PENNICHUCK WATER WORKS, INC.'S  
FIFTH SET OF DATA REQUESTS**

Pennichuck Water Works, Inc. ("PWW") respectfully requests that the Commission compel the City of Nashua ("Nashua") to respond to PWW's Fifth Set of Data Requests in the above-captioned proceeding. In support of its motion, PWW states as follows:

1. In accordance with the procedural schedule approved by Commission Order 24,457, on June 1, 2006, PWW propounded its fifth set of Data Requests to Nashua. Nashua responded to the data requests on June 22, 2006, but has failed to answer many of the requests and has failed to provide documents responsive to a number of the requests despite indicating that it would do so.

2. Some of the fifth set of Data Requests follow up on earlier data requests never fully answered from the third set of data requests propounded on January 17, 2006, as to which Pennichuck was forced to file a motion to compel on March 16, 2006. The parties thereafter met with the Hearings Examiner appointed by the Commission on April 28, 2006, and some of the documents which Nashua promised to produce at that meeting, Pennichuck still has not received and thus seeks in this Motion. Nashua's continued delay has prejudiced Pennichuck's preparation of this case and the orderly conduct of this docket.

3. On June 28, 2006, counsel for Pennichuck sent a letter to Nashua's counsel requesting that the documents be provided. On June 30, 2006, Pennichuck's counsel sent a

second letter to Nashua's counsel asking that Nashua respond to certain requests that went unanswered. Copies of these letters are attached to this motion as Exhibit A.

4. On July 10, 2006, the parties held a technical session at the Commission to discuss, in part, outstanding discovery issues. At that technical session, Pennichuck's counsel reviewed the outstanding discovery issues set forth in Exhibit A and requested Nashua's prompt response. Nashua's counsel responded by stating that the City "was not going to engage in this busywork" (referring to the discovery requests) and that it had failed to respond in large part because of Veolia's failure to cooperate with the City. Indeed, the largest portion of unanswered data requests concern Veolia. According to Nashua's counsel, the City has been in regular contact with Veolia to attempt to obtain documents and responses to the data requests, but that Veolia was not responding to Nashua's requests. This is not the first time that Pennichuck has encountered delays in obtaining information about Veolia in this docket, and in fact, some of the data requests to which Veolia and Nashua continue to fail to respond are repeated requests based upon prior discovery agreements reached with the Hearings Examiner appointed by the Commission.

5. As the Commission is aware, the standard for discovery in Commission proceedings is broad and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. Re Investigation into Whether Certain Calls are Local, 86 NH PUC 167 (2001). The Commission reaffirmed that standard in this case in its Order No. 24,488 (July 8, 2005) ("...the information being sought is or is likely to lead to relevant evidence that would be admissible in the proceeding."). The Commission will typically deny discovery requests only when it "can perceive of no circumstance in which the requested data will be relevant." Lower Bartlett Water Precinct, 85 NH PUC 371 (2000);

Accord, Petition for Authority to Modify Schiller Station, 2004 NH PUC LEXIS 38, \*7 (2004).

Clearly, a party in a legal proceeding in New Hampshire is entitled to "be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponents and whether the evidence is in the possession of his opponent or someone else." Scontsas v. Citizens Insurance Co., 109 N.H. 386, 388 (1969). The Commission has recognized the "liberality of the applicable discovery rule" in utility condemnation cases. See Re Public Service of New Hampshire, 86 NH PUC 730 (2001) (Commission ordered PSNH to produce a copy of a power supply agreement with a bankrupt paper mill over objection that the data request was not relevant to the public interest inquiry concerning the proposed taking of the Brodie Smith Hydro-Electric Station).

6. With that background in mind, PWW will address by topical groupings Nashua's objections, explaining why the requests are appropriate, and the need for a Commission order compelling the production of the requested information.

I. REQUESTS RELATED TO VEOLIA'S BACKGROUND

7. Discovery regarding Veolia is critical given that Nashua has selected Veolia as the contract operator of the water system assets it seeks to acquire. Specifically, Pennichuck submitted the following data requests, as to which Nashua responded either that it would refuse to produce the information requested, or that it would produce responsive documents but then failed to do so. Copies of the specific Veolia data requests, with Nashua's objection or response to date, is attached to this Motion as Exhibit B.

A. Data Request 5-55 requesting the names of any communities employing Veolia's "One and Done" customer service program under circumstances similar to those planned

in Nashua, where billing and collection remains the responsibility of the municipality. Nashua did not provide an answer to that specific question.

B. Data Request 5-56 regarding Veolia's customer service process charts, which Veolia has agreed to produce, but which it has failed to provide.

C. Data Request 5-57 regarding the specific instances of impropriety alleged by the Commonwealth of Massachusetts Inspector General as to Veolia's affiliate in Rockland, Massachusetts. Veolia suggests that responsive documents are available in another proceeding, but refuses to produce them here. It would be difficult for Pennichuck to obtain those out of state documents, readily within Veolia's grasp.

D. Data Request 5-60 regarding any interrogatory answer or deposition of Robert Corvi in certain Massachusetts litigation, identified in Veolia's prior testimony. Veolia states that "on information and belief", such documents do not exist, but it should be able to provide a definitive answer on that point, since its representatives are participating in this proceeding..

E. Data Request 5-63 asked for a comparison of Veolia's "comprehensive asset management program", described in its May 22, 2006 testimony, with the Reliability Centered Management program which Veolia offered, but which Nashua did not select, as part of its contract negotiations. Veolia's response failed to answer fully or make any comparison.

F. Data Request 5-77 requested Veolia to identify "our day to day Rockland customer contact" referred to in its May 22, 2006 testimony concerning its Rockland corruption problems. Veolia refused to answer.

G. Data Request 5-78 requested the name of "a Veolia Water employee" referred to in its May 22, 2006 testimony concerning its Rockland, Massachusetts corruption problems. Veolia refused to answer.

H. Data Request 5-79 requested an explanation of why continuation of Veolia's contract with Rockland was "infeasible", as set forth in its May 22, 2006 testimony, following the corruption scandal. Veolia refused to answer.

I. Data Request 5-81 requested Veolia to identify the performance standards it agreed to meet in its Indianapolis contract. Veolia refused to answer, and simply referred to the contract. There is a question as to Nashua's meaning of "performance standards", so Pennichuck must have Veolia provide that information. See 5-82.

J. Data Request 5-82 requested Veolia to identify similar performance standards in its contract with Nashua. It refused, again simply referring to the contract. See 5-81.

K. Data Request 5-88 asked about Veolia's plans to purchase water systems in New Hampshire, an important public interest issue given staff's concern about Pennichuck's continued ability to purchase troubled water systems. Veolia refused to answer based upon confidentiality, even though there is a protective order in place to deal with such information and Nashua has implied that Veolia might be willing to play a role similar to Pennichuck's once Veolia has a presence in the state.

L. Data Request 5-89 asked for certain of the documents produced to the Indianapolis Grand Jury in response to a subpoena. Nashua agreed by its counsel's letter dated May 5, 2006 (attached as Exhibit C), in settlement of Pennichuck's March 16, 2006 Motion to Compel, to produce "relevant non-confidential documents [provided in response to the

subpoenas]... following disclosure [to Pennichuck] of the subpoenas." Veolia has now refused to produce responsive documents based upon burdensomeness and unlikelihood of leading to admissible evidence. It has given no further explanation.

M. Data Request 5-90 requested Exhibit C to Veolia's 2004-2006 collective bargaining agreement with its Indianapolis employees, which Veolia previously agreed to produce. Veolia now says (as of July 14, 2006) that Exhibit C does not exist. But that seems unlikely, since the agreement described Exhibit C as follows: "A separate supplement describes benefits, and is hereby made part of this Agreement." It is highly unlikely that Veolia's Indianapolis union employees lack terms describing their benefits, such as health insurance retirement plans, so there must be an Exhibit C or its equivalent somewhere.

N. Data Request 5-91 requested the Indianapolis collective bargaining agreement which Veolia inherited from the prior owner and operated under until 2004. It is important for comparison purposes with the current agreement. Veolia has refused to produce it, even though Nashua's counsel agreed to produce "the collective bargaining agreement(s)... no later than May 31, 2006" as set forth in its counsel's May 5, 2006 letter (Exhibit C) settling in part Pennichuck's March 16, 2006 Motion to Compel.

## II. OTHER REQUESTS

8. Nashua has also refused to produce responses based upon other data requests. Again, Pennichuck submitted the following data requests, as to which Nashua responded either that it would refuse to produce the information requested, or that it would produce responsive documents, but it has failed to do so. Copies of the specific data requests, with Nashua's objection or response to date, is attached to this Motion as Exhibit D.

A. Data Request 5-13 requested an analysis of Nashua property tax rates from 2002-2006, in order to compare with Pennichuck rate increases highlighted by Nashua. Nashua has refused, on the basis that the information is available elsewhere. However, the information Pennichuck requested is in a form not easily gleaned from publicly available documents, and surely Nashua has the best ability to disclose the accurate figures.

B. Data Request 5-18 requested the names of the specific communities included within Nashua's May 22, 2006 testimony as "lower Merrimack River watershed and surrounding communities" within which it would be willing to expand operations. Its answer "we did not intend to limit our statement to specific communities" is not sufficient unless Nashua plans to withdraw its testimony. Pennichuck is entitled to know what towns are included in Nashua's planned sphere of operations.

C. Data Request 5-31 requested the names of other water systems which, like Pennichuck, contain a core with multiple disconnected systems. Nashua objected that the question is overbroad, burdensome, and calls for speculation. The question is specific and unambiguous. If Neither Veolia nor Nashua is aware of any such systems, they should say so..

D. Data Request 5-40 requested information about a Sansoucy valuation project involving an electric utility. Nashua objects, citing attorney client and other privileges, but did not supply a privilege log identifying the documents which are claimed to be subject to some privilege.

E. Data Request 5-43 also requested the number of years that Nashua plans to expend \$9.5 million annually on capital projects. Nashua has provided no response to that portion of the question.

F. Data Request 5-99 inquired whether Nashua would support water rate increases to fund the purchase of additional watershed land. Nashua never gave a direct answer to the question.

G. Data Request 5-150 requested communications with Nashua's tax expert, Steven Paul. Nashua cited the attorney client and other privileges, but did not supply a privilege log identifying the documents which are claimed to be subject to some privilege.

9. In addition to Nashua's inadequate responses to the fifth round data requests, Pennichuck has not received most of the documents promised by Nashua in response to these data requests. Nashua is simply ignoring the procedural schedule.

10. Much of the information requested in these data requests is important to Pennichuck's ability to prepare its capstone testimony and prepare for the hearings in this case and, more important, to the Commission's determination of whether Nashua's proposed taking is in the public interest. For example, Nashua has claimed that in conjunction with Veolia, it will provide seamless customer service, yet Nashua has failed to provide specific information about municipalities using its "One and Done" customer service method (5-55) which may shed light on whether Veolia's services are "the best in the world" as Nashua has alleged. Similarly, Nashua has failed to provide customer service process charts used by Veolia and referred to in its testimony in this docket (5-56).

11. Nashua has finally provided Veolia's code of business conduct (5-80), but it has yet to provide requested documents concerning the *actual conduct* of Veolia employees who have engaged in criminal activities in the course of servicing water and wastewater systems in the United States (5-57,78-79), even though Veolia provided testimony on that precise subject on May 22, 2006.

12. Nashua also hides behind attorney-client and other privileges (5-40,88,89,150), but fails to produce privilege logs so as to allow others to judge the correctness of that assertion.

Assent

13. PWW has sought the assent of the other parties to this proceeding. Town of Merrimack assents. In addition to the City of Nashua, the Town of Amherst and the Merrimack Valley Regional Water District do not assent. Other parties did not have the opportunity to respond prior to the filing of this Motion.

WHEREFORE, Pennichuck Water Works, Inc. respectfully requests that the Commission:

- A. Grant this Motion to Compel the City of Nashua to Respond to respond to Pennichuck Water Work's Data Requests (Fifth Set) as set forth herein; and
- B. Grant PWW such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

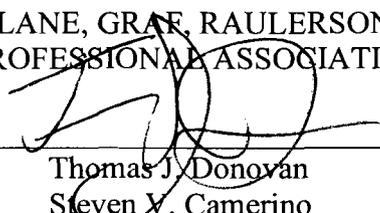
Pennichuck Water Works, Inc.

By Its Attorneys,

McLANE, GRAE, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

Dated: July 20 2006

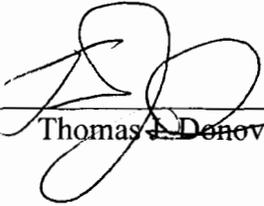
By: \_\_\_\_\_

  
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 this Motion has been forwarded to the parties listed on the Commission's service list in this docket.

Dated: July 28 2006

  
\_\_\_\_\_  
Thomas J. Donovan

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McLane, Graf,  
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MANCHESTER  
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PORTSMOUTH

June 28, 2006

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

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:

I am writing in follow up to Nashua's response to Pennichuck's Fifth Set of Data Responses in the above-captioned docket. The City's responses to these data requests were due by close of business on June 22. We received an electronic copy of Nashua's responses to these requests at 8:59 p.m. on June 22. The electronic copy of the responses was not complete. For example, many of the responses referred to documents that would be provided separately. We did not receive a hard copy of Nashua's data responses until June 27 at 5:00 p.m. I was hopeful that the hard copy of the responses would be complete. However, just like the electronic copy of the data responses, the hard copy is not complete. Specifically, the City's responses to the following data requests state that responsive documents will be provided separately, yet we have yet to receive any of these documents:

- 5-56 regarding Veolia's customer service process charts
- 5-59 regarding statements made by Robert Corvi that are cited in Nashua's May 22 reply testimony
- 5-80 regarding Veolia's code of ethics
- 5-83 regarding Veolia's customer complaint log from its Indianapolis operation
- 5-90 regarding Exhibit C to the 2004-2006 Veolia collective bargaining agreement

Justin C. Richardson, Esq.  
June 28, 2006  
Page 2

It is nearly one week past the deadline for Nashua's response to the 5<sup>th</sup> set of data requests and yet we still do not have a full set of responses. Even where the City has provided a response, many of the responses are in fact non-responsive, which I will address in a separate letter.

I would further note that Data Request 5-83 was in follow up to our May 15, 2006 discovery conference with a PUC hearings examiner. As you recall, at that conference, we met with the PUC Hearings Examiner to consider Pennichuck's motion to compel Nashua's response to other Pennichuck data responses. At that meeting Nashua agreed that it would produce Veolia's collective bargaining agreement in Indianapolis. You produced an incomplete copy of that agreement to us on May 31. The 5<sup>th</sup> Set of Data Requests was due to Nashua the next day. Instead of sending Nashua a separate letter following up on the incomplete collective bargaining agreement, I included a Data Request 5-83 requesting Exhibit C to the Veolia contract which the City had failed to produce. We should not have to ask again for this document.

You will also recall that at that May 15 discovery conference, in response to Pennichuck's motion to compel, Nashua agreed to produce information regarding litigation involving Veolia. Yet we did not receive that information until yesterday – 43 days after we had agreed on the resolution to that particular data request.

I know that there is a lot of material to produce in a short time frame in this case. Discovery deadlines take on increased significance in cases such as these where nearly every deadline in the procedural schedule is tied to the next filing deadline in the case. Thus, any delay in response has repercussions for preparation of the next step of the case. I would greatly appreciate your efforts to promptly resolve these outstanding issues.

Very truly yours,



Sarah B. Knowlton

cc: Hannah McCarthy  
Donald Ware  
Thomas J. Donovan  
Steven V. Camerino



McLane, Graf,  
Raulerson &  
Middleton

*Professional Association*

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June 30, 2006

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

Justin 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:

I am writing in follow up to Nashua's response to Pennichuck's Fifth Set of Data Responses in the above-captioned docket. We have reviewed the City's responses and have determined that the City's response to the following data requests are insufficient for the reasons set forth below.

- Request 5-13: Nashua should produce the actual and equalized city, county, local school and state school property tax rates for the City from 2002-2006 as this information is in the City's possession.
- Request 5-18: Nashua's response did not specify the communities included in the "lower Merrimack River watershed and surrounding communities" as that term is used in the City's testimony.
- Request 5-31: This request seeks information within the City's knowledge. The City either knows of such systems or not, and the City's response should identify such knowledge (or lack thereof).
- Request 5-40: Nashua objected to providing any information regarding a valuation project for which Mr. Sansoucy was retained. Please produce a copy of all

documents supporting the City's objection that the third party may prevent the disclosure of such information, as well as a privilege log identifying the documents the City claims is subject to the attorney-client privilege.

- Request 5-43: The data request asked that the City state the number of years it had committed to making capital expenditures at the rate of \$9.5 million a year, and for documents supporting the \$9.5 million figure, to which the City did not respond. Please complete the response to this request.
- Request 5-48: The question does not appear on its face to call for a legal conclusion. If the City believes that the question calls for a legal conclusion, the response should indicate specifically why that is the case and why the City is unable to provide a response.
- Request 5-49: This response refers back to 5-48 which is non-responsive. For the same reasons set forth above regarding 5-48, please respond to this request.
- Request 5-55: The request called for the City to identify the systems operated by Veolia entities using the "One and Done" customer service, where billing and collection is the responsibility of the government owner of the water system. Please answer this part of the request.
- Request 5-56: By separate letter, Pennichuck has already requested copies of the documents identified but not provided in response to this request. Because the Company has not received the documents, it cannot identify whether the City's response will be complete, and thus reserves the right to assert a future objection to the City's response.
- Request 5-57: Please produce the documents in Veolia's possession that are responsive to this request. Veolia's performance in other jurisdictions is highly relevant to its ability to perform under its Nashua contract.
- Request 5-59: By separate letter, Pennichuck has requested copies of the documents identified but not provided in response to this request. Because the Company has not received the documents, it cannot identify whether the City's response will be complete, and thus reserves the right to assert a future objection to the City's response.
- Request 5-60: Please produce the documents in Veolia's possession that are responsive to this request. Veolia's performance in other jurisdictions is highly relevant to its ability to perform under its Nashua contract.

- Request 5-63: Nashua's response did not compare the comprehensive asset management program to RCM. Please provide the requested comparison.
- Request 5-77: Please produce the documents in Veolia's possession that are responsive to this request. Veolia's performance in other jurisdictions is highly relevant to its ability to perform under its Nashua contract.
- Request 5-78: Nashua's response refers to 5-77 and thus is non-responsive. Nashua cannot rely on a statement in its testimony and then refuse to produce support for the statement. Please respond fully to the request.
- Request 5-79: Nashua's response refers to 5-77, which itself was non-responsive. Nashua cannot rely on a statement in its testimony and then refuse to produce support for the statement. Please respond fully to the request.
- Request 5-80: By separate letter, Pennichuck has requested copies of the documents identified but not provided in response to this request. Because the Company has not received the documents, it cannot identify whether the City's response will be complete, and thus reserves the right to assert a future objection to the City's response.
- Request 5-81: The City's answer is non-responsive. Please identify the specific provisions in the contract that are responsive to the request.
- Request 5-82: The City's answer is non-responsive. Please identify the specific provisions in the contract that are responsive to the request.
- Request 5-83: By separate letter, Pennichuck has requested copies of the documents identified but not provided in response to this request. Because the Company has not received the documents, it cannot identify whether the City's response will be complete, and thus reserves the right to assert a future objection to the City's response.
- Request 5-88: Whether Veolia intends to purchase water systems in New Hampshire is relevant to the public interest consideration in this case, given the City's statements regarding alternatives to the role that Pennichuck has played in the past. To the extent that the City asserts confidentiality as a basis for its objection, there are procedural mechanisms to address that issue.
- Request 5-89: The City agreed at the discovery conference with a PUC hearings examiner to produce such information upon request by the Company. The City's refusal to produce such information is unsubstantiated and in violation of the agreement of the parties. Further, the City fails to identify with specificity what

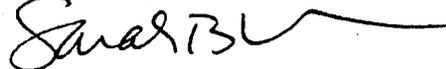
Justin C. Richardson, Esq.  
June 30, 2006  
Page 4

aspect of the request is overly broad and unduly burdensome, thereby making it impossible for the Company to narrow its request, if that becomes necessary.

- Request 5-90: By separate letter, Pennichuck has requested copies of the documents identified but not provided in response to this request. Because the Company has not received the documents, it cannot identify whether the City's response will be complete, and thus reserves the right to assert a future objection to the City's response.
- Request 5-91: The City agreed at the discovery conference with a PUC hearings examiner to produce all of the collective bargaining agreements assumed by Veolia when it began operating the Indianapolis system.
- Request 5-99: The City's response does not answer the question asked. The data request inquired about whether Nashua would support an increase in PWW's rates based on purchase of land in the watershed, not whether Nashua would purchase watershed land if it operated a water utility.
- Request 5-150: The City has asserted the attorney-client privilege in response to this request. Please produce an updated privilege log. In addition, please specifically identify (e.g. by legal citation) the "other privileges as provided by law" to which the response refers.

I appreciate your prompt resolution of these issues. Please do not hesitate to call if you have any questions.

Very truly yours,



Sarah B. Knowlton

cc: Robert Upton, Esq.  
Hannah McCarthy  
Donald Ware  
Thomas J. Donovan, Esq.  
Steven V. Camerino, Esq.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-55

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Req. 5-55 Please describe in detail "One and Done" customer service referenced on page 9 of your testimony and produce all documents relating to it. Identify all systems in which this has been implemented, and identify those systems operated by a Veolia entity where billing and collection remains the responsibility of the government owner of the water system.

ANSWER: "One and Done" customer service refers to an inquiry from a customer that requires follow-up work. The follow-up work may involve office research and/or field investigation. The person assigned to perform the follow-up work will follow-up with the customer contact person. For its projects Veolia follows this process to assure customer inquiries are addressed in a timely and efficient manner.

Data associated with billing and collections remains the responsibility of the Government Owner was previously provided in Table 3-1 in Data Request 3-1.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-56

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Req. 5-56      Produce all “customer service process charts” referred to on page 9 of your testimony.

ANSWER:      Responsive documents will be provided separately.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-57

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Req. 5-57      The Inspector General of the Commonwealth of Massachusetts on January 30, 2004 recommended that the Town of Rockland contract with Veolia be terminated for, among other reasons, "inferences of impropriety in the awarding of the contract". What specific instances of impropriety in the award to Veolia's affiliate have been alleged, and what is Veolia's response to each allegation?

**OBJECTION:** Nashua objects to this request on the grounds that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a).

**ANSWER:** The contract referenced within the Inspector General's letter of January 30, 2004 was by and between the Rockland Sewer Commission and Professional Services Group, Inc. ("PSG"), not Veolia Water North America – Northeast, LLC. The allegations and responses are contained in the publicly available documents filed in that proceeding, as indicated in response to Pennichuck Water Works Data Request 3-7.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-60

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-60 Veolia's affiliate later sued the Rockland Sewer Commission concerning the contract (D.Mass. No. 04-11131-PBS). Please attach copies of any interrogatory answer or deposition testimony by Mr. Corvi in that case, and provide a status report on the case, including any depositions taken, dispositive motions decided or pending, and trial schedule.

**OBJECTION:** Nashua objects to this request on the grounds that it is overly burdensome and that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a).

**ANSWER:** Upon information and belief, Mr. Corvi has not testified in any form in the lawsuit initiated by PSG against the Rockland Sewer Commission and the Town of Rockland, Massachusetts. Upon further information and belief, the current docket sheet is publicly available as indicated in response to Pennichuck Water Works Data Request 3-7.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-63

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-63 How does the "comprehensive asset management program" described in your testimony at page 13, line 21, compare with the "reliability centered maintenance" that was set forth as a part of Veolia's alternative proposal set forth in section six of its original proposal to Nashua (Burton Dep. Ex. 81).

ANSWER: There are numerous tools and approaches to providing a comprehensive asset management program. Reliability Centered Maintenance (RCM) is not required for Veolia to provide Nashua a comprehensive asset management program. It is an option with its own set of benefits and costs.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-77

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-77 Ref. page 5, line 21. Identify by name, position and employer the individual referred to as “our day-to-day Rockland customer contact.”

**OBJECTION:** Nashua objects to this request on the grounds that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a).

**ANSWER:** The Rockland litigation is currently pending. The information requested is available in the publicly available pleadings as set forth in response to Pennichuck Water Works Data Request 3-7. Veolia Water will not produce any information that is not already publicly available.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-78

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-78 Ref. page 6, line 3. Identify by name, position and employer the individual referred to as "a Veolia Water employee."

**OBJECTION:** Nashua objects to this request on the grounds that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a).

**ANSWER:** See Response To Data Request 5-77.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-79

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-79 Ref. page 6, line 6. Provide all information that supports or explains what you mean when you say that Rockland deemed a continued relationship with Veolia to be “infeasible”.

**OBJECTION:** Nashua objects to this request on the grounds that it is overly burdensome and that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a).

**ANSWER:** See Response To Data Request 5-77.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-81

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

---

Request 5-81 Describe all performance standards of any kind that VWNA has agreed to comply with under its contract with Indianapolis and identify where in VWNA's contract with Indianapolis the performance standard is set forth.

ANSWER: The contract is self-explanatory.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-82

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-82 With regard to the performance standards described in response to data request 5-82, indicate for which of these standards VVNA has agreed to comply with a similar standard (i.e., the subject matter, rather than the particular level of compliance) in its agreement with Nashua and where in the contract with Nashua the performance standard is set forth.

ANSWER: The documents are self-explanatory.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of ANSWER: June 22, 2006

Request No. 5-88

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-88 Does Veolia have any plans to purchase water systems in the State of New Hampshire?

**OBJECTION:** Nashua objects to this request on the grounds that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a).

**ANSWER:** This information is confidential. Moreover, disclosure of such information could violate law and contractual obligations.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-89

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-89 Please produce all documents and information provided in response to items 1 through 4 of Grand Jury Subpoena 05-64-SDD-240-08 issued from the United States District Court for the Southern District of Indiana dated September 30, 2005.

ANSWER: This request is unduly burdensome and is not reasonably calculated to lead to the discovery of admissible information.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-90

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-90 Please produce Exhibit C to the 2004-2006 Veolia collective bargaining agreement for Indianapolis.

ANSWER: Responsive documents will be provided separately.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Response to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-91

Respondents: Philip Ashcroft  
David Ford, P.E.  
Paul Noran, P.E.

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Request 5-91 Please produce all collective bargaining agreements assumed by Veolia when it began operating the Indianapolis system, including all exhibits thereto.

ANSWER: This request is unduly burdensome and is not reasonably calculated to lead to the discovery of admissible information. The current CBA has been produced.

Exh. C



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

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Kenneth J. Barnes  
Matthew R. Serge  
Justin C. Richardson  
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*Of Counsel*  
Frederic K. Upton

**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:

As referenced in the report of Hearings Examiner Donald Kries, Esq., to the Commission in this proceeding, representatives for the City of Nashua and the Pennichuck Water Works, Inc., met on Friday April 28, 2006 and discussed resolution of Pennichuck's Motion to Compel and Nashua's Objection thereto. In accordance with those discussions, I am providing this response on behalf of the City of Nashua by electronic mail to all the parties on the Commission's official electronic service list. Due to an unforeseen staff illness, I have not sent a copy by first class mail to all parties on the Commission's service list, but will do so on Monday May 8, 2006.

The parties discussed the Motion and Objection in terms of five substantive areas, set forth below. Based on discussion at the hearing, proposals were made to resolve four of the five substantive areas. No proposal was made to resolve number four of five, identified below. My understanding of these five areas, together with Nashua's response is the following:

1. *Information relative to problems concerning Veolia's Water Indianapolis, LLC's operations of the water system of the City of Indianapolis.*

As discussed last Friday, Nashua strongly disagrees that there were, in fact, any operational or other problems encountered with respect to Veolia's operations. As noted in Nashua's Objection, the Indiana Department of Environmental Management stated on October 6, 2005 that its own analysis did "not indicate a violation of state or federal drinking water quality standards."

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

However, in order to resolve this matter, *subject to an appropriate protective order*, Veolia Water North America – Northeast, LLC has agreed to make the subpoenas issued in the Indianapolis matter available by May 31, 2006 (earlier if available). Insofar as the proposal included all non-confidential documents or information provided in response to those subpoenas, Nashua further agrees to provide relevant non-confidential documents available, subject to an appropriate protective order, upon reasonable request and within a reasonable time period, such as 10 days, following disclosure of the subpoenas.

2. *Collective bargaining agreement for Veolia Water Indianapolis, LLC.*

As discussed last Friday, Nashua does not believe this information is relevant to this proceeding. However, in order to resolve this matter, Nashua will provide the collective bargaining agreement(s) for Veolia Water Indianapolis, LLC, no later than May 31, 2006 (earlier if available).

3. *Request for information related to all civil lawsuits related to the operation of water systems in the U.S. (except for employment or workers compensation matters) between Veolia Water and the Owner of the water system.*

Nashua will provide this information no later than May 31, 2006 (earlier if available).

4. *Internal communications related to the contract negotiations.*

Although the parties discussed this item, no proposal to resolve this matter was proposed. Accordingly, Nashua understands that the hearings examiner will review this matter and make a recommendation to the Commission.

5. *Veolia's risk profile and/or financial model.*

As discussed last Friday, this request arose *inter alia* in the context of Pennichuck's deposition requests for individuals involved in the negotiations of Nashua's contract with Veolia Water North America – Northeast LLC. To resolve this matter, it was proposed that:

- Nashua would provide Veolia's estimate of the total annual price (i.e. cost to Nashua) for each of the non-fixed components (the "buckets") under its contract with Nashua. These components are Renewal, Repair and Replacement Maintenance, Supplemental Services, and Capital Improvement Projects.; and
- Pennichuck agreed that it would not seek during depositions (or otherwise) information as to how Veolia determined those costs using its financial model or other confidential information.

Based on the foregoing, Nashua agrees to provide Veolia's estimate for each of the non-fixed components ("the buckets") no later than May 31, 2006.

May 5, 2006  
Page 3

The above sets forth my understanding of the proposals to resolve four of the five areas as discussed at the hearing held on April 28, 2006, and Nashua's response thereto. If I have failed to include any of the terms or issues related thereto, I request that the parties contact me as soon as possible in order to identify any changes necessary to correct the understanding with respect to the above items.

On behalf of Nashua and I believe all of the parties involved, I would also like to offer my appreciation to the Commission for its decision to use a hearings examiner to resolve this matter. Mr. Kreis's timely and appropriate discussion of the issues contributed greatly to the progress made on April 28, 2006.

If you have any questions concerning this matter, please contact me.

Very truly yours,



Justin C. Richardson

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

JCR

cc: Official Service List DW04-048  
Donald Kries, Esq., Hearings Examiner

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-13

Respondents: N/A.

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Req. 5-13 Identify the actual and equalized city, county, local school and state school property tax rates for Nashua for each year from 2002 through 2006.

**OBJECTION:** Nashua objects to this request on the grounds that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a) and is readily available from the NH Department of Revenue Administration.

**ANSWER:** N/A.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-18

Respondents: Mayor Streeter,  
President Rootovich, Alderman McCarthy.

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Req. 5-18      Ref. page 5, line 10. Please specify which communities you intend to include by your reference to the "lower Merrimack River watershed and surrounding communities."

ANSWER:      We stated that:

Our testimony today, however, explains why the interests of Nashua, as a municipal owner, will be more closely aligned with: (a) the long term best interests of protecting the water system and surrounding communities; (b) the development of an efficient regional water system focused on the needs of the lower Merrimack River watershed and surrounding communities, as opposed to a scattered unconnected network of systems that operates less and less efficiently as it expands to locations farther away from its core assets; and (c) the public interest.

We did not intend to limit our statement to specific communities. Upon acquisition of the system, we would continue to focus on providing service consistent with the commitments have made in this proceeding.

Given our intent to transfer assets to the Merrimack Valley Regional Water District, it is logical to include those communities that have expressed an interest in participation in the MVRWD, and others that would benefit by virtue of their proximity. As demand for water increases over time and the benefits of regionalization become more apparent, we expect that the system would expand incrementally in a planned manner.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-31

Respondents: N/A.

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Req. 5-31 Please provide any examples of which you are aware in which a municipality in which a core water system was located also owned multiple disconnected water systems outside the municipality. For each such example indicate the number of disconnected systems owned and the number of customers in each such system.

OBJECTION: Nashua objects on the grounds that this request is overbroad, unduly burdensome, and calls for speculation concerning any number of water systems that are not reasonably within the scope of this proceeding. Nashua has previously provided information concerning the water systems operated by Veolia Water North America – Northeast LLC. The Messrs. Streeter, Rootovich and McCarthy's knowledge of the particular details of each of those systems, however, is not necessary to evaluate or relevant to Nashua's petition.

ANSWER: N/A.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-40

Respondents: N/A.

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- Req. 5-40      On page 9 of reply testimony, Sansoucy states that “our firm was recently retained to prepare a valuation of a fossil fuel generation facility by a municipal client in preparation of a bid to purchase. The group indicated that in developing our income capitalization approach we were to use a for-profit entity’s cost of capital as it did not want to influence the price that it paid for this asset.” Please provide:
- a. The identity of the municipal client that retained you;
  - b. Copies of any and all engagement agreements;
  - c. A summary of the scope of work;
  - d. The amount paid by the municipal client to George E. Sansoucy and/or his company on the assignment;
  - e. All copies of any notes, correspondence, documents or other communications relating to your communications with the client about the income capitalization approach;
  - f. Copies of any reports, appraisals, studies, opinions or other documents provided by George Sansoucy or his company to the City;
  - g. The City’s bid to purchase.

- OBJECTION:** Nashua objects to this request on the grounds that:
- a. The Data Request is overbroad and the information requested is not necessary to evaluate or relevant to Nashua’s Petition within the meaning of Puc 204.04(a).
  - b. The Data Request seeks information that is protected from disclosure by attorney/client and other privileges as provided by law.
  - c. The information requested includes confidential financial information, the rights to disclose which are held by 3<sup>rd</sup> party clients.
  - d. Because the bid process described is ongoing, disclosure of the municipal client or the facility could adversely affect its competitive position.

**ANSWER:** N/A.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-43

Respondents: George Sansoucy and  
Glenn Walker

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Req. 5-43      You note at page 24 that the City is projecting annual capital expenses of \$9.5 million. Please provide copies of all documents that relate to or support the development of this \$9.5 million figure, and state the number of years the City has committed to make capital expenditures at this level.

ANSWER:      The \$9.5 million is calculated using the 2007 bond reserve amount of \$2.9 million for 2007 shown in Exhibit GES #4 of the January 12, 2006 testimony plus one-third of the reconstruction bond for 2007 shown in Exhibit GES #5 of the January 12, 2006 testimony.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Objections to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Objection: June 12, 2006

Request No. 5-99

Respondents: Katherine Hersh  
John Henderson, Brian McCarthy.

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Req. 5-99      Would Nashua support an increase in PWW's rates based on its purchase of land in the watershed? If so, how much of a rate increase would Nashua support?

**OBJECTION:** Nashua objects to this request on the grounds that the information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a).

**ANSWER:** We have not made any determination with respect to the use of revenues derived from water rates for land acquisition for water supply protection. We expect to evaluate the merits of additional land acquisition in the context of the initial watershed evaluation performed by Veolia and the source protection program developed by R.W. Beck and Tetra Tech as we have previously described in response to Pennichuck Water Works Data Request 5-98, testimony and elsewhere in this proceeding.

We further do not agree that rate increases would necessarily be required for land acquisition. To the extent that savings are produced from operation of the system by Veolia, those savings could be used in whole or in part for the acquisition land for water supply protection.

City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Objection: June 12, 2006

Request No. 5-150

Respondents: Steven Paul, Esq.

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Req. 5-150 Provide copies of all correspondence to or from the City or any of its representatives or other documents relating to this proceeding or the subject matter thereof, including all drafts of any testimony submitted in this proceeding.

**OBJECTION:** Nashua objects to this Request on the grounds that the Data Request seeks information that is protected from disclosure by attorney/client and other privileges as provided by law.

**ANSWER:** N/A.