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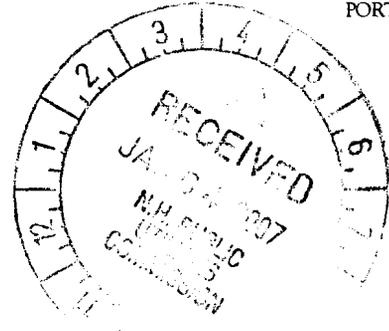
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OFFICES IN:
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January 4, 2006

Via 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.

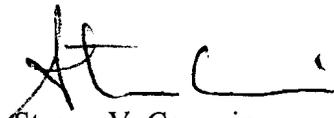
Dear Ms. Howland:

Enclosed for filing with the Commission are an original and six copies of the Pennichuck's Motion for Reconsideration of Order 24,706 in the above-captioned matter.

We have provided an electronic copy of the filing to the PUC librarian and the parties.

Thank you for your assistance with this matter.

Very truly yours,


Steven V. Camerino

SVC/ksm
Enclosures

cc: Service List (by electronic mail only)
Duane C. Montopoli, CEO and President, Pennichuck Corporation
Donald Ware, President, Pennichuck Water Works, Inc.

NHPUC JAN04'07 PM 4:28

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

PENNICHUCK'S MOTION FOR RECONSIDERATION OF ORDER 24,706

Pennichuck Water Works, Inc. ("PWW") respectfully requests that, pursuant to RSA 541:3, the Commission reconsider its Order No. 24,706 ("Initial Order") denying Pennichuck's Motion in Limine to Disqualify George E. Sansoucy and Glenn C. Walker as Valuation Expert Witnesses (the "Motion in Limine"). In support of this Motion, PWW states as follows:

1. The City of Nashua has proffered the prefiled testimony of Messrs. Sansoucy and Walker as independent experts to provide evidence on which it asserts the Commission should rely in determining the value of the assets Nashua proposes to take from PWW. The determination of the fair market value of those assets is a highly complex, technical matter that is not capable of resolution without extensive, perhaps exclusive, reliance on expert opinion.

2. PWW's Motion in Limine set forth in detail why Sansoucy and Walker do not meet even the most minimal standards necessary to be qualified in this case as independent experts. Their testimony, therefore, has no probative value and its admission into evidence for purposes of assisting the Commission in establishing a value for PWW's assets would be erroneous as a matter of law.

3. As is set forth in the Motion in Limine, the standard adopted in New Hampshire based upon *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) for determining whether a witness should be allowed to provide expert testimony is not merely a technical rule of evidence, as the Commission has apparently concluded in its Initial Order. It is a rule of substantive law that provides a basis for determining whether particular testimony may properly

be considered by a trier of fact based on its reliability. *See Baker Valley Lumber v. Ingersoll-Rand Co.*, 148 N.H. 609 (2002)(establishing standard for reliability of expert testimony). Even though the technical rules of evidence do not apply at the Commission, that does not mean there are no bounds as to the admissibility of evidence. The New Hampshire Supreme Court has plainly stated that, in administrative proceedings, "privileges apply, and irrelevant, immaterial, **unreliable** or incompetent evidence is to be excluded." *Appeal of Plantier*, 126 N.H. 500, 512 (1985)(emphasis added).

4. In this case, the inclusion of such highly suspect and unreliable testimony has the potential to substantially prejudice Pennichuck. Although the Commissioners are plainly experts in their own right regarding matters of public utilities regulation, including ratemaking and related issues, they are not valuation experts, and the Commission itself does not normally deal with issues of valuation. To allow the admission of unreliable evidence would be reversible error.

5. The Commissioners are presiding in this case much the way a judge would preside in a non-jury trial in Superior Court. In such cases, a witness is only allowed to offer expert testimony if the testimony meets certain standards. *See RSA 516:29-a*. The Commission should not apply a lesser standard here.

6. In summarily denying the Motion in Limine without substantive consideration, the Commission denied PWW, a condemnee facing the potential loss of all of its property, the due process and equal protection safeguards required by the New Hampshire Constitution. The Sansoucy/Walker testimony would not have been admissible if this condemnation case were tried in Superior Court, and should not be admissible here.

7. The Commission's findings that (i) "no useful purpose is served" by waiting for responsive pleadings and addressing the issues raised and that (ii) the issues raised were "unripe" are contrary to the law. Motions in limine that raise issues as to the admissibility or scope of testimony are favored in the law, and in fact were expressly encouraged by the Commission in this case.

8. The complexity of the appraisal methodology applicable to this case makes the expert qualifications of proffered witnesses of critical importance and requires the Commission to play an active role as gatekeeper of the evidentiary record. If the Sansoucy/Walker testimony is admitted into evidence, counsel for PWW will be required to spend extensive precious hearing time attacking the qualifications and pointing out the bias of these witnesses, rather than focusing on the substantive issues to be determined by the Commission. Given the very limited hearing time that the Commission has allocated to this case, PWW will be unfairly prejudiced by such an approach.

9. For these reasons, Pennichuck requests that the Commission grant this Motion for Reconsideration and deny the admission of any testimony by Messrs. Sansoucy and Walker on valuation.

WHEREFORE, Penichuck moves that the Commission:

- A. Reconsider its Initial Order ruling on the Motion in Limine;
- B. Deny the admission of any expert testimony on valuation by Mr. Sansoucy or Mr. Walker; and

C. Grant such other and further relief as may be just and reasonable.

Respectfully Submitted,

Pennichuck Water Works, Inc.

By Its Attorneys,

MCLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

January 4, 2007

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January 2007, a copy of Pennichuck's Motion for Reconsideration of Order 24,706 has been forwarded by electronic mail to the parties listed on the Commission's service list in this docket.



Steven V. Camerino