

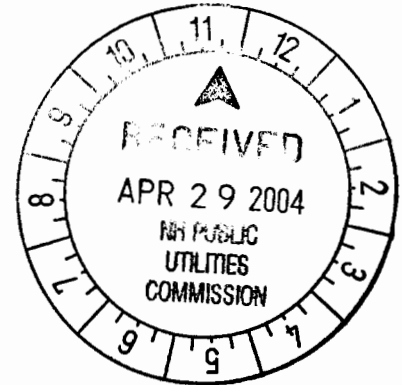


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April 28, 2004



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Executive Director and Secretary  
Public Utilities Commission  
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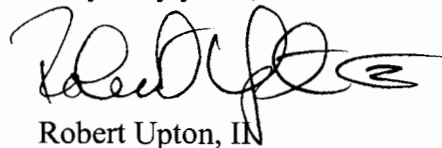
Re: DW 04-048 City of Nashua

Dear Ms. Howland:

I enclose herewith, an original and eight copies along with an electronic copy on a computer disk of the City of Nashua's Motion to Disqualify.

I certify that counsel for the Commission's staff and the Office of the Consumer Advocate have indicated that they take no position on the relief requested by the enclosed Motion. Counsel for Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc., do not consent to the relief requested in the Motion.

Very truly yours,



Robert Upton, II

RUII/dgg

Cc: Service List

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

**IN THE MATTER OF THE  
DETERMINATION OF THE  
FAIR MARKET VALUE OF  
THE PLANT AND PROPERTY  
OF PENNICHUCK WATER  
WORKS, INC., PENNICHUCK  
EAST UTILITY, INC., AND  
PITTSFIELD AQUEDUCT  
COMPANY, INC.**

**DOCKET NO. DW 04-048**

**MOTION TO DISQUALIFY**

NOW COMES the City of Nashua and moves to disqualify McLane, Graf, Raulerson and Middleton, Professional Association ("McLane") from further representation of Pennichuck Corporation ("Pennichuck"), Pennichuck Water Works, Inc. ("PWW"), Pennichuck East Utility Inc. ("PEU"), and Pittsfield Aqueduct Company, Inc. ("PAC") in the above Docket. In support of its Motion the City says as follows:

1. On April 8, 2004, McLane, on behalf of Pennichuck, PWW, PEU and PAC, filed with the Hillsborough Superior Court, Southern District a First Amended

Verified Petition for Declaratory Judgment Injunctive Relief which sought a ruling, inter alia, that:

- a. RSA 38:9-11 is unconstitutional for failure to provide any superior court and jury trial process; and
- b. RSA 38:1-13 is unconstitutional because it deprives Pennichuck of its right to engage in commerce and constitutes a temporary and permanent taking of Pennichuck's private property rights.

2. On April 20, 2004, on behalf of Pennichuck, PWW, PEU and PAC, McLane also filed a Writ of Summons in the Hillsborough Superior Court, Southern District against the City in which it is alleged inter alia, that the City's reliance on RSA Chapter 38 violated the Fifth and Fourteenth Amendments to the United States Constitution, Part 1, Article 2 and 14 and Part 3, Article 83 of the New Hampshire Constitution and constituted a civil rights deprivation under RSA 42 USC, Section 1983.

3. In this Docket, on behalf of PWW, PEU and PAC, McLane has moved to dismiss or alternatively to stay the City's Petition for Valuation again asserting that RSA 38:9-11 is unconstitutional and that this Commission should not act until the Superior Court has made such a determination.

4. At the same time these Superior Court actions were filed on behalf of Pennichuck, PWW, PEU and PAC asserting the unconstitutionality of RSA 38 and at the same time it was asserting the unconstitutionality of the City's Petition to the Commission, McLane was and had been since August 13, 2003, representing the Town of Ashland before the Commission (Docket DE 03-155) seeking on behalf of the Town of Ashland, NH to condemn and have valued, pursuant to RSA 38:9, certain utility property

of the New Hampshire Electric Cooperative (NHEC). A copy of the petition filed by it on behalf of Ashland is attached as Exhibit A.

5. NHEC has contested the Petition and the docket is pending a final hearing before the Commission on May 17, 2004. On information and belief, NHEC is aware of the arguments advanced by Pennichuck that RSA 38 is unconstitutional and intends to make a similar argument in opposition to Ashland's petition to the Commission.

6. The position taken by McLane in the actions before the Superior Court, asserting that RSA 38 is unconstitutional, is detrimental to the interest of the Town of Ashland in the pending docket before the Commission and there is a significant risk that its actions on behalf of Pennichuck, PWW, PEU and PAC will materially limit its effectiveness in representing Ashland before the PUC. McLane could not reasonably believe in arguing that RSA 38 is unconstitutional in these actions, that its simultaneous representation of Ashland, which relies upon RSA 38, would not be adversely affected.

7. The position taken by McLane before the Commission relying on the provisions of RSA 38 on behalf of Ashland is detrimental to the interests of Pennichuck, PWW, PEU and PAC and there is a significant risk that its efforts on behalf of Ashland will materially limit its effectiveness in representing Pennichuck, PWW, PEU and PAC. McLane could not reasonably believe in asserting the applicability of RSA 38 to the taking by Ashland, that its simultaneous representation of Pennichuck, PWW, PEU and PAC, who urge the unconstitutionality of RSA 38, would not be adversely affected.

8. McLane's representation of Pennichuck, PWW, PEU and PAC in the actions before this Court is a violation of Rule 1.7 of the Rules of Professional Conduct and calls into question the fair and efficient administration of justice.

9. The Plaintiff does not assent to the relief requested in this Motion

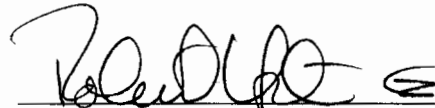
WHEREFORE, the City of Nashua respectfully moves the Commission:

- a. To disqualify McLane, Graf, Raulerson and Middleton from any further representation of Pennichuck, PWW, PEU and PAC in these or any other related matters in which they seek to have RSA 38, or any section thereof, declared unconstitutional; and
- b. To grant such other and further relief as justice may require.

Respectfully submitted,

CITY OF NASHUA

By its attorneys:  
Upton & Hatfield, LLP

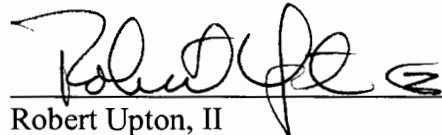


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Dated: April 28, 2004

#### CERTIFICATION

I hereby certify that a copy of the foregoing Motion to Disqualify was this day forwarded to all persons on the attached Service List.

  
Robert Upton, II

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Docket #: 04-048-1 Printed: April 28, 2004

**FILING INSTRUCTIONS:**

**WITH THE EXCEPTION OF DISCOVERY (SEE NEXT PAGE) FILE 1 ORIGINAL & COVER LETTER, PLUS 8 COPIES  
(INCLUDING COVER LETTER) TO:**

DEBRA A HOWLAND  
EXEC DIRECTOR & SECRETARY  
NHPUC  
8 OLD SUNCOOK RD  
CONCORD NH 03301-7319

PURSUANT TO N.H. ADMIN RULE 204.04 (C), FILE DISCOVERY

DIRECTLY WITH THE FOLLOWING STAFF

RATHER THAN WITH THE EXECUTIVE DIRECTOR

LIBRARIAN  
NHPUC  
8 OLD SUNCOOK RD  
CONCORD NH 03301-7319

BULK MATERIALS:

Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

MARCIA THUNBERG  
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AMANDA NOONAN  
CONSUMER AFFAIRS DIRECTOR  
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Docket #: 04-048-1  
Printed: 4/28/2004

STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 03-

Re: Town of Ashland

Petition for Valuation Pursuant to RSA 38:9

NOW COMES the Town of Ashland (the "Town") and petitions the New Hampshire Public Utilities Commission ("the Commission") pursuant to RSA 38:9 for a determination of the value of certain property of the New Hampshire Electric Cooperative ("NHEC") necessary for expanded electric service by the Town. In support of this petition, the Town states as follows:

1. Since 1917, the Town of Ashland has provided retail electric service to its residents. The Town currently serves approximately 1100 customers, which are comprised of residential, commercial and industrial customers. Currently, the Town provides electric service to approximately 85-90% of its residents and 99% of its business establishments. NHEC serves the remaining residents of Ashland, including those along 3.8 miles of North Ashland Road and Route 175 (the "Territory"), one resident in eastern Ashland, and three in the southern area of the Town. The Town offers electric service at highly competitive rates. Under the Town's tariff, a residential customer using 500 kilowatt hours per month would pay \$48.23 per month, while NHEC would charge \$74.87 for the same.

2. The Town has received requests for municipal electric service and petitions from residents in the Territory requesting that the Town "do what is necessary for us to come under the management and control of Ashland Electric". The Town is committed to making electric service available to all of its residents, regardless of where in the Town they reside and believes that it is in the public interest for the Town to serve all or as many of its residents as is practical.

3. In accordance with its commitment to provide service to all of its residents, and the provisions of RSA 38:12, the Town sent written notice to NHEC on March 26, 2003 stating its intention to expand its municipal electric service into the Territory. The Town provided NHEC with a description of the Territory, and identified the NHEC property necessary to provide expanded municipal electric service. On May 21, 2003, NHEC responded to the Town's notice and declined to voluntarily sell the property necessary to serve customers in the Territory.

4. Given NHEC's refusal to voluntarily sell its property to the Town, the Town is petitioning the Commission to find that expansion of Town electric service to its residents is in the public interest, and to establish appropriate compensation to NHEC for any property taken to serve its customers in the Territory.

5. The Town is capable of serving these additional customers. See Pre-Filed Testimony of Lee Nichols, attached hereto as Exhibit 1. As of October, the Town will employ three full time linesmen and maintains a contract with Public Service of New Hampshire to provide backup line support as needed. The Town currently purchases power on the wholesale market to serve its existing customers and can purchase additional load at competitive prices to serve new customers in the Territory. Any additional load can easily be accommodated by the Town's transformers, which have substantial excess capacity available. While NHEC poles are currently used to serve customers in the Territory, the Town believes that it is necessary to build two circuits in order to effectuate the transfer of customers from NHEC to the Town. One circuit would be constructed to express power through the Town to NHEC in Holderness, and the other would be constructed to serve as the distribution system for the Territory, since NHEC's current poles are quite old and difficult to maintain given their distance from the roadway. All of this construction would be completed within three months.

6. The Commission should grant the Town's petition since it is presumptively in the public interest for the Town to serve all of its residents, or as many as practical. Moreover, the Town is capable of providing reliable electric service to its residents and can do so at substantial costs savings to customers in the Territory. As a result, the Commission should grant the Town's request to expand into the Territory and determine appropriate compensation for the NHEC property taken.

WHEREFORE, the Town respectfully requests that the Commission:

- A. Issue an Order of Notice opening a docket in this matter; and
- B. Grant such other and further relief as may be just and reasonable.

Respectfully submitted

TOWN OF ASHLANI

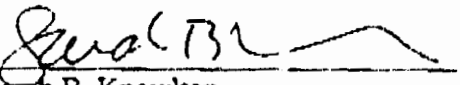
Date: August 12, 2003

By: 

Richard A. Samuels, Esq.  
Sarah B. Knowlton, Esq.  
Ten Pleasant Street, P.O. Box 459  
Portsmouth, New Hampshire 03802-0459  
(603)436-2818 - Telephone  
(603)436-5672 - Facsimile

Certificate of Service

I hereby certify that on August 12, 2003, I served the foregoing Petition for Valuation by first class mail on Mark Dean, Esq., counsel for NHEC and Michael W. Holmes, Esq., counsel for the Office of Consumer Advocate.

  
Sarah B. Knowlton