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Please respond to the North Conway office

June 23, 2005

RECEIVED
JUL 05 2005
N.H. PUBLIC UTILITIES COMMISSION

Debra A. Howland
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

Re: Docket DW 04-048
City of Nashua – Pennichuck Water Works, Inc.
Petition for Valuation Pursuant to RSA 38:9

Dear Ms. Howland:

I enclose for filing, herewith, an original and 8 copies, along with an electronic copy on a computer disk in word format, of Motion to Strike PWW's Reply to Nashua's Objection to Motion to Compel by the City of Nashua.

A copy of this letter and the above Motion has been mailed to all persons on the attached service list.

Very truly yours,

Robert Upton, II

RUII/dgg
Enclosure

Cc: Service List

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Docket #: 04-048-1 Printed: June 23, 2005

FILING INSTRUCTIONS:

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

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STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

Docket No. DW 04-048

MOTION TO STRIKE PWW's REPLY TO NASHUA'S OBJECTION TO MOTION TO COMPEL

The City of Nashua ("Nashua") respectfully moves the Public Utilities Commission to strike Pennichuck Water Works, Inc.'s, ("PWW's") Reply to Nashua's Objection to Motion to Compel, dated June 21, 2005, and in support of this motion, states as follows:

1. On June 2, 2005, PWW submitted a Motion to Compel the City of Nashua to Respond to Pennichuck Data Requests ("Motion to Compel"). On June 13, 2005, Nashua submitted a timely Objection to PWW's Motion to Compel ("Objection") pursuant to Puc 203.04.

2. On June 21, 2005, PWW filed document which was neither a motion nor an objection, captioned "Reply to Nashua's Objection to Motion to Compel" ("Reply").

3. PWW's Reply to Nashua's Objection represents its latest effort to use the discovery process in order to prevent Nashua and the Commission from focusing on the real issues in the case. However, because its Reply is not authorized by

statute or the Commission's administrative rules, and PWW has not requested that the Commission waive its procedural rules, the filing should be rejected.

4. The documents which make up the Record in this proceeding are set by RSA 541-A and the Commission's administrative regulations, Puc 200 et seq. Under RSA 541-A:31, V, the record in a contested case includes all "pleadings, motions, objections, and rulings." No provision is made for a "Reply" to an objection.

5. Similarly, the Commission's rules allow for both motions and objections, but make no provision for "replies" to objections. See e.g. Puc 204.01 (referring to pleadings as "motions, petitions or complaints"); Puc 203.04 (discussing motions and objections, but not replies).

6. PWW has not requested that the Commission waive its procedural rules pursuant to Puc 201.05 and allow it leave to file a reply to Nashua's Objection. Even if it had done so, PWW's Reply, with limited exception, simply repackages the arguments already made in its Motion to Compel in an attempt to have the last word. However, these arguments are already squarely before the Commission and allowing PWW, or any party, to continue to pile on additional letters, replies or other documents in this proceeding, will serve neither the public interest nor the orderly conduct of this proceeding.

7. In fact, the Commission's concerns regarding the conduct of this proceeding have already proved well founded. See e.g., *Order No. 24,447*, Page 6 ("Our goal is to focus the proceedings on the facts in order to avoid overreaching accusations and argumentation that only serve to cloud the fundamental issues the Commission must resolve.").

8. The Commission authorized the Executive Director to "schedule additional technical sessions for resolution of discovery disputes, which may be conducted in person or by telephone and presided over by the Commission or a designated Hearings Examiner." *Id.*, at Page 8. Given that both PWW and Nashua have a number of motions and objections pending before the Commission, an additional technical session before a hearings examiner or the Commission appears to be appropriate.

9. PWW does not assent to the Motion. Pittsfield takes no position. Staff does not assent, but also does not oppose the Motion.

WHEREFORE, the City of Nashua respectfully requests that the Commission:

a. Grant this Motion to Strike PWW's June 21, 2005, Reply to Nashua's Objection to Motion to Compel; and

b. Schedule a technical session to resolve the discovery motions pending before the Commission, including, inter alia,. Nashua and PWW's motions to compel, and Nashua's Motion to Limit Discovery Requests; and

c. Grant Nashua such other and further relief as justice may require.

Respectfully submitted,

CITY OF NASHUA
Upton & Hatfield, LLP
By its attorneys:

Robert Upton, II
23 Seavey Street, PO Box 2242
North Conway, NH 03860
(603) 356-3332

Dated: June 23, 2005

David Connell, Esquire
Corporation Counsel
229 Main Street
Nashua, New Hampshire 03061

CERTIFICATION

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

Robert Upton, II