

STATE OF NEW HAMPSHIRE

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December 6, 2005

RE: DW 04-048, City of Nashua  
Order No. 24,555

To the Parties:

Enclosed are revised pages 2 and 4 of Order No. 24,555 (December 2, 2005). On page 2 "Order No. 24,497" has been changed to "Order No. 24,487", and on page 4, "RA" has been changed to "RSA." All other portions of this order remain unchanged.

Please substitute the enclosed revised pages to your copy of Order No. 24,555.

Very truly yours,

A handwritten signature in cursive script, reading "Debra A. Howland".

Debra A. Howland  
Executive Director and Secretary

Enclosures  
cc: Service List  
Docket File

29, 2005) denying a Motion to Compel filed by Nashua regarding privilege and discovery into other valuations performed by or for PWW.

Each motion for rehearing gave rise to an objection and in some cases responses from other parties or Staff. The motion filed by Nashua regarding Order No. 24,487 gave rise not only to an objection from the Pennichuck Companies but also a request by Nashua to respond to the objection, which in turn was opposed by the Pennichuck Companies. The Commission's procedural rules do not authorize responses to objections and multiple rounds of pleadings are not favored. We find no basis here for allowing such additional pleadings and have not considered them in reaching our determinations herein.

## **II. Order No. 24,487**

### **A. Order**

In Order No. 24,487, the Commission held that the scope of severance damages and/or financial consequences of a taking of PWW would be determined after review of the testimony on this issue and not as a threshold legal matter as urged by Nashua.

### **B. Nashua Motion**

Nashua filed a Motion for Reconsideration, alleging that the Commission should not interpret the phrase "the utility" in RSA 38:6 narrowly in Order No. 24,425, limiting a taking to PWW alone, and then interpret the phrase "the owner" in RSA 38:9 broadly in Order No. 24,487, allowing entities other than PWW to be compensated for severance damages if the evidence so supports. Nashua argues that the legislature intended damages for severance to be limited to the plant and property of the utility being taken, not of the parent company or stock ownership of the parent company of the utility. Nashua asserts that if the legislation is to be read expansively to

record. We did not rule on who, if anyone, is entitled to damages in Order No. 24,487 and remain open to the arguments of the Parties and Staff on this issue. Accordingly, we deny the Motion for Rehearing.

### **III. Order No. 24,488**

#### **A. Order**

In Order No. 24,488, the Commission denied requests by PWW to compel responses to certain data requests regarding Nashua's claim of expertise in operating other municipal systems and certain questions regarding events prior to November 26, 2002, the date the Nashua Aldermen voted to proceed with a taking. As stated in the Order, to avoid becoming "ensnared by issues that no doubt are important to the parties but have little bearing on the determinations the Commission must make, we will not allow the parties to engage in debate over the Philadelphia Suburban transaction". Order No. 24,488 at 7-8.

#### **B. PWW Motion**

PWW filed a Motion to Reconsider or Rehear Order No. 24,488, arguing that it should not be prohibited from discovery into these areas. Details of Nashua's operations of other municipal systems, PWW asserts, is relevant if Nashua is to operate the water system. The questions regarding events prior to November 26, 2002, according to PWW, must be explored: 1) to determine "what gave rise to the City's consideration of pursuing a taking under RSA Chapter 38" and 2) because the Order is "contrary to the Superior Court's directive" regarding the scope of discovery in the Commission docket. PWW quotes Superior Court Judge Lynn's order that Nashua's "alleged bad faith, improper motive and lack of intent to follow through with the acquisition obviously are matters that would have a significant bearing on the question of

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