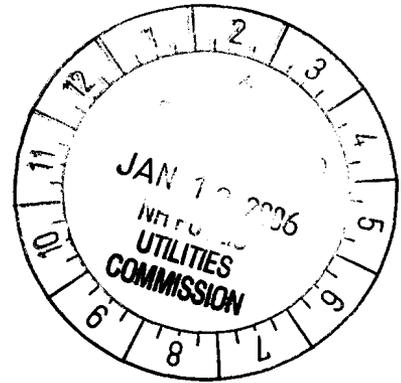


BOUTIN ASSOCIATES, P.L.L.C.  
Attorneys At Law

Edmund J. Boutin

January 12, 2006



Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Re: DW 04-048  
City of Nashua – Pennichuck Water Works, Inc.

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 the direct Testimony of Richard Hinch on behalf of the Town of Merrimack.

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

Sincerely,

A handwritten signature in black ink, appearing to be "E. Boutin", written over a circular stamp.

Edmund J. Boutin

EJB/alm  
Enclosures

cc: Service List

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

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

**Docket No. DW 04-048**

**TESTIMONY OF RICHARD HINCH**

Q: Please state your name and public office.

A: My name is Richard Hinch, and I serve as chairperson of the Merrimack Board of Selectmen, a five member board which serves as the governing body of the Town of Merrimack ("Merrimack")

Q: What is the reason for your testimony?

The Town is quite concerned that the Commission closely scrutinize the proposed taking of the Pennichuck Water Company ("PWW") by the City of Nashua. PWW has been a valued corporate citizen. It employs several Merrimack residents. The Town's largest employer is Anheuser-Busch, with nearly 800 employees. It accounts for 15% of PWW's average daily flow of water distribution. With the Merrimack Village District and citizens of Merrimack, this amounts to nearly 20% of PWW's average daily flow. Merrimack's prime industrial zone is in the PWW franchise. I am particularly concerned about the following issues.

First, I am concerned that the Commission will review this as a zero sum game. This will involve an unstated assumption that municipal ownership is better and that the whole public good issue is nothing but an argument among municipalities. If so, staff will see this as merely a political decision.

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However, Merrimack has a lot at stake. Merrimack sees in Nashua's pre-filed testimony, and in the defects it perceives in the Merrimack Valley Regional Water District Charter ("Charter"), severe problems which may not be resolvable. What is presently known is that PWW is a well-managed water utility with reasonable rates, by all accounts. It will have normal demands for foreseeable rate increases, involving capital improvements and a decent rate of return on its investment. What is unknown is whether a municipal utility, heavily weighted by Nashua's municipal interests, is a viable replacement for a known quantity. The Charter raises the specter of overbearing Nashua control of capital investment and rate setting, as well as where, when and how to place capital improvements. There is the additional question of whether Nashua or the Merrimack Valley Regional Water District ("District") will have the wherewithal financially to even equal PWW's performance.

The Commission has a vital role that Merrimack is depending on it to perform. The District seems to take the position that all it has to do is demonstrate that it will do no worse as a water utility than PWW does. If that is the District's ambition, the public good has been ignored, since the test should be whether the District can be a long-term improvement and how. PWW has a demonstrated ability to do the utility business. The District bears the burden of showing why this is not enough.

Merrimack has a more significant interest than other non-Nashua towns. As noted above, the combined Merrimack consumption is about 20% of average daily flow. Merrimack is a community that has its own water district which wheels PWW water through to consumers in Amherst and Bedford. The Anheuser-Busch plant employs 800 people in Merrimack. Based on prefiled testimony, Nashua has declined to respond to

questions as to whether it would honor its existing special contract with Anheuser-Busch, a contract that, in predecessor form, lured the brewery to New Hampshire.

This case affects Merrimack's important interests in at least four ways. First, PWW is the public water supplier for the southeasternmost portion of Merrimack. Its customers include important Merrimack businesses, employers and taxpayers such as Anheuser-Busch, Nashua Corporation, BAE Systems, and Brookstone. PWW serves over 300 residential customers in that part of Merrimack. The town is also a customer, and PWW provides fire protection service (i.e. hydrants) in sections of Merrimack. Each of these customers is part of PWW's core system, i.e. all of the water receives treatment at the Nashua treatment plant. Merrimack is concerned that these customers receive high quality water service at a reasonable price. Second, Pennichuck Brook forms a portion of Merrimack's border with Nashua, and part of the watershed and PWW's water supply is located in Merrimack. Merrimack therefore has a responsibility for maintaining the quality of that watershed. Third, as previously stated, about 20 percent of the daily flow from PWW's core system is delivered to and consumed by Merrimack customers. Because of this, Merrimack, more so than any other town, has a vital economic and legal stake in this proceeding. Fourth, since 1990 or so, PWW has supplied an emergency connection to the Merrimack Village District ("MVD") water system, which serves much of Merrimack. That emergency connection is vital when (as has happened in the past) the MVD water sources become contaminated.

Q: Does Merrimack believe that it would be in the public interest of Merrimack residents, businesses and taxpayers for Nashua to take PWW's assets?

A: No. Merrimack has been historically and is well served today by PWW, providing good quality water service at a reasonable price. Merrimack does not have the confidence that Nashua could provide that same good level of service, based upon the evidence Nashua has presented. Merrimack also worries that Nashua will favor its own residents in terms of rates and capital investments, at the expense of Merrimack residents and businesses. I am concerned that Nashua cannot be counted on in the future to act in a manner that would give appropriate weight to the interests of Merrimack businesses and residents. Currently, Merrimack customers are billed at the same rate as Nashua customers, and receive the same consideration in terms of new connections. Merrimack remains insecure at this point about ownership of the water system by Nashua; especially since Nashua's water operations would likely become exempt from Commission oversight should Nashua and/or the District take over PWW. Merrimack's citizens have not voted for municipalization of the water system, and we are not comfortable with Nashua voters and elected officials making decisions that would directly affect Merrimack water customers.

Merrimack also reiterates its concern that considering the public good in a vacuum from realistic valuation evidence begs the central question of a public good determination. The question is simple. Given the economics of this taking, can Nashua, or a regional water district, provide long-term service and capital improvements for this water system, while maintaining reasonable rates? As a regulated entity, Merrimack presumes that this regulation will ensure, as much as possible, that capital needs are met and that rates are realistically balanced against those needs. To date there has been no testimony by Nashua, other than questionable prefiled testimony, which is based upon

naked assumptions, as to how much the acquisition costs of this water system will be in condemnation. Although Nashua has now supplied what appear to be draft contracts for operation and maintenance of the system and for oversight, the contracts and Nashua's reservation of rights appear to be laden with so many contingencies as not to provide a full picture of operating costs. Merrimack is desirous of maintaining third party regulated status for any entity that serves its citizens. It sees this as the only way to ensure that decisions are not made in a vacuum in which Merrimack has no real say.

Merrimack is aware, and the Commission knows, that Nashua is a stalking horse for the District, which has no staff, experience, background or funding with which to purchase or operate this water system. Even if it did, or could, overcome these deficiencies, the Charter places effective control of decisions about rates and capital investments in Nashua's hands. Even as a member of the District, Merrimack could not counter this disadvantage. It is more pronounced because Merrimack's main industrial/commercial zone abuts a similar zone in Nashua. In a competition of the municipalities over development which depends on water service, Merrimack considers it unlikely that it would receive fair consideration in an unregulated environment.

Q: Has the Merrimack Board of Selectmen considered this issue?

A: Yes, on January 11, 2006, the Selectmen authorized me to file this testimony.

Q: How has PWW served the public interest in Merrimack?

A: PWW is an excellent supplier of water service at a reasonable price to customers in Merrimack. Its management is responsive to customer needs, as well as to Town concerns such as road excavation and fire protection. Ever since PWW obtained a water service franchise in 1969 for the southeastern portion of Merrimack, it has worked

diligently to satisfy town requirements. For instance, when the MVD water supply became contaminated in 1989-90, PWW stepped up to extend an emergency connection so that Merrimack residents could continue to receive potable water service. PWW's expansion into the southeastern corner of town enabled the development of Merrimack's industrial zone, which is a substantial contributor to the town's and the state's tax base, as well as a substantial contributor of high quality, well-paying jobs in southern New Hampshire. Those businesses are all dependent upon the availability of water service. Specifically, when Anheuser-Busch was planning to construct a brewery in New England, it considered locations out of state as well. The availability of a substantial water supply was a precondition to its decision to locate in Merrimack. As mentioned before, PWW provides fire protection service in part of the town. PWW is also a good corporate citizen. As an example, it donated four acres of land in Merrimack to enable the construction of the Home Health Hospice. Finally, PWW on its own has advocated that Merrimack look into approving a watershed protection ordinance so that privately held land within the watershed would not be used in a matter which harmed the PWW water supply.

Q: Does Merrimack have other concerns about whether this acquisition is in the public good?

A: I also want to express Merrimack's grave concern that the foundation for the economic viability of the acquisition is based upon what may be an artificially low estimated valuation. The public good cannot be determined without understanding how valuation affects the economics of the condemned utility. Cost of capital is a key concept here. Although there are many factors that determine cost of capital and may affect the

comparison of cost of capital for a municipality and a private entity, there is a glaring defect in the pre-filed testimony. In determining relative cost of capital, one has to assume a capital requirement. Acquisition price is a large part of determining that capital requirement. Therefore, a 2 to 3 % differential in the cost of capital percentage rate does not yield a meaningful answer to the cost of capital question. Rather, the cost of capital question is determined by what capital is needed. Since PWW does not have to raise acquisition capital, its capital requirements may be considerably less than Nashua's and the cost of capital for Nashua considerably higher than estimated, when viewed in real terms. Nashua has never demonstrated, for instance, that its estimated value is based on comparable sales, as that term is customarily used in valuation of property. A per customer allocation of value is only meaningful if it can be effectively demonstrated that the customer base of each acquisition is similar. Nashua bears the burden of proof of this issue and has provided little by way of testimony to meet that burden.

If Nashua's cost of capital is relatively higher than estimated, this could have an impact on their willingness to expand outside of Nashua. As a regulated utility, PWW has little choice but to expand where there is demand. Merrimack fears that Merrimack's concerns have not to date been addressed. However, the Town remains receptive to any efforts to meaningfully address these concerns. Nashua may seek to inhibit expansion in non-local areas because other towns may be competing for the most valuable industrial customers with Nashua.

Q: Does this conclude your testimony?

A: Yes.

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Docket #: 04-048-1 Printed: January 10, 2006

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