

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

December 9, 2004 - 9:14 a.m.
Concord, New Hampshire

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RE: **DW 04-048**
CITY OF NASHUA, NEW HAMPSHIRE:
Petition for valuation pursuant to RSA 38:9.
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Michael D. Harrington

Diane Bateman, Clerk

APPEARANCES: **Reptg. the City of Nashua, NH:**
Robert Upton, II, Esq.

Reptg. Pennichuck Water Works, Pennichuck
East Utilities & Pittsfield Aqueduct Co.:
Steven V. Camerino, Esq.
Thomas J. Donovan, Esq.
Sarah B. Knowlton, Esq.

Reptg. Merrimack Valley Reg. Water District:
Stephen J. Judge, Esq.

Reptg. Merrimack River Watershed Council:
Elizabeth Coughlin, President

Reptg. the Town of Merrimack:
Edmund J. Boutin, Esq.

COURT REPORTER: STEVEN E. PATNAUDE, CCR

ORIGINAL

APPEARANCES: (C o n t i n u e d)

Reptg. the Towns of Amherst & Milford:
William Drescher, Esq.

Reptg. the Towns of Litchfield & Hudson:
Jay Hodes, Esq.

Reptg. the Town of Pittsfield:
Laura Spector, Esq.

Reptg. Anheuser-Busch:
Dom S. D'Ambruoso, Esq.

Reptg. the N.H. Business & Industry Assn.:
Michael Giaimo, Esq.

Reptg. the Town of Bedford:
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Fred Teeboom, pro se

Clare McHugh, pro se

Barbara Pressley, pro se

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F. Anne Ross, Esq.
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Reptg. PUC Staff:
Marcia A. B. Thunberg, Esq.

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P R O C E E D I N G S

CHAIRMAN GETZ: Good morning. We'll open this prehearing conference in docket DW 04-048, City of Nashua Petition for Valuation, pursuant to RSA 38:9. On October 1, 2004, Commission issued a prehearing conference order, which, among other things, set the prehearing conference for this morning, and noted that parties will be given the opportunity to state their respective positions with respect to the petition. And, it also notes that we will be prepared to address other procedural issues that may arise, and points out that the parties should be prepared to work out a procedural schedule after the prehearing conference, regarding, among other things, discovery, responsive testimony, and related to valuation issues.

I'll note, before we start, I believe we have one more, one new petition for intervention filed by the Business & Industry Association. And, also point out that there was one issue outstanding that was briefed in the filings on October 25, and that concerns the propriety of the vote. And, I'll note that arguments regarding that are still under consideration. But, for purposes of putting together a procedural schedule, it's appropriate to assume that the vote is valid, in the absence of a decision to the contrary.

1 So, having set forth those issues, let's take
2 appearances please.

3 MR. UPTON: I'm Robert Upton, from Upton
4 & Hatfield, on behalf of the City of Nashua.

5 CHAIRMAN GETZ: Good morning.

6 MR. UPTON: Good morning.

7 MR. JUDGE: Stephen Judge, from the
8 Merrimack Valley Regional Water District. And, I'm with the
9 law firm of Wadleigh, Starr & Peters, in Manchester.

10 CHAIRMAN GETZ: Good morning.

11 MR. BOUTIN: Edmund Boutin, I'm with the
12 law firm of Boutin & Associates, and I represent the Town of
13 Merrimack.

14 CHAIRMAN GETZ: Good morning.

15 MR. GIAIMO: Good morning. Michael
16 Giaimo, with the Business & Industry Association.

17 CHAIRMAN GETZ: Good morning.

18 MR. CAMERINO: Good morning,
19 Commissioners, and welcome to Commissioner Harrington. My
20 name is Steve Camerino. I'm from McLane, Graf, Raulerson &
21 Middleton. And, with me today are Tom Donovan and Sarah
22 Knowlton, as well as the Chairman and CEO of Pennichuck
23 Corporation, Donald Correll. And, we represent the various
24 Pennichuck entities in this proceeding.

1 CHAIRMAN GETZ: Good morning.

2 MS. PRESSLEY: Barbara Pressley, citizen
3 intervenor.

4 CHAIRMAN GETZ: Good morning.

5 MS. PRESSLEY: Good morning.

6 MR. HODES: Jay Hodes --

7 MS. McHUGH: Sorry, I thought we were
8 finishing, I was skipped over. I'm Clare McHugh, I'm also
9 an intervenor.

10 CHAIRMAN GETZ: Good morning.

11 MR. HODES: Jay Hodes, appearing on
12 behalf of the Town of Litchfield and the Town of Hudson.

13 CHAIRMAN GETZ: Good morning.

14 MR. DRESCHER: William Drescher,
15 appearing on behalf of the Towns of Milford and Amherst.

16 CHAIRMAN GETZ: Good morning.

17 MS. SPECTOR: Laura Spector, from
18 Mitchell & Bates, on behalf of the Town of Pittsfield.

19 CHAIRMAN GETZ: Good morning.

20 MR. D'AMBRUOSO: Dom D'Ambruoso, from
21 Ransmeier & Spellman, for Anheuser-Busch.

22 CHAIRMAN GETZ: Good morning.

23 MR. D'AMBRUOSO: Good morning.

24 MS. COUGHLIN: Good morning, Mr.

1 Chairman, welcome Commissioner Harrington. Elizabeth
2 Coughlin, President of the Merrimack River Watershed
3 Council.

4 CHAIRMAN GETZ: Good morning.

5 MS. ROSS: Good morning, Commissioners.
6 Anne Ross, with the Office of Consumer Advocate, and with me
7 today are Ken Traum and Rorie Hollenberg.

8 CHAIRMAN GETZ: Good morning.

9 MS. THUNBERG: Good morning,
10 Commissioners. Oh, I'm sorry, Mr. Teeboom.

11 MR. TEEBOOM: Good morning. My name is
12 Fred Teeboom. I'm not an attorney. I represent myself.
13 I'm a citizen of Nashua.

14 CHAIRMAN GETZ: Good morning.

15 MS. THUNBERG: Sorry. Marcia Thunberg,
16 on behalf of Staff. And, present today is Mark Naylor, Jim
17 Lenihan, Doug Brogan, Jayson LaFlamme. Thank you.

18 CHAIRMAN GETZ: Good morning. Let's
19 address the BIA's motion for intervention first. Are there
20 any objections to that motion to intervene?

21 MR. UPTON: I --

22 CHAIRMAN GETZ: Please. Mr. Upton.

23 MR. UPTON: Oh, I'm sorry. I thought
24 you were looking behind me. I don't know that I fully

1 object to it, Commissioners. The rules permit intervention
2 based upon satisfying RSA 541-A, which speaks about the
3 "rights, privileges and duties" of intervenors. And, it's
4 hard for me to imagine that the BIA itself has any rights,
5 privileges or duties that are affected. This is a trade
6 organization, and it represents dues-paying members. And,
7 it's just hard for me to imagine that they have any rights,
8 duties and privileges that are affected.

9 Moreover, I'm assuming they're appearing in
10 opposition to this taking, since Pennichuck is one of their
11 -- is one of their members. And, its opposition we think
12 would be inconsistent to the interests of its business and
13 industry members that are in the City of Nashua, who could
14 potentially achieve lower rates. It's almost like they're
15 saying that the right thing to do is we need to intervene,
16 because we need to protect our members' right to receive
17 higher rates, to pay more money for their water.

18 If they intervene, we think -- Nashua thinks
19 that it should be limited to the receipt of -- it shouldn't
20 be full participation, it should be limited to the receipt
21 of documents and the filing of briefs, but not to
22 participation and discovery and filing testimony.

23 CHAIRMAN GETZ: It seems that you're
24 raising maybe in part whether BIA has been -- or, Mr. Giaimo

1 has been legitimately authorized by his membership to
2 participate?

3 MR. UPTON: No, I don't, I don't doubt
4 that he's been legitimately authorized. All I'm saying is
5 that, as an entity, the BIA has no rights, privileges or
6 duties that are affected. If one of its members came
7 through the door and said, "you know, we get water from one
8 of the Pennichuck companies", I'd have no right to say "no,
9 you can't participate." But the BIA itself is merely a
10 trade organization acting on behalf of its members. I don't
11 think that they meet the terms of the statute. I'm not
12 rising, I don't want to say "I don't want them to
13 participate in any way." I just think their participation
14 ought to be limited.

15 CHAIRMAN GETZ: Okay. Thank you. Do
16 you have a response, Mr. Giaimo?

17 MR. GIAIMO: Yes, I do have a response.
18 Traditionally, the Commission has accepted the BIA as
19 representing its members, and it is our members that have
20 their rights, privileges and duties pursuant to the statute.
21 And, I think that representing -- BIA represents its members
22 in that area. And, I guess I would say that I think it is
23 -- I think we do fairly and consistent with what the PUC has
24 done before, I think it's appropriate that we be allowed to

1 intervene.

2 CHAIRMAN GETZ: Do you have any response
3 with respect to Mr. Upton's proposal that your participation
4 be limited in some manner, to I guess it was filing briefs
5 and receiving documents?

6 MR. GIAIMO: I would have no -- so,
7 we're a limited intervention, is that --

8 CHAIRMAN GETZ: I believe that's his
9 proposal, is that I guess it would prevent you from doing
10 cross-examination or filing testimony, is the way I take it.

11 MR. GIAIMO: But still able to have my
12 -- have the comments and opinions of the Association heard
13 at appropriate times?

14 CHAIRMAN GETZ: That's the way I
15 understand it.

16 MR. GIAIMO: There would be no problem
17 with that.

18 MR. CAMERINO: Mr. Chairman, and I
19 certainly -- I don't know what type of intervention
20 Mr. Giaimo had planned, and so that type of limitation may
21 be fine by him. But my certain is that we have other
22 intervenors, who are also membership organizations, and none
23 of their interventions have been limited in this manner.
24 And, I think we should see how the case unfolds. I'm very

1 concerned about the Company being subject to discovery from,
2 you know, maybe a dozen parties and cross-examination in
3 ways that really disrupt this proceeding, in terms of I
4 think you're very familiar with the practice where friendly
5 parties supplement a party's direct through discovery and
6 through cross-examination. So, to me, it's premature right
7 now to talk about how we're going to circumscribe any
8 intervenor's participation. There may be a need to do that
9 later, I recognize that. But I don't think we should single
10 out one party for that right now.

11 CHAIRMAN GETZ: Other comments?

12 Ms. Pressley.

13 MS. PRESSLEY: Thank you, Mr. Chairman.
14 If you do allow this expansion at this stage to a group such
15 as this, which are a formal lobby group registered with the
16 state, I request that you allow those of us who represent
17 the citizens to seek similar representation through
18 environmental and conservation groups, because to counteract
19 their side, to sort of make it a level playing field. I
20 think it's unfortunate to expand it to anybody, only because
21 it's going to take more time and more time is going to cost
22 the ratepayers on both sides eventually. But, if you do
23 approve this, I hope you will also allow other intervenors
24 to balance it later on.

1 CHAIRMAN GETZ: Thank you. Ms. Ross.

2 MS. ROSS: Yes. I do -- I have a little
3 bit of confusion, and maybe the BIA could help me with this.
4 If the BIA has as a member Pennichuck Water Works, which is
5 a party in this proceeding with some very strong interests,
6 and also has as members customers who are users of water in
7 the Nashua area, it seems to me that the trade association
8 has -- is representing very conflicting interests in this
9 litigation. And, I guess what I would like to know is which
10 group the Pennichuck Water Works, i.e. the owner of a
11 private water company, or the customers who use that service
12 is BIA going to represent? What interest is it of their
13 membership interests that they're representing? And, if
14 they could at least clarify that for me, it might help me to
15 at least understand their conduct of the proceeding as we go
16 forward.

17 CHAIRMAN GETZ: Well, I guess that goes
18 to the issue that I inquired of Mr. Upton. It seems like
19 that's an internal governance issue for the BIA. If there
20 are questions about whether he's legitimately authorized,
21 maybe they should be pursued. But I think at this point
22 what I would recommend is, in the technical session
23 afterwards, that the parties further explore these issues
24 about the BIA's participation. We will take the matter

1 under advisement and wait to see if there's any more
2 recommendations. Certainly, with respect to responding to
3 Mr. Camerino's issue, it's the BIA's internal decision on
4 how deeply it wants to participate in this proceeding. And,
5 if they want to come to some arrangement with the
6 Petitioner, then that's their call.

7 So, let's move on from that issue, unless
8 there's anybody else who wants to comment with respect to
9 the BIA's motion?

10 (No verbal response)

11 CHAIRMAN GETZ: Okay. Are there any
12 other preliminary matters, before we go around the room and
13 hear the statement of the positions of the parties?
14 Mr. Camerino.

15 MR. CAMERINO: After we do the positions
16 of the parties, are we then going to have some discussion
17 about procedural issues, is that correct, or do you want to
18 do those now?

19 CHAIRMAN GETZ: Well, I guess, I would
20 look at the statements that should probably be done in two
21 parts at this point. One is, if there are substantive
22 issues or substantive positions, there are also procedural
23 issues that you want to raise, why don't we do that as we go
24 around the room. Unless there's other, you know, kinds of

1 motions that people think they need to make prior to doing
2 that. But I would say address both issues as we go around
3 the room. Is there anything else?

4 (No verbal response)

5 CHAIRMAN GETZ: Mr. Upton.

6 MR. UPTON: Thank you very much. The
7 position of the City of Nashua is largely set forth in its
8 petition and in its prefiled testimony. I don't want to
9 spend a lot of time restating that position. But I would
10 say Nashua has taken all action necessary under RSA 38 to
11 acquire the assets of what the Commission has now limited
12 the City to acquiring to the assets of Pennichuck Water
13 Works. We sought initially to acquire the assets of
14 Pennichuck East and Pittsfield, in addition to Pennichuck
15 Water, because of the City's concern over what continued
16 ownership of those companies by Pennichuck would mean to
17 their rates.

18 Our analysis showed that the rates of
19 Pennichuck East and Pittsfield would increase considerably
20 more under Pennichuck ownership than if Nashua acquired
21 them. Nashua believed, and the reason we filed our petition
22 seeking to acquire the assets of those companies, we
23 believed that it would be in the public interest for the
24 Commission to order us to acquire those, because of this

1 impact on rates. We also considered the acquisition of
2 those assets to be important in connection with the efforts
3 to establish a regional approach to water issues in Nashua
4 and surrounding area.

5 Nashua's primary concern always, however, has
6 been municipal ownership of the water system that serves its
7 citizens and the citizens of surrounding towns. To that
8 end, the decision of the Commission yesterday is an exciting
9 moment for Nashua, because it means that, with the decision,
10 the last decision of the Superior Court eliminating the
11 final -- the final counts of the lawsuit against the City by
12 Pennichuck, that there are no more impediments to what I
13 think is an actually pretty historic proceeding. It's going
14 to be the largest eminent domain proceeding in the State of
15 New Hampshire.

16 We are anxious to move this forward. We
17 think it can be done expeditiously. There are a couple of
18 things, procedural issues, that I'll now move to that I
19 think need to be established by the Commission. And, the
20 first is, and probably most importantly, is what is the date
21 of valuation going to be? The City thinks that it makes the
22 most sense to use a valuation date probably of December 31,
23 2004. That will be the year end for the Company. It will
24 be the date on which all of their financials that will

1 appear in their SEC filings and in their filings with you
2 that will be based upon, and it probably makes the most
3 sense. Those are not going to be immediately available,
4 unfortunately, so there is going to be some delay in having
5 those and being able to utilize them for purposes of
6 establishing a value, but those generally should be
7 available sometime in March.

8 Any value that -- Any value that is -- or,
9 valuation date that is set, if the Commission permits the
10 City to acquire these assets, is going to have to be
11 reconciled at the end. We understand that. But there has
12 got to be some date chosen for a valuation, because the
13 valuation will determine rates, and rates are going to be
14 very important in the determination of public interest.

15 The second, the second procedural thing that
16 I think needs to be discussed is, when the City of Berlin
17 sought to acquire the J. Brodie Smith hydro station from
18 PSNH, in that petition the Commission bifurcated the
19 determination of public interest and valuation. We think
20 this is a very different kind of analysis that needs be
21 done. Because, as I said, the public interest determination
22 in this case, unlike in Berlin, is going to be driven in
23 large part by rates, and rates can only be determined when
24 you have some idea of what the value is. So, the two really

1 go hand-in-hand. So, bifurcation we think would cause an
2 unnecessary delay, and we don't think it needs to be
3 bifurcated. We think the two issues can be dealt with at
4 the same time.

5 The other issue is, and maybe the parties
6 will be able to agree on this, I don't know, but I just want
7 to make sure I raise it, is, you know, who's going to have
8 the first crack at discovery? We think, because it's our
9 petition and because it's largely a petition to determine
10 valuation, that we should have the first level of -- or, we
11 should have -- we should have the first crack at discovery,
12 because those are issues that need to be determined. And,
13 they also, as I said, because value drives rates, it will
14 also have a large impact upon public interest. It may well
15 be that the parties can agree. And, it may be that we can
16 agree that we'll do discovery simultaneously, rather than
17 the ordinary method here of having one party conduct
18 discovery, and then the other parties conduct discovery.

19 But those are the only issues that I can see
20 in discovery that the parties probably -- that the parties
21 may have difficulty resolving.

22 CHAIRMAN GETZ: Thank you. Mr. Judge.

23 MR. JUDGE: I'm here representing the
24 Merrimack Valley Regional Water District. That district

1 consists of eight communities; Nashua, Bedford, Pittsfield,
2 Amherst, Londonderry, Litchfield, Pelham, and our newest
3 member is Raymond. Some of those communities are Pennichuck
4 Water Works customers, some of those communities are
5 Pennichuck East customers, and Pittsfield, obviously, is a
6 Pittsfield Aqueduct Company customer.

7 The District has been supportive of Nashua's
8 petition, it remains supportive at this point. Yesterday's
9 deliberations and the forthcoming order will be something
10 that we'll have to take into consideration in the future.
11 And, we are, obviously, unhappy that the assets of
12 Pennichuck East and the assets of the Pittsfield Aqueduct
13 are not going to be a part of this proceeding, based on the
14 deliberations that occurred yesterday.

15 So, the position of the District, to this
16 point, is support of Nashua's petition.

17 CHAIRMAN GETZ: Thank you. Mr. Boutin.

18 MR. BOUTIN: Thank you. I represent
19 Merrimack, as I told you. The Town is quite concerned that
20 the Commission closely scrutinize the proposed taking of
21 Pennichuck Water Works. The Town's largest employer is
22 Anheuser-Busch. With the Town of Merrimack, it consumes
23 about 20 percent of the average daily flow from Pennichuck
24 Water Works' core system. It's no small matter to

1 Merrimack. Nashua does not speak for the Town of Merrimack.
2 Merrimack is not, at this point, taking a position in favor
3 or opposed to the petition. But it is taking a position
4 that it is deeply skeptical of it.

5 And, for that reason, I want to express my
6 first concern that this isn't a zero-sum game. There's an
7 unstated assumption sometime that, because you've got the
8 municipal water district and you've got one town speaking
9 one way and another town speaking another, that this is
10 really a zero-sum game. It's a dispute among
11 municipalities. This isn't so. The Town of Merrimack has a
12 vital concern. We ask both the Commission and the Office of
13 Consumer Advocate to look very closely at what's going on,
14 because we're only going to be able to develop our position
15 as we see the quality of the discovery. And, as we know
16 what's really going to happen, right now we're served by a
17 water utility that's admittedly well run, it admittedly
18 serves its customers, it admittedly makes capital
19 investments as are required. It's an entity that has been a
20 vital corporate citizen in Merrimack. It serves
21 Anheuser-Busch, which has 800 employees, has many employees
22 residing within Merrimack and many of its facilities are
23 located in Merrimack.

24 Those are very urgent concerns for the Town.

1 It makes us skeptical that, ultimately, a municipal water
2 district, comprised of many towns, is going to be in the
3 best interest of its citizens. And, whether or not it's
4 going to be in the best interest of the Merrimack Valley as
5 a whole.

6 I realize that there's a trend nationally to
7 municipalize public utilities. New Hampshire goes things
8 it's own way. It generally has a good way of looking at
9 things, a practical way of looking at things. And, when you
10 go through this, I ask that you take that practical point of
11 view and ask the questions that a practical person would.
12 It's not a zero-sum game. And, we're only going to learn as
13 you learn. We need to -- We need to question closely some
14 of the assumptions that are made in this presentation.

15 For instance, the question of cost of capital
16 is a very big question. It's very easy to say that it costs
17 the municipality less to raise capital. That's where the
18 purchase price comes in. Because, if the purchase price is
19 that much higher, Pennichuck doesn't have to acquire itself.
20 You start from a different point. Now, I notice that
21 there's going to be question about valuation date. I don't
22 know what the position is of Pennichuck. But I know that,
23 traditionally, when you value a utility, you value it, or
24 value any take in property, you value it as of the date of

1 the notice of taking.

2 I raise this now, because it has -- it
3 deserves some careful consideration, because it's going to
4 end up being an appellate issue. Because, in my mind,
5 there's a substantial likelihood that the value of
6 Pennichuck's assets may have been adversely effected
7 negatively by what's gone on in the past year. I want to
8 know what it's really going to end up costing, because the
9 Town of Merrimack will then know what its rate impact is
10 going to be. Whether cost of capital is a red herring,
11 whether it makes little sense in the long run, or whether
12 it's a practical consideration that they have to consider.

13 So, I ask you to take your time with it. I
14 look at -- I look at the prefiled testimony that I've seen
15 so far. When you talk about scheduling discovery, one of
16 the things that I'm most concerned with is I want to find
17 out if this dog is going to hunt at all. I want to know
18 whether or not there's any basis for a cost of sales
19 approach to determining value, or whether the approach that
20 I've heard the Town's experts use time after time, which is
21 replacement cost, less depreciation, is, in fact, the
22 appropriate measure. That, again, and I think that's why
23 discovery on Nashua's position has to be conducted first, I
24 want to know whether or not the dog's going to hunt. I want

1 to know what that rate impact is going to be. And, we're
2 only going to know that when we test what is a very broad
3 based testimony, with very little support. I want see what
4 the difference is in these sales, cost of sales -- or, I'm
5 sorry, comparable sales is a technique that requires an
6 intimate knowledge of what other utilities were acquired,
7 what their mix of customer base was, what their capital
8 position was. I think we have to know these things.

9 Again, I'm not saying that anything is wrong.
10 I'm saying that, if we don't know it, we're asking for
11 trouble, and the Town of Merrimack is going to be in a
12 position of not being informed in making its own decision as
13 to what its ultimate position is going to be.

14 I also am somewhat concerned that Merrimack
15 is going to be seen as merely a recalcitrant party. I want
16 to point out that, again, Merrimack has an intimate
17 involvement in the Pennichuck Water system. It is pleased
18 with its involvement in the water system. It doesn't
19 necessarily see the need for the change. But it will find
20 out whether or not a change is needed as these proceedings
21 go.

22 Therefore, to the extent that there's any
23 procedural order, I want to indicate that Merrimack intends
24 to participate fully in discovery and ask leave from the

1 Commission that it be entitled to do so, if there is any
2 question about it now. Thank you.

3 CHAIRMAN GETZ: Thank you. Mr. Giaimo.

4 MR. GIAIMO: Good morning. In light of
5 the fact that the BIA's petition for intervention is under
6 advisement, I guess, I respectfully request that, after that
7 is figured out, deliberated upon, that at that point the BIA
8 is allowed to put its position in the papers to be provided
9 to all the parties at that time. Mr. Chairman, you
10 adequately and appropriately summarized the fact that the
11 BIA has a governance body, and we have policies in place
12 which dictate BIA policies, and which provide me -- the
13 governance body provides me with the authorization to
14 represent the business community as a whole. Much as the
15 OCA has a board, and their board doesn't always come to
16 agreement, but they resolve -- they still have a policy and
17 they still have a -- they still go forward. The same is
18 true with the BIA. And, we represent the 400 members in our
19 membership, some are utilities, many are customers. And, I
20 hope that everyone can respect the position of that board
21 and as we speak with one voice for the business community.

22 MR. BOUTIN: Excuse me, Mr. Chairman. I
23 just ask leave to interrupt here. If I may, I had some -- a
24 written statement of position from the Town of Merrimack

1 that I would like to make part of the record at the
2 conclusion of the hearing.

3 CHAIRMAN GETZ: You can submit that and
4 we'll put it in the record.

5 MR. BOUTIN: Thank you.

6 CHAIRMAN GETZ: And, Mr. Camerino.

7 MR. CAMERINO: Thank you, Mr. Chairman.
8 Pennichuck Water Works has been providing the highest
9 quality water service for over 150 years. What's amazing to
10 me about us being in this room is that even the City of
11 Nashua agrees with that. And, so, the idea that we're now
12 going to go about changing who provides water service in
13 Nashua, I think really doesn't make much sense. The Company
14 has an impressive record of responsiveness, reasonable rates
15 and community mindedness.

16 Over the years, Pennichuck has worked closely
17 with this Commission and the Department of Environmental
18 Services to help address difficult water quality problems
19 throughout Southern and Central New Hampshire by agreeing to
20 acquire many small, troubled community water systems.
21 Pennichuck does not believe that the City of Nashua will
22 have the same interest in assisting this Commission and DES
23 in this way.

24 Pennichuck believes that political realities

1 will inevitably mean that Nashua will operate the water
2 system for its own benefit, without concerns for the
3 development, rates or needs of those beyond its municipal
4 borders.

5 With regard to the materials submitted by the
6 City on November 22, one can only describe the City's case
7 as superficial and insufficient on its face. Nashua's
8 filing demonstrates yet again the City's disregard for the
9 seriousness of this process and the impact that it has had
10 and will have on Pennichuck, its affiliates and its
11 customers.

12 Nashua's case is based entirely on
13 generalities and little in the way of specifics that bear
14 directly on the matters before the Commission in this case.
15 The testimony submitted by Nashua is premised almost
16 entirely on the assumption that the fact that other
17 municipalities own their own water system somehow
18 demonstrates that Nashua can do a better job of operating
19 the water system than Pennichuck has done. Moreover, Nashua
20 makes this assertion without providing any specifics as to
21 what its plan is to operate and manage the water system or
22 tell us who will operate and manage the water system.
23 Instead, the City's testimony simply tells us that it will
24 issue an RFP at some point in time to see if it can find

1 someone who can do a better job than Pennichuck has done.

2 Nashua's case boils down to nothing more than
3 an effort to get this Commission to assume the very thing
4 that's at issue in this case, Nashua's ability to do a
5 better job than Pennichuck. That's not something that this
6 Commission can find simply by confirming what we all already
7 know, that other cities operate their own water systems,
8 because, of course, some of those cities do it quite well
9 and others do it dismally. Equally notably, Nashua premises
10 its entire economic analysis on an assumed purchase price of
11 \$81 million, a figure that probably is about a third of the
12 actual value of the assets the City is seeking to take.

13 Nashua's case is filled with misstatements,
14 inaccuracies and inconsistencies. One of the most obvious
15 is the City's statements regarding the stranded costs. If
16 you look at Alderman McCarthy's testimony on Page 8, he
17 repeats Attorney Upton's repeated assertions that the City
18 was seeking to take all three of Pennichuck Corporation's
19 utility subsidiaries, in order to avoid a claim for
20 severance damages. If you then turn to Mr. Sansoucy's
21 testimony on Page 16, you see the City's expert saying that
22 Mr. Upton has advised him that there is no issue of
23 severance damages if the City cannot take all three of the
24 utility subsidiaries.

1 Finally, and most importantly, Nashua's case
2 provides no analysis at all of the impact of the proposed
3 taking on the systems that it will not be able to acquire or
4 the municipal and community water systems that are operated
5 by Pennichuck Water Service Company, Pennichuck's
6 unregulated affiliate. That's because Nashua chose to
7 ignore this Commission's October order, where you directed
8 them to discuss the significance of not being allowed to
9 take those other systems. The City's testimony on this
10 point is relegated to a couple of flip sentences that the
11 Commission's decision on this issue will have no impact on
12 their analysis.

13 After waiting 22 months for Nashua to file
14 its case, my client is not surprised, but they are extremely
15 frustrated, that Nashua's filing was well more than a day
16 late and a dollar short.

17 With regard to procedural issues, we have a
18 number of them. First and foremost, the Pennichuck
19 Companies plan to file a motion for summary judgment with
20 regard to the non-Core systems owned by Pennichuck Water
21 Works. At the time that this Commission received the briefs
22 from the parties, although Pennichuck was able to allege
23 through its own knowledge that the non-Core systems could
24 operate without the Core system, and therefore should not be

1 subject to taking, the Commission's order left that open as
2 a subject for further factual finding. If you review the
3 City's filing now, and, in particular, Mr. Sansoucy's
4 testimony, he indicates that the systems, and this is on
5 Page 17 of Mr. Sansoucy's testimony, he states "There is no
6 physical connection between the Core system and the balance
7 of the PWW system." He then goes on to refer to those
8 non-Core systems as "not hydraulically connected to the
9 treatment plant." So, it's Pennichuck's position that this
10 issue is now ripe for summary judgment, and we can create
11 considerable administrative efficiency by addressing that
12 issue right now and not making it part of the longer
13 proceeding. And, we think it's quite important in terms of
14 what the scope of discovery is and Pennichuck is ready to
15 move forward immediately on that basis and file a motion
16 within the next few weeks. So, we think that needs to be
17 deposed of first, and we're prepared to do that.

18 Secondly, with regard to date of valuation,
19 we do think that's an important issue. We don't think it
20 needs to be addressed right at this moment, but it will need
21 to be addressed at some point during the procedural
22 schedule, the parties will have to consider that. And, we
23 are quite concerned about the issue raised by Mr. Boutin as
24 to whether Nashua's efforts to take all of the company or

1 the holding company, all three of the utility subsidiaries
2 and their tactics in doing that have affected the value and
3 somehow driven it down. We think that's a legitimate topic
4 of discovery, and we think the Superior Court has indicated
5 that that's a legitimate topic of discovery. And, so, we
6 agree with Mr. Boutin on that point.

7 The next procedural issue is one that
8 Mr. Upton can probably resolve for us today. It sounded
9 from his opening statement and from some press reports from
10 Mayor Streeter, that the City is quite pleased with the
11 Commission's oral deliberations yesterday. And, I don't
12 want to put words in his mouth, but that would lead me to
13 conclude that they do not intend to appeal that ruling. If
14 that's the case, that would be helpful to know for
15 procedural purposes. If they do intend to appeal or simply
16 don't know today, that might delay the procedural part.
17 And, I think, if Mr. Upton wants to respond to that right
18 now, I would be amenable to that.

19 MR. UPTON: I can try to help the
20 Commissioners. We had no discussion about whether or not to
21 take an appeal. But it would be my recommendation to the
22 City not to take an appeal.

23 CHAIRMAN GETZ: Well, let me just
24 address one procedural issue, too. Pursuant to our rules,

1 the party that opens a proceeding, also gets the opportunity
2 to close the proceeding. So, after everybody goes around
3 the room, Mr. Upton, then you'll get a chance to respond --

4 MR. UPTON: That's fine.

5 CHAIRMAN GETZ: -- to what everybody
6 else brings up, and then that will be the conclusion of this
7 portion of the prehearing conference. So, you may want to
8 take notes.

9 (Laughter.)

10 MR. UPTON: Certainly.

11 MR. CAMERINO: Well, I thank Mr. Upton
12 for that comment, and don't intend to hold him to it until
13 he provides something more formal. But my only point here
14 is that, if the City did determine that it was going to
15 appeal, that might affect the procedural schedule some, but
16 that does not seem to be an issue, but we'll wait to hear on
17 that.

18 The next issue which will affect procedure
19 here, but, again, I don't think it has to effect the
20 determination of the schedule, I do think we will need to
21 hear back from the District as to what its role will be and
22 who it's representing. Because, as Mr. Judge indicated,
23 they have members whose interests may not be involved in
24 this case any further, at least as it relates to the

1 District. They may have a different position, in fact, now
2 than they did at the outset of the case. And, I think that
3 will be helpful to all parties to know who his client is and
4 who they represent.

5 The next procedural issue we have, which may
6 require some directive from the Commission, is the role of
7 what I'll call "intervenors supporting Nashua" and
8 "intervenors supporting Pennichuck". And, at this point,
9 I'm not talking about whether they can file testimony or ask
10 questions, but rather where they fit into the procedural
11 schedule. And, typically, the Commission has required all
12 supporters file testimony together and all opponents file
13 testimony together. And, we have a situation here where
14 Nashua has already filed its testimony. And, before we
15 begin our discovery, we'd like to know that all of the
16 supporting testimony is in. And, I can easily imagine that
17 there might not be any testimony from other parties. And,
18 frankly, I'd have some concern that Nashua gets a second
19 bite of the apple through that. But, if there is going to
20 be testimony, we'd like to know that today, because that
21 would affect the procedural schedule.

22 The next, I have a number of housekeeping
23 matters on procedure that I'll rattle off at the end here.
24 But I think the other major procedural issue for us is that

1 we do believe that bifurcating the schedule and doing the
2 public interest first is going to significantly expedite the
3 resolution of this case. We, having reviewed Nashua's
4 testimony, we feel very strongly that they have not met even
5 the most minimal burden with regard to public interest,
6 particularly because they failed to address many of the
7 important issues that relate to the fact that they're not
8 going to be able to take all of the Pennichuck utilities and
9 all of the Pennichuck Water Works assets. And, we think
10 that, through some discovery on Nashua, and our submission
11 of testimony as to why what they proposed, and given the
12 systems they can take, is not in the public interest, and
13 then if they would like discovery on Pennichuck. We believe
14 this case can be disposed of much more expeditiously than if
15 we go into a lot of valuation work and discovery on
16 valuation, which will put a significant burden on the
17 Company and significant costs and delay a final outcome of
18 this case for a couple of years. And, one of our concerns,
19 which we have tried to express since day one, is that we
20 believe that Nashua's strategy is to hold this company
21 hostage for a prolonged period of time to force it to agree
22 to a value that is less than fair. And, we don't believe
23 that it should be allowed to do that. We believe that this
24 case should be disposed of as expeditiously as possible, and

1 we think the way to do that is to deal with the public
2 interest piece first. And, we think that Nashua's filing,
3 if you look at it even briefly, you will see that it does
4 not meet the normal standards for a case of this magnitude.
5 This isn't like the Brodie hydro case. That was one asset
6 of a very large statewide company.

7 Right now, Nashua is talking, even at the
8 most minimal level, of taking about two-thirds of the
9 customer base of Pennichuck. And, that has very large
10 ramifications. And, we think that that should be dealt with
11 sooner, rather than later, and the way to do that is through
12 bifurcation.

13 The last issue I have is really a group of
14 issues, which is what I'll call "housekeeping". First of
15 all, I am aware, from checking the Commission's docket
16 filing system on the Web, that parties are still not copying
17 other parties. And, I don't think it's appropriate for some
18 of the intervenors, particularly individual intervenors, to
19 complain about the Commission's process, and then not abide
20 by its rules. They should be sending copies, even if
21 they're not attorneys, they should be subject to the same
22 conduct and respect of other parties. And, we really feel
23 very strongly that everybody in this case should follow the
24 rules.

1 We would ask that parties who are represented
2 by counsel not make direct contact with clients of other
3 parties who are clients of counsel, and rather contact
4 counsel directly. And, we would ask that, as we talk about
5 procedure, that we find some way to coordinate data
6 requests, because we expect them to be quite burdensome,
7 quite extensive, and we need to figure out a mechanism to
8 deal with that. And, what we'd like leave to do is to come
9 up with some kind of proposal that involves putting
10 documents in a data room, not providing 20 copies of
11 everything. And, that way, parties who really want to look
12 at it can look at it. Maybe electronic service on
13 everything, but find some way to slim this down. We don't
14 have a specific proposal today, but we'd like to see if we
15 can come up with something by agreement of the parties. We
16 also are -- and, I would add on the data requests, one of
17 the concerns is the copying costs actually can be quite
18 extraordinary, when you're talking about very large
19 documents and multiple parties.

20 The last thing is that we do have an order
21 from the Superior Court that came out a couple of weeks ago,
22 maybe ten days ago. And, it talks about what the scope of
23 discovery is in this case, and we think that that ruling is
24 quite significant, and there are some issues in there that

1 we think are a proper part of this case and we expect to be
2 pursuing in the public interest phase. Thank you.

3 CHAIRMAN GETZ: Thank you. Ms. McHugh.

4 MS. MCHUGH: Yes. Good morning. Two of
5 the speakers have mentioned that they were very concerned
6 about change, change of Nashua taking over Pennichuck or
7 acquiring it. Change is going to occur. Pennichuck has
8 already declared it's for sale. It has -- That's why Nashua
9 is coming forth to say they want to purchase it. Change is
10 going to occur. So, it's only a question of who is going to
11 be the person or the party to purchase it. I think Nashua
12 should be, for many reasons, but, ultimately, as far as I
13 understand from those people that have really studied it,
14 that, in 30 years, that Nashua would actually own it, and
15 that would be a tremendous boost to our community.

16 The whole thing that's driving this is that
17 we do not want to be controlled by a foreign corporation.
18 And, that's a trend today. And, we want to control our own
19 water. There is going to be someone here that is going to
20 talk to you about they're concerned that may be the decisive
21 vote of 77 percent of our community, that maybe they were
22 not well informed. But I'm here to tell you that the City
23 of Nashua did an incredibly great job at informing the
24 community. There were -- Every ward had a meeting, and both

1 Pennichuck had its contingency and the City was there. They
2 explained all of the detail or a lot of the details
3 regarding the purchase. Ward by ward, they were held at
4 schools, school cafeterias, they were jammed with people.
5 The community came out, they were interested. The
6 newspapers kept us abreast. There were many sources. That
7 also -- that issue was taken to court, and that person that
8 was concerned about this issue, they ended up losing.

9 I'm very concerned about the amount of money
10 that Pennichuck is spending now on their media campaign. I
11 love to watch Fox News, and they're constantly coming out
12 with ads, commercials, regarding their position. I think
13 that's -- and the newspaper. There probably have been 40
14 full-page ads or close to full page in the Nashua Telegraph
15 and also the Broadcaster. I'm concerned about the -- that
16 vote is decided for Nashua. What do they expect to gain
17 from it? I say it's an enormous drain of ratepayer and
18 stockholder resources.

19 And, I was a legislator, up until about a
20 week ago, when the new group were sworn in, I did not run
21 for re-election. But I was on the -- one of the legislators
22 that worked tirelessly on the charter legislation. I was
23 not a sponsor, nor a co-sponsor, but I worked -- I attended
24 every meeting, I was incredibly involved.

1 At a prior meeting, when you were at the
2 other location, I think it was Attorney Camerino that made
3 an assumption about what our intent was. Our intent was to
4 make it as broad as possible, not as limited as what he
5 thought it was. We wanted to give many towns the
6 opportunity to form a group to purchase it together
7 ultimately, which, although Nashua is the leading person to
8 buy it, but, obviously, afterwards we want to be able to
9 control it as a group of towns and communities, whoever
10 wants to participate. Thank you.

11 CHAIRMAN GETZ: Thank you.
12 Ms. Pressley.

13 MS. PRESSLEY: Thank you, Mr. Chairman,
14 members of the Committee. Although I speak today as a
15 private citizen, I'd like to tell you a little bit about my
16 history and background and what motivated me to be involved.
17 I am a former State Representative. I'm a former
18 Alderman-At-Large for the City of Nashua. And, I'm a former
19 State Senator for District 12. And, District 12 does
20 include portions of the City, but also some towns. And,
21 this gave me a very unique position to understand the three
22 different types of governments, the City government, the
23 town government, and the state. And, I happen to be the
24 person who was alarmed, like much of the community, when out

1 of the blue we read in the paper one day that our water
2 supply was going to be sold to an out-of-state entity. I
3 think it's important for you to realize that that's what
4 started all this, was action by the Pennichuck Corporation.

5 As it moved along, I became quite alarmed,
6 when I realized that some of the statements being made by
7 the Pennichuck Corporation turned out later not to be
8 accurate. It became very apparent early on that they were
9 hoping to rush through the PUC hearings at that time. And,
10 so, I launched an effort to involve the towns, and many of
11 us felt was the most civilized way and appropriate way to do
12 this. What we objected to was ownership. And, we decided
13 we wanted to own what they had, and it was for sale. They
14 had sought corporate -- secretly sought, by the way,
15 corporate offers, two of which were for cash, for the whole
16 company, and one was a stock-for-stock transfer.

17 So, someone -- two entities had already made
18 a cash offer. So, a lot of the citizens felt the smart
19 thing to do is to just change ownership and buy the whole
20 corporation, because that's what they have for sale. So, I
21 and others launched the effort to allow the Legislature to
22 create regional water entities. And, proud to say, that
23 legislation does exist today, and, hopefully, communities
24 across the state will be able to use that. Water is not

1 something that stops at the boundary.

2 So, as this moved along, it became pretty
3 clear, they decided that it would go to a vote. And, so, I
4 did, with others, launch an effort to form a citizens group,
5 and I brought something to show you. These were the signs
6 that we had put up in our community, all throughout the
7 community.

8 (Displaying signs.)

9 MS. PRESSLEY: With the Commission's
10 permission, I'd like to also point out that there are just a
11 handful of us in the room today that will be paying for
12 everything that's going on, because the ratepayers are the
13 only people who will be paying eventually for both sides.
14 Whatever prevails on either side, it's the ratepayers. So,
15 I think, with your permission, would you ask how many people
16 in the room actually are ratepayers? Have a hook-up,
17 actually have Pennichuck water delivered to their home?
18 Would you allow that, people to raise their hands who have
19 that?

20 CHAIRMAN GETZ: Please.

21 (Show of hands.)

22 MS. PRESSLEY: Okay. So, that means the
23 few of us here are the ones who are going to pay for all the
24 work that takes place here. And, might also mention to you,

1 a lot of these people are salaried. So, the few who raised
2 their hands are the ones who are paying for this entire
3 process.

4 So, what are the differences between the two?
5 And, we started for the regional, we were certainly hoping
6 for a very civilized, gracious, amicable purchase. Nobody
7 wanted to cheat the Company. We wanted to pay a fair price,
8 and merely transfer ownership and keep everything else the
9 same. Well, as you know, because we're here today, it did
10 not work out that way. But that certainly was the purpose
11 of the group. And, although I speak for myself, I also
12 turned into you, we did, as citizens, form a group. We
13 raised some money to pay for the signs, and we passed out
14 fliers at the dump, to encourage people to get out to vote.
15 And, we are the -- the group is called "Citizens for Local
16 Water Control", and they --

17 MR. CAMERINO: Mr. Chairman, if I could
18 just interrupt. I think we've been pretty patient, but
19 these are supposed to be statements of position. If Ms.
20 Pressley wants to outline her position in the case, that's
21 one thing. But this seems to me to be inappropriate. She's
22 now referring to a group that is not a party to this
23 proceeding to my knowledge. And, I also am wondering, when
24 she referred to a document that she's filed with the

1 Commission, that she has never provided to us, and I'm not
2 familiar with what she's referring to.

3 MS. PRESSLEY: I will be happy to
4 apologize. I'm one of those people that thought that, if I
5 turned in eight copies to the Commission, that that was my
6 responsibility.

7 CHAIRMAN GETZ: Is this document you're
8 referring to already been submitted to the Commission? I
9 can't see what you're holding up from --

10 MS. PRESSLEY: Yes, it has been. I have
11 some extra copies that I'd be happy to share. My point in
12 saying that we did have a citizens group. After the vote
13 was taken, we have not functioned after that. But we do
14 still have \$105 in our account. So, I want to sort of
15 clarify that, as far as my standing to speak before you as a
16 citizen.

17 CHAIRMAN GETZ: Well, I just want to
18 respond to Mr. Camerino's statement. This is a statement,
19 preliminary statement of positions, it's not sworn
20 testimony, and we have a *pro se* intervenor, so we do give
21 some leeway and to the -- and to the breadth of the
22 statement. So, if you could -- I'd like to at least
23 finalize whether that document has been filed with us. And,
24 if it hasn't been provided to other parties, if you could

1 make that available to them.

2 MS. PRESSLEY: Anyone else like a copy?

3 CHAIRMAN GETZ: You can take care of
4 that after.

5 MS. PRESSLEY: If I could have the
6 mailing addresses, I'd be happy to mail them copies, too.

7 CHAIRMAN GETZ: Well, then, the service
8 list should be provided to you as well.

9 MS. PRESSLEY: Okay.

10 CHAIRMAN GETZ: We can take care of that
11 after the --

12 MS. PRESSLEY: Mailing addresses. Okay.
13 Fine. Thank you. So, certainly, it became an issue of
14 "what are the advantages of corporate ownership and public
15 ownership?" And, my understanding, having done a fair
16 amount of research across the country, I have attended water
17 groups, is that 85 percent of the drinking water in our
18 country is managed and owned by municipal government of some
19 sort, an entity of government. And, only 15 percent are
20 corporate. So, what are some of the differences? Number
21 one, water I think is a different utility from the others
22 that you work with. The water belongs to us. All this
23 company does is move it around and deliver it to our homes.
24 So, it's not something where anybody can come in and do it,

1 like the telephone company, you can have other people come
2 in and provide telephone services. But we can't have
3 anybody else come in and move our -- the same product
4 around, which already belongs to us. One of the difference
5 between the corporate and the public ownership also has to
6 do with land use. One of our major complaints, and they
7 have done it across the country, corporate water companies
8 have completely built on the watershed. That's been done
9 legally, but most of your privately, your publicly held
10 companies, owned by the people, they do protect their
11 watersheds. That is your natural filtration system. And,
12 it's something that, once its built, it is gone forever.

13 The other thing has to do with secrecy. The
14 corporation, we now know that, for the past 20 years,
15 Pennichuck has been positioning itself to be bought. We did
16 not know that. So, I purchased one stock of Pennichuck, and
17 this was my ticket to go to their shareholders meetings.
18 There's no other way we can find out what they're doing.
19 And, we do believe that water is special, and water is not
20 like any other product, it is a life-giving product. So, I
21 certainly believe that we have a right as a people to
22 control and manage our own drinking water supply.

23 I don't know if it's appropriate at this
24 time, but if you'll indulge me a little bit more. I'm not

1 totally certain what your purview of authority is, but I
2 have some requests. One, this is a sample of the type of
3 advertising that is taking place. All of this is taking
4 place after we voted. But Pennichuck Corporation is putting
5 ads like this in all of our papers. They're on television
6 constantly. And, a lot of this information I think is of
7 questionable accuracy. So, who is paying for that? They
8 say their stockholders are. But, as you know, every cost to
9 the Company eventually goes to the ratepayer. So, here the
10 ratepayers voted by 78 percent that they wanted to own it.
11 And, after the vote, the corporation that they also pay for
12 has now hired a company to come in and to, you know, lobby
13 to change a vote that was already taken. It's totally
14 inappropriate.

15 I would request, since you are a
16 quasi-judicial commission, that you request of Pennichuck,
17 while this case is before them, to cease and desist in their
18 -- I'd like to use the word "propaganda" before the public,
19 because the ratepayer pays for that.

20 I'm here to tell you that the City of Nashua
21 has not been squeaky clean in this process also. A lot of
22 us are pretty frustrated with the way they have handled
23 business. And, I would also ask that you give them some
24 instructions, if that is within your purview. The City, in

1 its deliberations and its preparations for a regional,
2 forgot one thing. They have yet to decide how the citizens
3 of Nashua are to be represented. As of today, all they have
4 is that all the ratepayers in Nashua will have the Mayor and
5 the Board of Aldermen making those decisions. They have yet
6 to create a board, a commission like yourself, an authority.
7 There's nothing else that I'm aware of in city government
8 where the mayor and board of aldermen are going to be
9 handling the whole thing. The appropriate thing to do is to
10 set up an independent board like yourself. What they have
11 today is that, let's say the three of you were not appointed
12 through the proper procedures, but you were three state
13 reps. And, before you could do anything, you had to go
14 before a 400 member Legislature to make a decision. That's
15 basically what the City has done. So, the City has not
16 fulfilled a lot of its -- what I think they should do before
17 they do purchase. So, I hope that you will hold their feet
18 to the fire also.

19 I also have some problems with the City, I
20 think they have been in violation of the Right To Know law.
21 And, I ask that you hold the attorneys that represent
22 Nashua, ask that they be cautious of that. As you know, any
23 purchase by a local government is excluded from the Right To
24 Know law. So, they go into nonpublic session quite a bit.

1 So, we all have to leave the room, but they talk about a lot
2 more at their nonpublic sessions. They talk about who are
3 going to be the decision makers. They talk about all sorts
4 of things that do not -- that are not excluded from the
5 Right To Know law. So, I would ask you Commissioners to
6 remind the City attorneys that the Right To Know law must be
7 respected, as far as how they are going to manage the
8 purchase, should it come to fruition.

9 I have another one, too. I'm very concerned
10 about the charter. And, within my statement before you, I
11 pointed out why that I have filed a complaint with the --

12 CHAIRMAN GETZ: This is in the filing
13 you submitted on October 25th?

14 MS. PRESSLEY: Yes, it is in the filing.
15 Yes. I did go through proper channels. I did file a letter
16 of concern to the Attorney General's Office. And, their
17 decision was that, in fact, that they would expect you to
18 review the charter. I'll read from that, and, again, I have
19 copies here.

20 CHAIRMAN GETZ: I'm sorry, Ms. Pressley,
21 you have some new document from the Attorney General that we
22 have not received?

23 MS. PRESSLEY: I believe your attorney
24 --

1 CHAIRMAN GETZ: Or, is it part of your
2 October 25th filing?

3 MS. PRESSLEY: A copy was sent to you
4 from the Attorney General. And, I included a copy of it.
5 And, it basically, -- basically, as I read it and understand
6 it, I filed a complaint that the charter was not
7 appropriate, did not have representational government. And,
8 that my suggestion also to you, the quote I'll read from the
9 letter, it says "Certainly, if you have concerns, you should
10 feel free to raise them in any appropriate forum." And, I
11 consider the appropriate forum to be your forum today. So,
12 I do challenge the language of the charter. And, what I
13 would recommend that you do, if you would consider it, and I
14 ask this with all due respect, that you send the charter as
15 drafted to an independent entity that knows a lot about
16 charters, possibly the Conservation Law Foundation or the
17 Franklin Pierce Law School. And, while you're proceeding,
18 ask them to look over this regional water district charter,
19 and make sure that the ratepayer is protected.

20 I attended many of their meetings. And,
21 unfortunately, the ratepayer is not protected adequately in
22 the charter. The people who drafted the charter for the
23 regional were all municipal representatives, and they
24 certainly represented their municipalities and protected

1 their interests. But, unfortunately, the ratepayers did get
2 shortchanged in the process.

3 So, I look forward, I'm sorry to take so
4 long, and my apologies. I will try to be better in the
5 future. Would you like a copy of this?

6 CHAIRMAN GETZ: I think we have it.

7 MS. PRESSLEY: Okay.

8 CHAIRMAN GETZ: Thank you.

9 MS. PRESSLEY: Okay. My interpretation
10 is that the Attorney General's response to my concern was
11 that I should bring it up before you. So, that is why I'm
12 doing that at this time. And, I honor your decision. I
13 know this is a tough one. I certainly understand your
14 rationale for your decision yesterday morning. And, since
15 we're in a contentious situation, instead of an amicable
16 purchase, I can certainly understand what you're doing. I
17 am a citizen of Nashua. We want to own our own company.
18 And, any other -- any other part of it that you deem
19 appropriate. Thank you very much.

20 CHAIRMAN GETZ: Thank you. We're going
21 to take a short break while the stenographer changes the
22 paper. Thank you.

23 (Recess taken at 10:16 a.m. and
24 reconvened at 10:32 a.m.)

1 CHAIRMAN GETZ: Okay. If we can resume
2 with Mr. Hodes.

3 MR. HODES: Thank you. The Town of
4 Hudson is not taking a position, an adversarial position at
5 this point in these proceedings. The Town of Litchfield has
6 been supportive of the City of Nashua's petition. The Town
7 of Litchfield is also a member of the Merrimack Valley
8 Regional Water District. Obviously, with your deliberations
9 yesterday, the Town of Litchfield, as well as some of the
10 other towns affected, are going to have to think that
11 process through at this point.

12 There has been some, in the prefiled
13 testimony of Nashua, some issues about that, if only the
14 Core system is allowed to be taken, the effect on the
15 outlying towns and their rates, and that would be
16 Litchfield's concern. That the Commission be protective and
17 considerate of the ratepayers in all of the surrounding
18 towns and all of the District members. And that, if it
19 turns out that it's inefficient for Pennichuck to retain
20 those assets, and is going to be implicated on the backs of
21 the ratepayers of the outlying districts, we would ask that
22 that be taken into consideration, if Pennichuck should be
23 required to sell those assets, if, in fact, they're forced
24 to go forward with the sale of their Core system.

1 So, again, Litchfield's position is that we
2 recognize this is a battle now between Nashua and the water
3 company, but we don't want the spoils to fall on the
4 shoulders of the ratepayers in the surrounding towns.

5 CHAIRMAN GETZ: Thank you.

6 Mr. Drescher.

7 MR. DRESCHER: Thank you. As far as the
8 Town of Amherst is concerned, we have consistently supported
9 the position of the City of Nashua in this matter, and still
10 do. The Town of Amherst has approximately 800 ratepayers
11 who are, I believe, part of the Core system of the
12 Pennichuck. Amherst is also one of the member towns in the
13 Merrimack Valley Regional District and support the process.

14 The Town of Milford, who I also represent,
15 has not taken a position opposed to or in support of Nashua.
16 Their primary interest to this point in this process was to
17 ensure that whatever comes out of this process that a bulk
18 sale contract, a wholesale water purchase contract that's
19 currently in effect between the Town of Milford and with
20 Pennichuck, be honored by whoever stands in the position
21 when this is all -- when the smoke clears. Milford has its
22 own water system that supplies a significant number of
23 people in the community, and, at this point, is not in a
24 position to indicate one way or the other who they support

1 in the ultimate outcome.

2 I should say that both of those communities,
3 however, do have a significant amount of water resource
4 located within their geographical territory. Amherst
5 particularly has a significant amount of water resource that
6 Pennichuck and others share. And, it is of critical
7 importance to both of those towns that that be protected.
8 Thank you.

9 CHAIRMAN GETZ: Ms. Spector.

10 MS. SPECTOR: Pittsfield has supported
11 the City of Nashua to date, with the ultimate goal that they
12 would somehow end up controlling Pittsfield Aqueduct
13 Company, either through the District or on their own. Given
14 the Commission's decision yesterday, I need to touch base
15 with the Selectmen and see what their position is at this
16 point, I haven't had an opportunity yet to do that.

17 CHAIRMAN GETZ: Thank you.
18 Mr. D'Ambruoso.

19 MR. D'AMBRUOSO: Thank you, Mr.
20 Chairman, Commissioners. On behalf of Anheuser-Busch, our
21 interest in this proceeding is the continuation of the
22 special contract that Anheuser-Busch currently has with its
23 supplier, Pennichuck Water Works. Anheuser-Busch takes no
24 position for or against Nashua or Pennichuck in this

1 proceeding. Our sole concern is the protection of that
2 special contract and any extensions to it. I would add that
3 we have many of the same issues mentioned by Mr. Boutin and
4 Mr. Drescher, and, at the appropriate time, would like to
5 address those issues. Thank you very much.

6 CHAIRMAN GETZ: Thank you.
7 Ms. Coughlin.

8 MS. COUGHLIN: Thank you, Mr. Chairman.
9 The Merrimack River Watershed Council's interest is in the
10 sustainability of the aquifer, the withdrawals from the
11 river, and revolves around the operation and maintenance of
12 whoever is running the operation in this area. We are
13 proponents and respect the Public Trust Doctrine. And, we
14 were supportive of the formation of the Regional Water
15 District.

16 At this time, we are not taking a position
17 towards either party with respect to the ownership of this
18 operation. However, we expect to see things in discovery
19 relative to Nashua's commitment, with respect to the Water
20 District, and also what their plans for operation and
21 maintenance are, and many other things. So, we will be
22 taking a position, but not at this time.

23 CHAIRMAN GETZ: Thank you. Mr. Teeboom.

24 MR. TEEBOOM: Hello, Commissioner. My

1 filing is dated the 24th of October, and it's in the record.
2 By way of introduction, I'm a citizen of Nashua, but I'm
3 also a former Aldermen-At-Large in Nashua. I feel, and felt
4 at the time this vote took place, and feel all the way
5 through to today, that there's really no case made for this
6 public taking. I haven't heard anybody say that the water
7 service provided by Pennichuck is bad. I've not heard
8 anyone say that anybody got ill because of the water
9 supplied by Pennichuck. I have not heard anybody say that
10 the firefighters don't have any water to fight the fire. I
11 haven't heard anybody say that the water tastes bad. In
12 fact, if you go down the City, I think the water by
13 Pennichuck takes quite good.

14 So, why this taking? This happened after the
15 merger was allowed with PSC. And, it came down to an
16 emotional question. If you look at Ms. Pressley's signs, I
17 would like to hold it up if she would give it to me, it says
18 "Keep our water supply local". Well, who is stealing the
19 water supply? Is anybody moving the rain over some other
20 area? It's staying local.

21 During this vote, the City refused to provide
22 pro and con arguments, even though the charter says on the
23 referendum question there should be pro and con arguments
24 presented to the citizens. The court refused on a

1 technicality, which I still don't understand to today,
2 stating that the Board of Aldermen had no legal right to
3 pass the measures they put before the polls. It's still a
4 surprise to me to this day, but we're not here to argue
5 about the Superior Court ruling.

6 The fact is, that what the citizen actually
7 said in the voter information was that a "yes" vote, I'm
8 quoting the record, it's in the record, the "yes" vote means
9 "the City may continue to pursue acquisition", and a vote --
10 "no" vote means "it cannot acquire the system now". So, the
11 voters said "okay, continue to pursue this." It didn't say
12 some mandate to buy it, which is now I believe Nashua's
13 representation.

14 So, all the -- there was no determination of
15 value prior to the vote. There is a notation on the RSA
16 38:3 that says "it's prudent to provide", I'm not quoting it
17 quite correctly, but makes a notation about "determining
18 value before you bring the issue to a vote". This wasn't
19 done. There's no evaluation presented to the citizens to
20 tell them what the price would be. There certainly was no
21 evidence of maintenance costs.

22 And, I ask you to take a look at all their
23 presentation, all that stuff presented by the various
24 attorneys, and look at the background, and see "where was

1 the discussion made in case Pennichuck refused to sell?" I
2 think there was a tacit assumption made that, if Pennichuck
3 decided to merge with PSC, then surely they would sell it to
4 Nashua. There was no discussion to say "what are the legal
5 implications and what are the financial and cost
6 implications, if Pennichuck decided not to sell?" No
7 discussion. The vote was premature, it was incomplete
8 information. And, they wind up on this emotional question
9 about "we're losing our supply." You heard in earlier
10 testimony from Clare McHugh, you know, "it's going to be
11 taken over by foreign governments." What foreign
12 government?

13 This is the same city that is, today,
14 considering privatizing its landfill. Why? Because it's
15 losing money with the landfill. It's in deficit. Now, why
16 should it privatize its landfill and buy the water utility?
17 That defies also comprehension. Where is the case made that
18 Nashua will do a better job managing than Pennichuck and
19 will control costs better? In fact, they have a history of
20 not controlling costs very well, and the landfill is a good
21 example of that.

22 What concerns me also, and no one has
23 mentioned this, but, if Nashua takes this over, there is no
24 more PUC oversight. Now, the PUC may not be my favorite

1 agency, as you all know --

2 (Laughter.)

3 MR. TEEBOOM: -- with the Southwood
4 business, but I am worried about not having any PUC
5 oversight, seeing how the government of Nashua conducts its
6 business, much of it in closed session, as earlier
7 mentioned.

8 Well, the rest of my case, I won't take --
9 this is in these 30 pages I filed. But I would like to make
10 a note about the procedural question. I'm not an attorney
11 that gets reimbursed for my time or my expenses. It
12 ultimately goes to the ratepayer, unless you disallow all
13 these costs to go to the ratepayer. My whole filing cost me
14 \$55. I ask you that the e-mail be sufficient. I ask, and I
15 think actually was suggested put a data room, the military
16 has a data room, and if anybody is really concerned, you go
17 to the data room, check in, check all the documentation.
18 That way we don't have all these expensive mailings. I have
19 a stack on the other case, 056 case, is this high
20 (indicating) of mailings. I mean, literally this high
21 (indicating). And, I hate to think, if you continue with
22 this case and don't summarily dismiss it, which I hope you
23 do, then it might be this high (indicating) of stack of
24 paper. Thank you.

1 CHAIRMAN GETZ: Thank you. Ms. Ross.

2 MS. ROSS: Thank you. The Office of
3 Consumer Advocate has not taken a position at this point in
4 the proceeding with regard to whether Pennichuck or Nashua
5 is the better party to be owning and managing this company.
6 Our focus really is on the ratepayer impacts of whatever
7 course of action the Commission is considering. And, our
8 focus in discovery will be on understanding the pricing and
9 the basis for the pricing and what its impact will be
10 ultimately on ratepayers.

11 With regard to a couple of procedural issues
12 that have been raised, the first having to do with the issue
13 of "who gets discovery first and on what matters?" Since
14 the ratepayer impact will be based on the cost of the
15 acquisition, we think that it makes most sense for Nashua,
16 who is asking to buy, to have discovery first on Pennichuck,
17 with regard to all of its assets and operations. Because
18 that data is going to be necessary in order to begin to
19 figure out even what a valuation approach should be.

20 The second issue that I know was raised by
21 Pennichuck has to do with whether the Commission should
22 bifurcate its public interest determination from the pricing
23 issues. And, again, because we have to look at this from a
24 ratepayer impact point of view, it makes no sense to us for

1 the Commission to struggle with whether or not this taking
2 is in the public interest without any data on the cost.
3 And, I think those two issues are so closely linked, we take
4 the position that the public interest has to include
5 ratepayer impacts, the cost of services, and the quality of
6 services to consumers. And, those issues cannot be fleshed
7 out by the Commission until the parties have had discovery
8 and submitted testimony. And, therefore, we don't believe
9 that bifurcation makes sense with regard to the public
10 interest. Thank you.

11 CHAIRMAN GETZ: Thank you.
12 Ms. Thunberg.

13 MS. THUNBERG: Good morning,
14 Commissioners. Staff's goal in this proceeding is to
15 conduct a thorough review of the public interest and
16 valuation determination that this Commission is charged to
17 make under RSA 38. We expect to make a thorough review of
18 the Core system, the satellite systems as part of that.
19 Staff takes no position in this case. It sees its role as
20 protectorate of the process. It would rather let the
21 discovery process follow its course, let the information
22 fall as it is, before making a determination or
23 recommendation to the Commission.

24 Staff recognizes the diverse participants in

1 this docket. Some are seasoned practitioners, others are
2 not here. Staff sees its role as assisting persons
3 unfamiliar with the process at making sure that they
4 understand the process, understand the breadth of the
5 Commission's jurisdiction. And, if some of the issues that
6 come up during technical sessions or in discovery are
7 something that is not properly in this jurisdiction, we'll
8 try to at least let them know that there are other Superior
9 Court options. It's not providing legal advice, but
10 sometimes those issues come up. In a docket like this,
11 where people unfamiliar with the process, unfamiliar with
12 the Commission's jurisdiction, want an issue raised, and
13 it's just not properly here, certainly doesn't preclude them
14 from filing a motion to require the Commission's
15 consideration of it. But we will try to help out where we
16 can.

17 To the extent Ms. Pressley's motion or has
18 made an oral motion about the extent of Pennichuck's post
19 vote advertising, at this point, Staff isn't aware that any
20 of that advertising is detrimental to the docket, and would
21 actually oppose the motion, to the extent it is an oral
22 motion presently before the Commission.

23 Other than that, Staff looks forward to
24 working with this large group at the technical session

1 following this prehearing conference. Thank you.

2 CHAIRMAN GETZ: Mr. Upton, opportunity
3 to respond.

4 MR. UPTON: Yes. Thank you very much.
5 Mr. Camerino spoke about how well run the Company is. And,
6 Nashua would agree that in the past that was true. We have
7 great concerns, however, given the filings that have been
8 made to this Commission in the rate case, that the Company's
9 dividend policy has had a dramatic impact upon its capital
10 improvement plans. And, we also don't know how well this
11 company will be run in the future. The Company has been
12 very clear that it is for sale, it announced at its annual
13 meeting, and its current CEO was hired for the purpose of
14 selling the Company. This company is not going to be the
15 same company if it continues to stay in existence.

16 Mr. Camerino talked about how responsive the
17 Company has been to acquire troubled systems around the
18 state, and that's true. But those troubled systems have
19 been acquired by -- and the new companies or the new systems
20 that this company has acquired have been acquired by
21 Pennichuck East, not by Pennichuck Water Works. It's been
22 acquired by Pennichuck East. And, as you determined
23 yesterday, the City can't acquire Pennichuck East. To the
24 extent that those -- they want to continue to make those

1 kinds of acquisitions, they're free to do so under
2 Pennichuck East. This taking doesn't affect that in a bit.

3 I resent the implications made by
4 Mr. Camerino that our prefiled testimony was deficient. We
5 filed significant financial analysis, and it's based upon a
6 determination of value by our expert consultant. And, they
7 can disagree all they want, but we have supplied
8 considerable financial analysis that shows that rates, under
9 Nashua's ownership, will increase much less dramatically
10 than they would under continued Pennichuck ownership,
11 including Pennichuck Water Works. In the case of Pennichuck
12 Water Works, the increases under Nashua will be half, half
13 of what Pennichuck's increases will be under our analysis.
14 We presented evidence in those -- in that prefiled testimony
15 that the operations and maintenance will be performed by a
16 well qualified operations and maintenance company, possibly
17 even Pennichuck Supply Company. How can that be a problem?
18 We presented evidence that Nashua has the authority to bond
19 this acquisition. And, our financial experts presented
20 testimony that the bond issue would be well received and
21 insurable.

22 Nashua is the only city in New Hampshire
23 which does not own its own water system. I mean, water
24 systems are -- it's not the most difficult thing to operate.

1 Nashua has a well run waste water treatment facility that it
2 operates entirely on its own. Nashua has the capability to
3 operate this system, and we presented evidence to that
4 effect.

5 I guess I also have to say, I'm tired of
6 hearing about how the City is trying to delay this process.
7 We have done everything we could to try to advance this.
8 It's been, in fact, the Company that has caused any delays
9 that have occurred. And, to stand up today and say "the
10 City is delaying, but, oh, by the way, Commissioners, we
11 think there ought to be bifurcation", is -- I really think
12 borders on being disingenuous.

13 Bifurcation is going to cause delay. It's
14 going to cause delay. In response to Mrs. Pressley, I would
15 say only that the City is governed by its charter. The
16 Mayor and Board of Aldermen are the entities that are
17 responsible for making decisions about water, just as they
18 do for the waste water treatment facilities.

19 With respect to what Mr. Teeboom had to say,
20 there is no statutory obligation to provide any information
21 with respect to this vote. But that's not to say that no
22 information was provided. I think you heard Mrs. McHugh say
23 today that there were meetings in every ward, that those
24 meetings were attended by both sides of the debate. We have

1 supplied in the testimony newspaper articles concerning the
2 debate, including a discussion by the then CEO of the
3 Company about what it would cost to buy the Company. This
4 information was all in the public arena. The City voters
5 were fully aware of what they were voting on and the vote
6 spelled out exactly what was going to happen in the vote, in
7 the materials, and you can refer to that. Thank you very
8 much.

9 CHAIRMAN GETZ: Thank you. Mr.
10 Sullivan.

11 MR. SULLIVAN: Yes. Mr. Chairman, I'd
12 just like to enter my late appearance, I'm for the Town of
13 Bedford. I appear late today, as I informed the Commission
14 when it was rescheduled, I was in a trial this morning, I
15 apologize. I don't have anything to add beyond what the
16 regional district, of which Bedford is a member of, has
17 already stated or some of the other towns have stated.
18 Given yesterday rulings, I have to go back to my client and
19 reassess our position.

20 CHAIRMAN GETZ: Thank you.

21 MR. CAMERINO: Mr. Chairman, a
22 procedural comment again. I am concerned going forward, and
23 I don't know what the Commission can do for us, in terms of
24 a directive to the parties. But the statements of position

1 this morning was a good example of the problem that the
2 Company is facing. There are a lot of facts that were
3 thrown in, particularly from Ms. Pressley, that simply are
4 not true, and that the Company now has no opportunity in the
5 public domain to respond to those, probably until the
6 hearing on the merits. And, while I have some disagreement
7 with what Mr. Upton said, I have to say that I think counsel
8 understands the ramifications of stating things that are
9 simply not true. And, without saying anything about anyone
10 in particular here, the Company is put at a significant, and
11 I don't think appropriate, disadvantage when individuals are
12 not held to that standard. And, we need to find a mechanism
13 to limit the scope of those submissions or provide the
14 Company a reasonable opportunity to respond in a public
15 setting, where reporters and others are here, so that
16 statements about what's recoverable and what ratepayers pay
17 for are not just left out there.

18 CHAIRMAN GETZ: Okay. At this point,
19 let me make a couple of observations. A number of
20 procedural issues that I think parties have raised that are
21 clearly legitimate, that go to how to efficiently and
22 orderly conduct what is clearly some complex multiparty
23 litigation. And, there are many cases and many mechanisms
24 that we have used in the past to deal with things, such as

1 using e-mail for contact and for setting up data rooms, to
2 make things convenient for all of the parties. But, rather
3 than trying to dictate them from the Bench, and I may be
4 overly optimistic in this regard, but we will use our normal
5 procedure and we'll move into a technical session, and hope
6 at a minimum that the parties among themselves, guided by
7 Staff, and to try and narrow the issues that we're going to
8 have to deal with. Sounds like, at a minimum, there's a
9 dispute as to whether the case should be bifurcated in the
10 way that the Brodie Smith case was. But I'm hopeful that
11 you can at least agree among yourselves as to the less
12 contentious mechanisms for conducting the proceeding.

13 Also note that Mr. Camerino raised an issue
14 that does occur from time to time with respect to allies,
15 for lack of a better word, for different parties. We would
16 encourage joint participation, but also note, while there
17 are some parties clearly aligned either with the City or
18 with Nashua, there are, obviously, parties who are neutral.
19 So, I'm hopeful you can work those issues out amongst
20 yourselves. And, what I would ask, to the extent that they
21 aren't worked out, that Staff file with us a description of
22 the issues that we may have to deal with, either based on
23 the writings or ultimately in a separate hearing, if there
24 are things that can't be resolved.

1 There are also some substantive issues, and I
2 think Ms. Pressley's comments raised those, that go to
3 things like "is Nashua following its Right To Know law
4 obligations?" So, there's a range of things that either are
5 within or without our jurisdiction that have been raised
6 today. In the order that we will be issuing summarizing the
7 deliberations yesterday, we'll address some of those
8 substantive issues. But we are hopeful that you can work
9 out a good deal of the procedural issues and submit them to
10 us.

11 Are there any other issues that need to be
12 raised or is there anything glaringly obvious that I missed
13 that I should be responding to at this point?

14 (No verbal response)

15 CHAIRMAN GETZ: Okay. Well, I think
16 that takes care of all the issues that we noticed for
17 today's prehearing conference. So, we will close this
18 prehearing conference, take the matter under advisement, and
19 hope that the parties can come to some serious agreements on
20 how to proceed with this case. Thank you.

21 **(Prehearing conference ended at**
22 **11:00 a.m.)**