

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 11-026

JOINT PETITION OF CITY OF NASHUA, PENNICHUCK CORPORATION ET AL

Petition for Approval to Acquire Stock in Pennichuck Corporation

Order Approving Acquisition and Settlement Agreement

ORDER NO. 25,292

November 23, 2011

APPEARANCES: Rath, Young & Pignatelli, P.C., by William F.J. Ardinger, Esq., and Andrew W. Serell, Esq., for City of Nashua; McLane, Graf, Raulerson & Middleton, P.A. by Steven V. Camerino, Esq. for Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., Pittsfield Aqueduct Co., and Pennichuck Corp.; Wadleigh, Starr, and Peters, P.L.L.C. by Stephen J. Judge, Esq. for Merrimack Valley Regional Water District; Olson & Gould, by David K. Wiesner, Esq. for Town of Milford; Boutin & Altieri, P.L.L.C. by Edmund J. Boutin, Esq. for Town of Merrimack; Ransmeier & Spellman, P.C. by John T. Alexander, Esq. for Anheuser-Busch, Inc.; Fred S. Teeboom, *pro se*; Office of the Consumer Advocate on behalf of residential ratepayers, by Rorie Hollenberg, Esq.; and Marcia A.B. Thunberg, Esq. of the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On February 4, 2011, the City of Nashua (Nashua or City), Pennichuck Corporation, Pennichuck Water Works, Inc. (PWW), Pittsfield Aqueduct Company, Inc. (PAC), and Pennichuck East Utility, Inc. (PEU) (together, Joint Petitioners) filed a Joint Petition for Approval of Nashua's Acquisition of Pennichuck Corporation (Joint Petition) pursuant to the terms of an Agreement and Plan of Merger (Merger Agreement) that had been filed with the Commission on November 16, 2010, in Docket No. DW 04-048, also known as the eminent domain docket.

Pursuant to the Merger Agreement, Nashua would acquire all outstanding shares of Pennichuck Corporation, which would include indirect acquisition of its regulated subsidiaries,

PWW, PAC, and PEU. The acquisition is subject to a number of conditions detailed further herein. Nashua states that once it completes the acquisition, it will operate all Pennichuck Corporation businesses using the companies' current operating employees and will appoint an independent board of directors to oversee operations.

Contemporaneous with the Joint Petition, the Joint Petitioners filed a motion to consolidate Docket No. DW 11-026 with the eminent domain docket, DW 04-048. In its motion, the Joint Petitioners represented, among other things, that the Merger Agreement contemplates the settlement of all issues raised in the eminent domain docket and that consolidation of the two dockets would allow for a more efficient review of the Merger Agreement. On April 28, 2011, by Secretarial Letter, the Commission granted the motion and stated that consolidation would promote the orderly and efficient conduct of the proceedings.

On February 9, 2011, the Commission issued an Order of Notice in both DW 04-048 and DW 11-026 and set a prehearing conference for February 24, 2011. The Commission directed Staff and the parties to hold a technical session after the conference to review the petition and allow the Joint Petitioners to provide any amendments or updates.

On February 17, 2011, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. On the same date Fred S. Teeboom of Nashua intervened. On February 22, 2011, the Merrimack Valley Regional Water District (District), the Town of Milford, and the Town of Merrimack each intervened. At the February 24, 2011 prehearing conference, Anheuser-Busch Inc. participated and filed a written intervention on March 2, 2011. On April 28, 2011, by way of a Secretarial Letter, the Commission granted all petitions to intervene.

On February 18, 2011, the Joint Petitioners filed the direct testimony of Donnalee Lozeau, Mayor of Nashua; John L. Patenaude, Transaction Executive (an advisor to Nashua with respect to the proposed merger transaction); Bonalyn J. Hartley, Vice President of Administration and Regulatory Affairs for PWW and Pennichuck Corporation, which holds all of PWW's common stock; Donald L. Ware, President of PWW, PEU, and PAC (often referred to as the Pennichuck Utilities); Arthur Gottlieb, Managing Director of C.W. Downer & Co., an investment banking firm providing investment banking and consulting services to Nashua; and John Griffin, Chief Financial Officer/Comptroller for Nashua.

The testimony of Mr. Patenaude explained that he serves as a Special Consultant to Nashua for the transaction and would be appointed as the Interim Chief Executive Officer of Pennichuck Corporation upon the completion of the acquisition. Mr. Patenaude described the terms and conditions of the Merger Agreement, the structure and financing of the proposed transaction, and Pennichuck Corporation's management and corporate governance structure following the merger. The testimony of Ms. Hartley explained the impact of the proposed transaction on the rates and operations of PWW, PEU, and PAC, and a proposed method for determining the revenue requirements and rates for the PWW utilities in the future, reflecting the special circumstances of City ownership and financing. Ms. Hartley testified that the rates required under City ownership would be at or lower than the level that would be required if the current ownership structure were to remain in place. The testimony of Mr. Ware described how PWW, PEU, and PAC will be operated under City ownership and the resulting benefits of the change in ownership to their customers. The testimony of Mr. Gottlieb presented information regarding the fairness and reasonableness of the purchase price and financial analysis demonstrating the feasibility of the merger and the proposed financing both in the short and long

terms, while at the same time resulting in rates to customers of PWW, PEU, and PAC that are lower than those that would be charged under current ownership. The testimony of Mr. Griffin explained the feasibility and marketability of the proposed general obligation bond financing and the impact of the proposed financing upon the financial status of Nashua.

On February 28, 2011, Staff filed a proposed procedural schedule on behalf of the Parties and Staff, which the Commission approved on March 3, 2011. On April 28, 2011, the Commission issued a Secretarial Letter regarding procedural matters including solicitation of comments on whether the Commission should continue the designation of Mark A. Naylor, Director of the Gas & Water Division, as a staff advocate pursuant to RSA 363:32, II. Mr. Naylor had been designated as a staff advocate on April 19, 2006 in DW 04-048, the eminent domain docket. The Town of Merrimack filed a letter on May 25, 2011, supporting the appointment of Mr. Naylor as Staff Advocate and noting that he had the background and ability to undertake such responsibilities. On May 27, 2011, the OCA filed a letter stating that it did not support removal of the designation. Joint Petitioners and Fred S. Teeboom each filed letters stating that they did not object to the Commission discontinuing the designation. On June 15, 2011, the Commission discontinued the designation stating that, "there was no longer a basis for concluding that the public's confidence in the fundamental fairness of the now consolidated proceedings would be enhanced by Mr. Naylor's designation as a staff advocate."

On June 10, 2011, the Commission suspended the procedural schedule, pending a recommendation for a new procedural schedule, in response to a motion made by the Joint Petitioners on June 2, 2011 to stay the proceeding because more time was needed to respond to discovery questions. Staff proposed a revised procedural schedule on July 19, 2011, which was

approved by Secretarial Letter dated July 21, 2011, and that scheduled a hearing on the merits to begin October 25, 2011.

On July 1, 2011, the Joint Petitioners filed supplemental testimony of Ms. Hartley and Mr. Patenaude. On July 7, 2011, the Joint Petitioners filed a corrected page to Ms. Hartley's testimony. On August 30, 2011, the OCA filed the direct testimony of Scott J. Rubin, Esq.; the District filed the direct testimony of Rick Sawyer, Planning Director for the Town of Bedford and Treasurer of the Board of Directors of the Merrimack Valley Regional Water District; and Staff filed the direct testimony of Mr. Naylor. The Town of Merrimack received an extension to file testimony and on September 7, 2011 filed the direct testimony of Finlay C. Rothhaus, Chairman of the Merrimack Town Council. Mr. Teeboom also filed direct testimony on September 7, 2011.

On October 18, 2011, Nashua filed a settlement agreement on behalf of the Joint Petitioners, the District, Town of Milford, Anheuser-Busch, Inc., Mr. Teeboom and Staff. The Town of Merrimack and the OCA did not sign the settlement agreement. On October 24, 2011, Nashua filed a fully executed copy of the settlement agreement.

On October 19, 2011, the City of Nashua filed its second supplemental testimony of Mr. Patenaude and Ms. Hartley. On October 24, 2011, the Town of Merrimack filed a brief in support of its request that the Commission condition approval of the settlement agreement on the Town of Merrimack receiving a seat on the board of directors of Pennichuck Corporation.

On October 25, 2011, the Commission held a hearing on the merits and the settling parties presented testimony and other evidence in support of the settlement agreement. On October 31, 2011, Pennichuck Corporation filed a motion for protective treatment for

confidential information contained in responses to discovery requests OCA 1-28 and OCA 2-4. On November 17, 2011, Mr. Teeboom objected to the motion for protective treatment.

II. POSITIONS OF THE PARTIES AND STAFF

A. City of Nashua

According to the Joint Petition, Nashua entered into a settlement agreement with Pennichuck Corporation, PWW, PEU, and PAC on November 11, 2010. See Exh. 2 at 90-94. The settlement agreement provided that Nashua would purchase the stock of Pennichuck Corporation for \$29.00 per share, which results in an aggregate consideration to be paid to the Pennichuck Corporation shareholders (including exercised options) of approximately \$138,000,000. The parties intended the value to constitute the “final determination of the price to be paid for the plant and property to be acquired under” RSA Chapter 38. Nashua agreed to execute a motion for dismissal with prejudice for Docket No. DW 04-048 and place it in escrow until such time as the Merger Agreement terminated. Nashua also agreed to hold Board of Aldermen meetings within 90 days after the date of the Merger Agreement for the purpose of taking an affirmative vote to approve and ratify the issuance of bonds necessary to consummate the acquisition and to make findings as required by the Special Legislation. The Special Legislation, passed in 2007, required the Board of Aldermen to find the following:

- 1) that the acquisition of stock, rather than the direct acquisition of plant and property, will provide a more orderly method for the city to establish, own, and operate a municipal water utility consistent with the purposes of RSA 38; and
- 2) that the acquisition of stock, rather than the direct acquisition of plant and property, will be financially beneficial to the city and its customers and will, therefore, be in the best interests of the city and provide a public benefit.

The Board of Aldermen made the requisite findings by Resolution No. R-10-81, dated January 11, 2011. Exh. 2 at 117-119. The findings were made within 90 days of November 11, 2010, the date of the Merger Agreement.

According to the Joint Petition and the Merger Agreement, Nashua will become the sole shareholder of Pennichuck Corporation and Pennichuck Corporation will continue to own all of the outstanding shares of its current corporate subsidiaries, including the regulated utilities, PWW, PEU, and PAC, and the unregulated utilities, The Southwood Corporation (Southwood) and Pennichuck Water Services Company (PWSC). Nashua will not acquire direct ownership of any stock of any of Pennichuck Corporation's corporate subsidiaries. Upon completion of the merger, Pennichuck Corporation and its subsidiaries will continue their existence as separate legal entities, with the only change being that Nashua will become the sole shareholder of Pennichuck. PWW, PAC, PEU, Southwood, and PWSC will continue their legal status as business corporations organized under RSA Chapter 293-A. Nashua represents that PWW, PEU, and PAC will continue to be public utilities within the meaning of RSA 362:2 and RSA 362:4 and will continue to be subject to the Commission's jurisdiction.

The Merger Agreement incorporates some of the terms of the November 2010 settlement agreement and sets as conditions precedent: company stockholder approval, Nashua ratification vote with requisite findings, regulatory approvals from the Commission, and no burdensome regulatory conditions that have a material adverse effect or fundamentally and materially adversely affect the economic benefits to Nashua so as to render inadvisable the consummation of the acquisition. Additionally, the acquisition is conditioned upon the ability of Nashua to obtain debt financing within 90 days after the date on which all conditions precedent are satisfied. Exh. 2 at 62-65. As noted above, the Board of Aldermen held their vote to "establish a

municipal water company through the purchase of the stock and/or assets of Pennichuck Corporation” and made the requisite findings. The Board of Aldermen also authorized up to \$220,000,000 in general obligation bonds. Exh. 2 at 120-123.

Nashua’s original proposal to acquire Pennichuck Corporation, as detailed in the Merger Agreement and the testimony of Mr. Patenaude, Ms. Hartley, Mr. Ware, Mr. Gottlieb, and Mr. Griffin, has been modified by supplemental testimony and the subsequent settlement agreement entered into by the Settling Parties. A description of Nashua’s amended proposal as it was presented at hearing follows.

According to the Merger Agreement, Nashua will acquire all of the stock of Pennichuck Corporation. It will raise the funds to acquire Pennichuck Corporation by issuing General Obligation Bonds. The acquisition will be accomplished through a merger of a newly-organized subsidiary, Acquisition Subsidiary, owned by Nashua, into Pennichuck Corporation. At the time the merger becomes effective, the Acquisition Subsidiary will cease and Pennichuck Corporation will be the Surviving Corporation in this transaction. Exh. 2 at 23-24. Thereafter, Nashua will become the sole shareholder of Pennichuck Corporation.

The aggregate principal amount of the City Acquisition Bonds will be approximately \$152,099,885. The proceeds from the issuance of the City Acquisition Bonds will be used to fund the following categories of costs related to the City’s acquisition (the Acquisition Costs), and the current estimate of the cost for each of such categories is as follows:

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| (1) Merger consideration to be paid under the Merger Agreement: | \$137,793,398 |
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This amount is based on the current estimate of the number of common shares outstanding or otherwise available to receive merger consideration, which is approximately 4,682,276.

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| <p>(2) Bond issuance costs and fees: These estimated costs consist principally of legal fees for bond counsel, fees for First Southwest (the City’s financial advisor), and other costs of issuing the City Acquisition Debt.</p> | <p>\$1,800,000</p> |
| <p>(3) Transaction costs and fees: These estimated costs include costs incurred by both the City and Pennichuck in connection with the Merger, including legal and accounting fees, investment banking fees, fees and costs relating to customary due diligence conducted by the City during negotiation of the Merger Agreement. For avoidance of doubt, the transaction costs and fees described in this category of the Acquisition Costs do not include PWW or Pennichuck’s eminent domain costs as defined in DW 10-091.</p> | <p>\$5,286,875</p> |
| <p>(4) Severance costs: These are estimated costs that arise under severance packages for certain senior corporate management employees of Pennichuck, which will be triggered by completion the Merger and termination of their employment.</p> | <p>\$2,219,612</p> |
| <p>(5) Rate Stabilization Fund: This amount will be contributed in cash to PWW to provide a fund that will be used to ensure stable revenues in the event of adverse revenue developments.</p> | <p>\$5,000,000</p> |
| <p>Total Estimated Acquisition Costs</p> | <p>\$152,099,885</p> |

Nashua states the acquisition is in the public interest because of the following benefits.

- (1) The City is acquiring more assets in this transaction than it would have under the eminent domain order from the Commission. Exh. 2 at 10.
- (2) The acquisition avoids harms that may have occurred by removing PWW from the corporate structure.
- (3) The acquisition allows Nashua to control its water resources and its watershed, and bring some stability to water rates.
- (4) Future rates will be lower under municipal ownership than they would be under current ownership.
- (5) Customers in communities outside Nashua will also benefit from the transaction, as the Pennichuck Utilities will continue to be regulated by the Commission, and ratepayers outside Nashua will also see lower rates over time compared to rates reasonably expected under

current ownership. (6) Nashua will establish a Board of Directors for Pennichuck that will focus on running the company as a business, apart from political decisions. (7) The proposed Ratemaking Structure is expected to produce lower rates for customers when compared to the rates of the utilities under current ownership because the overall combined cost of capital under the proposed Ratemaking Structure (determined using the interest rate on the City Acquisition Bonds to determine the City Bond Fixed Revenue Requirement (CBFRR) and utilities' cost of debt for the remaining costs) will be materially lower than the cost of capital under current ownership (which utilizes a higher private equity cost of capital for over half of the utilities' capital).

Nashua states that the Ratemaking Structure will permit each of the regulated utilities to support its operating and debt service costs and to provide payments to Pennichuck Corporation to support Nashua's obligations under the City Acquisition Bonds. Nashua also states that the Ratemaking Structure, including the CBFRR, is reasonably structured to provide for the collection of revenues sufficient to enable Nashua, acting through Pennichuck Corporation and its subsidiaries, to satisfy all of the operating and debt service costs of PWW, PEU, and PAC and Nashua's obligations under the City Acquisition Bonds.

Upon questioning at hearing, Nashua explained that if the merger is approved, decisions regarding how to invest capital in PWW, PAC, or PEU would be made by the Board just as such decisions are presently made. Hearing Transcript of October 25, 2011 morning session (10/25/11 a.m. Tr.) at 35 lines 1-6. Nashua explained that its models of future operations included an amount of capital investment each year of about the same as what Pennichuck is now investing. Nashua seeks to establish a board of directors to include individuals with finance, operational, or regulatory expertise. Nashua explained that it will operate as the shareholder and

will vote only as it relates to financial decisions. 10/25/11 a.m. Tr. at 38 lines 5-7. Board decisions will not be put to Nashua voters.

When asked to comment on the criticism that Nashua's acquisition will eliminate the opportunity for shareholders to have an open forum to make their voices heard, Nashua responded that ratepayers will be heard before the Commission and that the by-laws call for actions of the Board to be open under the Right-to-Know law. 10/25/11 a.m. Tr. at 39-40.

Mr. Patenaude testified that Nashua would purchase shares of Pennichuck Corporation and not any specific asset and thus all real property would remain owned by the individual utilities. With respect to the statement that one of the benefits of the transaction would be control of real estate, Mr. Patenaude testified that the decision making about changes to any properties would not change as a result of the acquisition. He stated that although the shareholders of Pennichuck Corporation may develop or sell land that was not Nashua's mantra. It will hold land and not develop it. The by-laws or articles of incorporation say the sale of land or sale of a utility would have to be approved by the sole shareholder, the Board of Aldermen.

Regarding the issue of whether Nashua has a say over specific capital projects, Mr. Patenaude testified that the Board of Aldermen have the final say regarding bonding for capital expenditures, not specific capital projects. The reservations of rights listed in the Merger Agreement identifies actions that require the sole shareholder's approval and include any action to amend the by-laws; create or incur indebtedness; issue or sell any debt securities; guarantee any debt securities of any person; merge or consolidate all or substantially all of the assets; sell, lease, or transfer assets or any substantial part of the assets; or make any loan or advance to any person or purchase or otherwise acquire any capital stock, obligations, or other securities.

As to municipal representation on the board of directors for the City-owned Pennichuck Corporation, according to the by-laws, a seat is reserved for a member of the District and, so long as the person nominated by the District fits within the description of who can serve, Nashua is required to appoint that person. 10/25/11 a.m. Tr. at 41 lines 12-18. Regarding why the District and not the Town of Merrimack has a seat on the Board, Nashua responded that it is because the District was set up to operate the utility in the event of the eminent domain taking and, further, because the District represents a region that includes Merrimack. Nashua stated that directors must understand that they would not be voting for the District, but rather would owe a fiduciary responsibility to the business. Nashua opposes having each town nominate directors because the Board would become too unwieldy and such directors may not understand their fiduciary responsibility. 10/25/11 a.m. Tr. at 43. Nashua has developed a list of qualifications that it is seeking for Board nominees.

B. Pennichuck Corporation, PWW, PAC, and PEU

1. Settlement Agreement

Pennichuck Corporation and the Pennichuck Utilities offered testimony in support of the settlement agreement. Ms. Hartley testified that the ratemaking structure is broken into two major components. The first is the cost of acquiring the existing equity, which is used to calculate the CBFRR, and the second major element is the remaining costs, including any future investment, which will remain subject to traditional ratemaking. 10/25/11 a.m. Tr. at 51 lines 8-17.

Mr. Ware testified that rates would be lower under Nashua's ownership than under the current ownership because capital investment will be financed primarily with debt and will result in a lower cost of capital in the calculation of the revenue requirement. 10/25/11 a.m. Tr. at 52

lines 10-18. Second, because Pennichuck Corporation will no longer be publicly traded, there will be approximately \$1.7 million in savings. The requirement that the utilities come in for a rate case will allow the lower interest rates from the bonds and the \$1.7 million in savings to be incorporated into the revenue requirement.

Ms. Hartley testified that the Rate Stabilization Fund is akin to a bond reserve and will give the rating agencies confidence that Nashua will have adequate cash flow to pay the bondholders and allow the City to retain its AAA rating and obtain the lowest possible interest rates on its bonds. The lower interest rates, as explained by Mr. Ware, benefit customers in that they help keep future customer rates lower. In future rate cases, the Rate Stabilization Fund will be evaluated and if the fund balance is less than \$5 million, a deferred debit will be set up equal the difference between the \$5 million and the amount of the funds in the Rate Stabilization Fund at the end of the test year. If the fund is over \$5 million, a deferred credit with a three-year amortization period will be set up. The goal is to retain and maintain the \$5 million throughout the duration of the general obligation bonds (City Acquisition Bonds). 10/25/11 a.m. Tr. at 55 lines 4-15. Mr. Ware testified that the Joint Petitioners' original proposal called for the \$5 million fund to be funded by PWW, PEU, and PAC on a *pro rata* basis, whereas the settlement agreement has the \$5 million coming only from PWW.

With respect to dividends, Mr. Ware testified that Nashua will be able to pay its eminent domain costs out of dividends when the utilities have good years; in bad or marginal years, dividends would not be taken out. 10/25/11 a.m. Tr. at 60 lines 1-8. Pursuant to the settlement agreement, Nashua would not be able to take out more than \$500,000 per fiscal year and eminent domain costs are capped at \$5 million over time. Thus, if there are no profits, there are no payments toward eminent domain costs.

Mr. Patenaude testified that the Municipal Acquisition Regulatory Asset (MARA) is the acquisition premium incurred by Nashua and includes the cost of the acquisition plus related transaction costs. It will be recovered as an asset and will be depreciated over time, based on the amortization of the principal of the bond. It has no specific ratemaking treatment because it is already included in the CBFRR. Ms. Hartley testified that the transaction costs did not include Nashua's eminent domain costs. She testified that there is no intent to change the existing Money Pool Agreement and Cost Allocation and Services Agreement currently in effect and that the agreements should continue in the same manner under Nashua's ownership.

When asked at hearing about how the acquisition of new debt in the amount of \$157 million could result in lower customer rates, Ms. Hartley testified that the utility's current return on equity is 9.75% but, under new ownership, the modified return on equity would be lower, for example, 7.19%. The CBFRR would be calculated at an interest rate lower than 9.75%.

Upon questioning at hearing by the Town of Merrimack, Mr. Ware testified that the core PWW system serves customers in the towns of Hollis, Amherst and Milford, and that PWW has contracts with the Towns of Hudson and Tyngsboro. 10/25/11 a.m. Tr. at 82. Mr. Ware testified that capital costs will be funded by bond debt of about \$8 million a year and that any additional bonded indebtedness would be approved by the shareholder. 10/25/11 a.m. Tr. at 84. If the Board of Aldermen and Nashua fail to approve the amount of the borrowing, there will be no borrowing. *Id.* Regarding the Rate Stabilization Fund, if one of the utilities needs money to stabilize its rates, the utility can borrow from the Rate Stabilization Fund as one option or borrow from a line of credit. 10/25/11 a.m. Tr. at 86-87. If a borrowing from the Rate Stabilization Fund did occur, the ratepayers of PWW would bear the risk of the loans.

2. Motion for Confidential Treatment

In its motion for protective treatment of confidential information, Pennichuck Corporation seeks to protect non-officer employee compensation information and forward-looking financial information, both of which were provided to the OCA during discovery in response to discovery requests OCA 1-28 and OCA 2-4. With respect to the forward-looking financial information, Pennichuck requests protective treatment only through and until the closing on the merger.

Pennichuck Corporation states that its response to OCA 1-28 contains confidential stock option information relating to non-officer employees, including the identity of those employees, the total number of options held by the employee, and the total net value at the merger/consolidation price. Pennichuck Corporation argues that RSA 91-A:5, IV expressly exempts from public disclosure any “records pertaining to internal personnel practices [and] confidential, commercial, or financial information...” Non-officer employee compensation is also exempt under this statute as recognized by the Commission in *Pennichuck Water Works, Inc.*, 91 NH PUC 562, 563 (2006). Pennichuck Corporation states that it keeps this information in confidence and does not otherwise release this information to the public. It states that release of the information to the public would violate the reasonable privacy expectations of the employees and would not provide the public with any meaningful additional information regarding the Commission’s review of the matters at issue in the proceeding or advance any significant public interest. It argues that any minimal benefit to the public arising from public disclosure is outweighed by the significant benefits of nondisclosure, i.e., the privacy of non-officer employees.

With respect to its response to OCA 2-4, Pennichuck Corporation states that it contains forward-looking financial information, including information relating to its budget, operating expenses, revenue and balance sheets for the period 2011 through 2014. Pennichuck Corporation does not release this information to the public because it is material non-public information of a publicly traded entity which, if released, could potentially mislead and harm the investing public. As with the non-officer employee information, Pennichuck Corporation states that the public's interest in the information is outweighed by the significant potential harm disclosure would cause the investing public.

C. Town of Merrimack

The Town of Merrimack filed the testimony of Finlay Rothhaus, Chair of the Merrimack Town Council. Exh. 22 at 2. Mr. Rothhaus testified that: Merrimack was concerned that ratepayers were not allowed representation on the board by right, but only at the discretion of Nashua; ratepayers in the Town of Merrimack share inordinately in the risks of owning a utility; Nashua's control of the utility may result in discrimination against Merrimack in terms of allocation of resources due to Merrimack having a substantial commercial and industrial district served by the core PWW water system; the issue of regionalization has not been adequately considered due to Nashua's reluctance to adopt any regional approach to public utility water service; and the request by Nashua for ratepayers to fund transaction and litigation costs in the amount of \$12.4 million and the revenue stabilization in the amount of \$5 million is unfair to ratepayers outside Nashua's borders.

The Town of Merrimack filed a brief requesting the Commission condition approval of the Joint Petitioners' requests on giving Merrimack a seat on the board of directors of Pennichuck Corporation. Merrimack argues this condition is necessary to protect the legitimate

interests of ratepayers residing in the town. Merrimack states that absent a seat on the board, it will be left without a voice or vote on matters of critical interest to the town and its resident ratepayers. In support of its request, Merrimack states that 5.6% of PWW's total assets, or 3.25% of net book value, are within the town. Merrimack customers account for over 10% of consumption of PWW water. Nearly 60% of the watershed lands held for the benefit of Pennichuck are located in the town. Merrimack is a competitor with Nashua for industrial and commercial development especially along the Route 101-A corridor. Merrimack expressed its concern that Nashua's control of expansion of the water system and capital improvements could adversely affect its ability to develop its industrial and commercial area.

Merrimack acknowledges that the settlement agreement contains a provision allowing the District a seat on the Pennichuck board of directors but notes that the town is not a member of the District. Merrimack stated that the District's charter "effectively vested all control on matters of significant import in Nashua." Brief at p. 3. The charter establishes two methods for directors to vote: by director or by customer. Matters relating to capital improvements, issuance, refunding or advance payments of bond and establishment of fees, rates, charges, or tariffs are decided by vote by customer, not vote by director. Thus, Nashua's supermajority of customers gives Nashua a greater voice in the District.

The Town argues the Commission has authority to impose conditions pursuant to RSA 38:11 and can thus authorize the relief Merrimack seeks. Merrimack argues that the Commission's authority extends beyond simply approving a stock purchase and includes making a public interest finding and imposing conditions pursuant to RSA 38:11 and the special legislation. Merrimack states that eight municipalities are represented in the District but that

many other Pennichuck-customer towns are not in the District and that simply because other towns did not intervene does not make Merrimack's request unfair.

Merrimack asserts that customers are being asked to absorb a share of funding the Rate Stabilization Fund, the risk associated with intercompany loans, the risk that its largest employer could be adversely affected and these risks could be diminished if Merrimack is part of the conversation before action is taken. Merrimack states that continued regulation of Pennichuck is not a protection because it would limit Merrimack's participation to proceedings before the Commission and Merrimack would not be able to participate in the board room, prior to litigation.

Merrimack states that Nashua's refusal to provide Merrimack a seat on the board because it would cause a faction is not a legitimate reason since it acknowledges that Merrimack's interests are unique, New Hampshire law recognizes that corporations may prescribe qualifications of directors, classes or shareholders may nominate directors, the Water District has been granted a seat on the board, and the by-laws provide for a non-resident director appointed by the Nashua Board of Aldermen. Merrimack cited RSA 293-A:6.01(a) as allowing shares to have differing preferences and limited rights. Also, RSA 293-A:8.02 authorizes the establishment of qualifications for directors and it is not uncommon to have directors elected by class of share. RSA 293-A:7.28. Merrimack also states that the Board of Aldermen exercises the powers of the sole shareholder, Nashua, demonstrates that the appointment of directors is an inherently political process. Merrimack also notes that the bylaws provide that one natural person who is a customer, but not a resident of Nashua, shall be on the board and that the Board of Aldermen can select that person. Although the settlement agreement provides for an additional member to be nominated by the District, the District is controlled by Nashua and the

District's charter does not specify whether the vote to nominate this person is done by director or by customer. Merrimack states that there is no more or less parochialism involved in having a director nominated by Merrimack than there is in having a director nominated by the District. Merrimack requested that the Commission approve suggested language that would effectuate Merrimack's ability to nominate a board member.

At hearing, Merrimack noted that the provision in the settlement agreement that allows the District to nominate a director was not contemplated at the time the Charter was adopted and that how the director would be nominated by the District is not addressed by the Charter. The original Board is to be nominated by the Mayor and approved by the Aldermen. Nine of the fifteen Aldermen are from wards. Approximately 80 percent of ratepayers of PWW reside in Nashua. Merrimack's representation on the board would enhance the different perspectives represented on the board and the board would be in better stead because of that. Not allowing Merrimack a seat on the board, it contends, would mean it would be limited to participation at the Commission and participation at the Commission is costly which makes raising issues before the Commission less desirable than raising issues at the board level.

D. Merrimack Valley Regional Water District

The District represents eight communities: the Towns of Amherst, Bedford, Londonderry, Litchfield, Pelham, Raymond, Pittsfield, and the City of Nashua. The District signed the settlement agreement and requested the Commission approve the agreement. The District filed the testimony of Rich Sawyer, Planning Director for the Town of Bedford, and Treasurer of the Board of Directors for the District. Exh. 14. Mr. Sawyer stated that the towns within the District thought it was important for the entire State that the Pennichuck utilities end up in local control, because it would return important State resources to the control of a local

entity. The District was willing to support Nashua's bid for the utilities even if the District would not end up being the entity that controlled the utilities. Mr. Sawyer stated that the District had held discussions with Nashua and was confident that the District would get a voice in the management and oversight of the utilities. The District has been asked to submit candidates to fill one position on the board of directors of Pennichuck Corporation and that the District will continue to discuss opportunities for the District to help preserve our local resources through oversight of and participation in the operations of the utilities. The District also requested it be reimbursed for the \$328,817.90 in costs and legal fees it has incurred to date to support the transaction.

The District stated that it did not blindly follow Nashua. The District noted that since PWW has a franchise in South Merrimack and the industrial area noted on Exhibit 22, page 55, PWW is required to provide service to customers and that the idea that somehow PWW is going to stop serving customers for some reason or that Nashua is going to be in competition with the Town of Merrimack is unlikely. According to the District, it made efforts to have the Town of Merrimack join the District; however, the Town declined.

E. Fred S. Teeboom

Mr. Teeboom filed testimony on the Joint Petitioners' initial proposal and objected to the acquisition cost. Mr. Teeboom called the \$29/share cost, the \$10 million in legal and consulting fees and the assumption of \$220 million in debt too high. He stated that the proposed purchase price was better than the \$243 million set by the Commission but suggested that \$25 per share would result in a fairer purchase price. Mr. Teeboom opposed that the \$5 million Rate Stabilization Fund to underwrite the CBFRR. Mr. Teeboom called the proposed transaction 100% leveraged and the Rizzo Report suggested the desired mix should be 40-50% equity, not

0% equity and 100% debt. Mr. Teeboom expressed concern that the proposed organization would include a self-appointed board of directors, limited public oversight, a for-profit status, and non-public meetings. Mr. Teeboom objected to the for-profit status of the new corporation and stated that a non-profit would pay no federal or state taxes. Mr. Teeboom alleged that land continues to be sold off and that a 33-acre parcel is slated to be sold to Southwood, which he found inappropriate. Mr. Teeboom stated he was pleased that the bond debt would be paid off in thirty years and that rates would be lower thereafter.

In his pre-filed testimony, Mr. Teeboom recommended that the Commission approve the transaction with the following conditions: (1) reduce the acquisition price to \$25/share; (2) ratepayers not pay for Nashua's \$5 million in eminent domain charges; (3) order a complete inventory of the acquisition; (4) stop the "back-door sale" of the 33-acre conservation land; (5) change the for-profit corporation to a not-for-profit corporation; (6) order full disclosure of all revenue projections; (7) review the proposed articles of incorporation and by-laws to ascertain whether the corporate independence is too far removed from public control and oversight; and (8) combine PWW, PEU, PAC, and PWSC into a single entity and disband Southwood.

Responding to Pennichuck Corporation's motion for protective treatment, Mr. Teeboom set forth a number of general propositions. He stated that: concurrent with the completion of the acquisition and public ownership of the companies, the information contained in discovery needs to become public; the settlement agreement contains \$2.22 million in severance costs and the public is entitled to know to whom this money is paid; the public is entitled to know who makes windfall gain in stock options from this sale; and, the claim that lower rates will occur as a result of the transaction can only be verified if forward-looking projections are examined and the public is entitled to examine the projections.

F. Anheuser-Busch, Inc.

Anheuser-Busch, Inc. signed the settlement agreement and stated that its participation in the agreement should not be construed to endorse any particular composition of the Pennichuck Corporation board or directors. Its endorsement can fairly be construed to express the company's hope and expectation of a long and fruitful relationship with Nashua and the new Pennichuck.

G. Town of Milford

The Town of Milford signed the settlement agreement and supports the terms and conditions of the agreement. The Town stated that the settlement agreement was a significant improvement over the proposal originally described in the Joint Petition. The Town urged the Commission to approve the agreement as soon as possible so that the benefits of lower interest rates are available to all customers of all utilities.

H. Office of the Consumer Advocate

The OCA did not object to the settlement agreement proposed by the Settling Parties, though it is not a signatory. In pre-filed testimony provided on the Joint Petition and associated Merger Agreement, but not presented at hearing, the OCA's consultant, Scott J. Rubin, Esq., stated the transaction would cause substantial harm to customers who did not live in Nashua. Exh. 12. Attorney Rubin also stated that the proposed acquisition is likely to lead to net benefits to the public, but only if the Commission adopted his suggested changes that were intended to recognize the difference between owner-customers (customers located in Nashua) and non-owner-customers (customers located outside Nashua). He stated the special ratemaking and accounting provisions were not consistent with the public good and that the Commission should not approve those provisions. The suggested changes included: (1) dividing PWW into two

ratemaking districts, one district for customers located within Nashua and one district for customers located outside Nashua; (2) none of the acquisition-related costs should be assigned to PAC, PEU, or customers outside of Nashua; (3) in future rate cases, PWW, PEU, and PAC should file simultaneous rate cases; (4) the revenue requirements for PAC and PEU should be determined as they are determined now, by using the traditional utility-basis method; (5) a separate revenue requirement for outside customers of PWW should be determined using the traditional utility-basis method of rate setting; (6) in the rate case, Pennichuck should calculate the total revenue requirement from utility operations using the cash-needs approach, i.e., calculate the amount of cash needed to meet expenses and meet Nashua's debt service obligation, then subtract from that amount of cash it anticipates from unregulated operations to determine the cash it needs from its utility operations; and (7) calculate the revenue requirement for inside-city district PWW customers to be equal to the revenue requirement from utility operations, minus the revenue requirements of PAC, PEU, and the outside-city district of PWW.

Attorney Rubin also recommended the Commission evaluate whether it would be in the public good to consolidate some or all of the outside-city utility operations. He explained that his approach would ensure that those who are outside Nashua – residents and businesses that have no obligation to pay taxes to Nashua, no vote for Nashua's decision-makers, and that have no expectation of receiving any benefit if Nashua decides to sell (or otherwise monetize) its investment in the utilities will pay rates that are established in the same way as they are now. The Commission will thus be better able to protect the outside-city customers because it could ensure that costs are fairly allocated between inside- and outside-city customers.

I. Staff

Staff filed testimony on the Joint Petitioner's proposal and recommended the Commission approve the proposal, but only with conditions that modify the requested ratemaking for the utility subsidiaries. Exh. 13. Staff believed the transaction would be in the public interest because it would leave in place the operational structure of the utility subsidiaries as well as most of the management structure as now exists, resulting in continuity of service, which is a clear benefit. The established affiliate relationships between the subsidiaries for the sharing of personnel and common assets would remain and ensure the continuation of the cost sharing arrangement that takes advantage of the economies of scale that benefit customers. The acquisition of stock means the Commission will continue to regulate PWW, PEU, and PAC, which Staff believes is important considering that Nashua would be acquiring water systems that serve thousands of customers who reside outside of Nashua.

In its prefiled testimony Staff expressed concern about the acquisition premium the City of Nashua would be paying but stated that because customer rates would not be increased, there is reason for the Commission to depart from its long-standing policy of disfavoring recovery of acquisition premiums. Staff stated that the City of Nashua's acquisition premium is accompanied by a reduction in operating costs of about \$1.7 million and that savings, along with the lower cost of capital on each utility's remaining rate base, and the dedication of revenues collected for income taxes and a portion of cash flow from depreciation expense, results in the avoidance of rate increases as a result of the proposed transaction at the negotiated price.

Staff stated that the proposed Rate Stabilization Fund is not equity and should not be treated as such. Staff stated that the proposal for rate base treatment is a violation of RSA 378:30-a, the so-called anti-CWIP statute, which prohibits utilities from including "Construction

Work in Progress” in rates and earning a return on assets not currently being used to provide utility service. Staff stated that the sole purpose of the RSF is to insulate Nashua from the vagaries of cash flow in operating the utilities; it provides no benefit to customers. Staff expressed concern about the change in risk sharing associated with the RSF. Staff stated that the City of Nashua’s request for assurance in the ratemaking structure was incompatible with the normal risk-sharing in regulated utilities where shareholders are provided an opportunity to earn a fair return on investment, not an assurance. Staff recommended the Commission reject the establishment of the RSF with ratepayer funds. Staff suggested that the risk-shifting could be mitigated by consolidating the rates of PWW, PEU, and PAC into a single tariff.

Staff urged the Commission to reject Nashua’s request to include its costs in the eminent domain case in its bonds and in customer rates. Staff stated that 3,800 customers who reside outside of Nashua would be asked to help reimburse Nashua for its costs for an eminent domain process for which they had no say. Staff also expressed concern that, despite the savings identified by the Joint Petitioners, there was no mechanism to pass the approximately \$1.7 million in savings on to customers.

At hearing, Staff stated that the changes to the Merger Agreement identified in the settlement agreement addressed Staff’s concerns and that the Staff now recommends that the Commission find the transaction in the public interest and approve it. Staff stated that the settlement agreement provides benefits to the customers of all three regulated utilities. The overall cost of capital is expected to be lower than under the current ownership and Staff believes it may be substantially lower. The current equity capital of the three regulated utilities will be replaced with the City’s bond fixed revenue requirement at an interest rate that may be below 5%. The existing debt of each utility, combined with the City of Nashua’s commitment to

request a lower cost of equity when it does accumulate equity capital in the utilities in the future, will result in total return costs that may be lower even though this transaction includes an acquisition premium. Future capital improvements will be financed with debt that carries a lower cost than equity capital. Staff stated it was confident that customers inside and outside Nashua will see, in the long term, lower rates than they would have seen under existing ownership. Staff noted that customers will be assured the continuation of good service since the management and operational personnel will remain in place.

Staff stated that the concern that none of the savings of the transaction would be realized by customers was addressed by the provision requiring PWW, PEU, and PAC to come in for rate cases in 2013. Staff's concerns regarding the rate stabilization fund have been addressed by the modifications contained in the settlement agreement; the fund is more akin to a working capital fund and at the end of the 30-year life of the bonds and it will be credited to customers. Staff's concern regarding the City's request for recovery of its eminent domain costs through the general obligation bonds has been addressed in the agreement; Nashua will be reimbursed for the costs only as the utilities are able to generate net income over time. When asked on cross examination, Mr. Naylor stated that Staff was no longer advocating that PWW, PEU, and PAC's rates be consolidated as part of the transaction. Hearing Transcript of October 25, 2011 afternoon session (10/25/11 p.m. Tr.) at 21 lines 6-16. Mr. Naylor also stated that he did not foresee any significant problems arising from the proposed ratemaking structure.

III. SUMMARY OF THE TERMS OF THE SETTLEMENT AGREEMENT

The settlement agreement was entered into by Nashua, Pennichuck Corporation, PWW, PEU, PAC, the Town of Milford, the District, Anheuser-Busch, Inc., Fred Teeboom, and Staff (together, Settling Parties).

A. Merger Transaction

The Settling Parties recommend that the Commission find that Nashua's acquisition of Pennichuck Corporation, pursuant to the Merger Agreement, is consistent with the public interest within the meaning of the Special Legislation. The Settling Parties also request that the Commission approve the Joint Petitioner's petition and Nashua's acquisition of the stock of Pennichuck Corporation. The Settling Parties state that the Commission has authority pursuant to RSA Chapter 38 and the Special Legislation.¹ The Special Legislation authorizes Nashua to purchase the stock of Pennichuck Corporation and hold such stock or establish one or more business corporations under RSA Chapter 293-A. The Special Legislation further directs the Commission to make a public interest determination prior to any such purchase.

B. Ratemaking Structure

To effectuate funding of the acquisition, the Settling Parties request the Commission approve a unique ratemaking structure that would apply to all future rate cases of each of the regulated utilities (PWW, PEU, and PAC). The Settling Parties state that the proposed ratemaking structure is designed to treat customers of each of the three regulated utilities similarly and fairly, and to provide to all of these customers, on a fairly apportioned basis, the benefit of Nashua's favorable capacity to issue general obligation bonds to finance the acquisition. They further state that the ratemaking structure is intended to provide an appropriate method for determining the revenue requirements and rates of each utility in future rate cases to ensure that the regulated utilities will have rates at levels that are sufficient to enable each utility to meet their operating requirements and to satisfy each utility's apportioned share of responsibility to pay the debt service arising from the City Acquisition Bonds.

¹ 2007 N.H. Laws 347, as amended by 2010 N.H. Laws 1: (eff. June 10, 2010).

The Settling Parties state that the proposed ratemaking structure generally applies traditional ratemaking principles and procedures, with the important exception that the portion of each utility's cost of service attributable to equity capital acquired by Nashua at the time of the closing of the acquisition is to be recovered through establishment of a fixed revenue requirement that is directly related to the cost of servicing the City Acquisition Bonds. This fixed revenue requirement is referred to as the City Bond Fixed Revenue Requirement (CBFRR). Exhibit B to Ms. Bonalyn J. Hartley's second supplemental testimony illustrates the CBFRR.

Under the proposal, the Settling Parties would compute a revenue requirement for each regulated utility at the time of future rate cases in two parts. First, the CBFRR is substituted for the value of each utility's equity measured at the time of closing of the acquisition. Rate base is thus reduced as the matching Equity-Related Items are not included in the traditional return on rate base. The Settling Parties illustrate these adjustments in Exhibit B to the settlement agreement. The Settling Parties state that the return on the remaining rate base as well as all operation and maintenance costs will be recovered through application of traditional ratemaking principles and procedures.

For each regulated utility, its CBFRR will be determined by a formula set forth in Exhibit B, Schedule A, Attachment A. Under this formula, each utility's assigned pro-rata share of the City Acquisition Bond will be based on that utility's proportional share of the total equity for all three utilities as of December 31, 2011. For this purpose, the value of the equity of The Southwood Corporation is included in the determination of the value of the equity of PWW. The assigned debt service obligation amount related to the City Acquisition Bond will be determined using the actual interest rate of the City Acquisition Bonds. According to the Settling Parties, the purpose of using the actual interest rate to compute the CBFRR is to provide the benefit of

Nashua's ability to issue general obligation bonds to finance the acquisition to all customers of the regulated utilities. Once the CBFRR is determined for each utility, Nashua will apply it in all future rate cases until the City Acquisition Bond has been paid in full.

As for the portion of each regulated utility's rate base that remains subject to traditional ratemaking principles and procedures, the Settling Parties propose the equity rate of return applicable to that portion be determined in accordance with Schedule 4 of Exhibit B. In addition, for purposes of determining the capital structure applicable to PWW's rate base, the Rate Stabilization Fund will not be considered equity capital for that purposes.

Nashua intends to finance future capital expenditures of the utilities with debt issued by each utility. If there is any equity reflected on a utility's financial statements at the time of a future rate case (for example, accumulated retained earnings or attributable to future equity investment), the Ratemaking Structure would apply a formula cost of equity based on the average of the interest rates on 30-year Treasury bonds for the most recent 12 months ending prior to the filing of the rate case, plus 3.0 percentage points. As to dividends, Nashua agrees to limit its receipt of dividend payments following the acquisition other than for payments under the CBFRR, to reimbursement of its costs to prosecute the eminent domain case, estimated at \$5 million. The Settling Parties agreed to a \$500,000 annual cap on these dividends related to this reimbursement.

Provided the acquisition is closed on or prior to March 31, 2012, Nashua agrees and the Settling Parties request that the Commission order Nashua to file full rate cases (within the meaning of N.H. Admin. Rules Puc 1602.01) simultaneously, and not later than June 1, 2013. Nashua states that these rate cases will be filed in accordance with the ratemaking structure identified above and will use calendar year 2012 as the test year. Nashua also agrees to reflect,

among other things, the actual interest rate of the City Acquisition Bonds in the ratemaking structure. Nashua further agrees to seek temporary rates per RSA 378:27 in the rate cases. According to the Settling Parties, the 2013 rate cases will: (1) allow the development of an operating history under the new ownership structure; (2) extend the period during which PEU has avoided the filing of a full rate case; and (3) ensure that rates are adjusted promptly to reflect the actual borrowing costs of the City Acquisition Bonds. In the event the acquisition closes after March 31, 2012, the Settling Parties agree that the first rate cases should be filed simultaneously, no later than September 1, 2013, and use a 12-month period ending March 31, 2013 as the test year, subject to appropriate pro forma adjustments to reflect the use of a period that is different from the actual fiscal year of the utilities. Nashua agrees to seek temporary rates pursuant to RSA 378:27.

C. Rate Stabilization Fund

Nashua and Pennichuck Corporation agree to contribute \$5,000,000 to PWW upon consummation of the acquisition to establish a fund that will be used to ensure stable rates and the continued ability to pay the debt service on the City Acquisition Bonds in the event of adverse revenue developments. According to the Settling Parties, the fund is intended to provide holders of the City Acquisition Bonds with reasonable assurances of the available cash to be used to pay debt service on the City Acquisition Bonds, similar to a debt service reserve fund, and will hence facilitate Nashua's ability to borrow funds at reasonable interest rates, which will directly benefit customers in the form of a lower cost of capital. Nashua agrees to maintain the fund according to procedures set forth in Exhibit C to the settlement agreement. The methodologies and procedures in Exhibit C specify: (1) the amount of the PWW Rate Stabilization Fund; (2) the treatment of the PWW Rate Stabilization Fund as a component of the

PWW rate base in future rate proceedings in accordance with the Ratemaking Structure; (3) maintenance of the target amount for the PWW Rate Stabilization Fund through adjustments to rates in connection with any PWW full rate case; and (4) the requirement for annual reporting and reconciliation regarding the PWW Rate Stabilization Fund accounts. The Settling Parties recommend the Commission approve the establishment and maintenance of the fund.

D. Municipal Acquisition Regulatory Asset and Related Accounting Treatment

1. The Settling Parties request the Commission approve the establishment and amortization of the regulatory asset known as the MARA for PWW, PEU, and PAC. The Settling Parties detail the methodologies and procedures for the MARA in Exhibit D of the settlement agreement. The Settling Parties agree that the final actual amount of the MARA, including the final actual amount of the Acquisition Costs, shall be subject to audit by the Commission in the first rate cases filed by the utilities. The Settling Parties agree that under the Ratemaking Structure, the MARA will be treated as an Equity-Related Item that is removed from the traditional ratemaking process and is subject to recovery only through the CBFRR. The Settling Parties agree that the MARA is not intended to create any other rights for any other purpose.

2. The Settling Parties request the Commission authorize the payment by PWW, PEU, and PAC to Pennichuck Corporation, distributions from each utility's paid-in-capital account for the purpose of enabling Nashua to satisfy its obligations under the City Acquisition Bonds.

3. The Settling Parties request the Commission approve the following affiliate transactions: (a) allocation of management and service costs among PWW, PEU, and PAC in accordance with the terms of the existing Cost Allocation and Services Agreement (dated

January 1, 2006 and filed in Docket No. DA 06-004); (b) participation by each of PWW, PEU and PAC in accordance with the terms of the existing Money Pool Agreement (dated January 1, 2006 and filed in Docket No. DA 06-004) including loans from PWW to PEU or PAC to enable each of them to meet their share of responsibility to provide cash flow to enable Nashua to satisfy its obligations under the City Acquisition Bonds, subject to the requirements set forth in Exhibit C to the settlement agreement; and (c) making of intercompany cash payments among Pennichuck Corporation and its subsidiaries with respect to allocation of federal and state income tax liabilities in accordance with existing practice of Pennichuck Corporation and its subsidiaries. Nashua states that it is not a party to the money pool agreement and agrees not to become a party to the money pool agreement.

4. The Settling Parties agree and recommend that the Commission require PWW, PEU, and PAC to not pay or distribute funds in any fiscal year with respect to their common stock, through dividends or other distributions to Pennichuck Corporation, in excess of an amount equal to the sum of:

- (a) the amount of the utility's then applicable CBFRR, and
- (b) an amount from current earnings and profits with respect to such fiscal year to provide funds to allow Nashua to reimburse itself for costs incurred by Nashua relating to its efforts to pursue the eminent domain proceeding from January 1, 2002 until August 2009 (the Eminent Domain Amount), provided, however, that the distribution in respect of such Eminent Domain Amount with respect to any fiscal year shall not exceed \$500,000, and, provided further, that the aggregate of all distributions in respect of such Eminent Domain Amount shall not exceed \$5,000,000.

For purposes of this provision, the Settling Parties agree that the Eminent Domain Amount shall only include costs incurred by Nashua and shall not include any eminent domain expenses and costs incurred by the District or PWW that PWW sought to recover in its last rate case, Docket No. DW 10-091. The Settling Parties agree that such eminent domain expenses and costs shall

not be recovered from PWW, PEU, or PAC customers. The Settling Parties further agree that the final Eminent Domain Amount shall be subject to audit by the Commission in the first rate cases filed by the utilities and that all parties shall have the right to audit and review evidence provided by the utilities that document the nature and amount of all costs comprising the Eminent Domain Amount.

E. Other Conditions

The Settling Parties request that the Commission condition any approval of the acquisition on Nashua obtaining bonds with terms substantially consistent with the terms described in Exhibit B to the settlement agreement, the true interest cost on the City Acquisition Bonds not exceeding 6.50 % per annum, and on Nashua providing written notice to the Commission within 30 days prior to issuance of any indebtedness by the City to refinance or refund the City Acquisition Bonds. The Settling Parties further request the Commission condition the approval of the acquisition on the inclusion in the Pennichuck Corporation by-laws of the requirement that at least one member of the Pennichuck Corporation board of directors be nominated by the District and approved by Nashua, provided that such member shall be subject to the same conditions as would apply to any other person who is appointed to the Pennichuck Board of Directors, as set forth in the proposed Pennichuck Corporation by-laws. The By-Laws shall provide that the District nomination and Nashua approval of a Board member requirement shall not be amended without the consent of the District.

The Settling Parties also request that the Commission order PWW, PEU, and PAC to file, within 90 days following the consummation of the acquisition, a detailed accounting of the transactions impacting the utilities, a copy of the fully-executed closing documents, a

presentation of the accounting entries made on the books and records of each utility, a calculation of the MARA, and an accounting of all Acquisition Costs.

IV. COMMISSION ANALYSIS

A. Motion for Confidential Treatment

RSA 91-A:5, IV states that records of “confidential, commercial, or financial information” are exempt from disclosure. *See Unital Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009). In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. *Id.* Second, when a privacy interest is at stake, the public’s interest in disclosure is assessed. *Id.* Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* This is similar to the Commission’s rule on requests for confidential treatment. See N.H. Code Admin. Rules Puc 203.08.

On October 31, 2011, Pennichuck Corporation filed a motion for protective treatment of confidential information responsive to data requests OCA 1-28 and OCA 2-4. The former seeks “compensation information relating to Pennichuck employees receiving cash or other consideration upon approval and/or consummation of the merger” and the latter seeks “Pennichuck’s financial projections for the years 2012 through 2014, including projections considering the City’s ownership of Pennichuck.” Motion, pp. 1-2.

Regarding the documents over which Pennichuck Corporation seeks protection, the Commission previously determined that compensation data for specific non-officer employees ought to be granted confidential treatment and be exempt from public disclosure. *See,*

Pennichuck Water Works, Inc. Order No. 24,701, 91 NH PUC 562, 563 (2006) (citing *Union Telephone Co.*, 81 NH PUC 525, 526 (1996) and *Pennichuck Water Works, Inc.*, 86 NH PUC 764,765 (2001)). The compensation at issue here relates to the approximately \$800,000 aggregate value of stock options that 25 non-officer employees accumulated over time and that must be distributed after closing. Disclosure of Pennichuck Corporation's non-officer employee compensation data could violate the employees' reasonable privacy expectations, be disruptive to the relations among its employees, and undermine the company's ability to hire and retain employees. Further, there is no indication that disclosure of the compensation data for specific non-officer employees would inform the public about the workings of the Commission. In balancing the interests of Pennichuck Corporation and its employees' interest in not publicly disclosing the compensation data with the public's interest in disclosure, we find that the privacy interests in non-disclosure outweigh the public interests in disclosure and, therefore, we grant Pennichuck Corporation's motion regarding discovery request OCA 1-28.

As to protection of the forward-looking financial information supplied by Pennichuck Corporation in response to discovery request OCA 2-4, we also find that the privacy interest in non-disclosure outweighs the public interest in disclosure and will grant the motion. In Docket No. DW 04-048, the Commission previously protected the company's forward-looking financial information and determined that its release would likely result in a competitive disadvantage to the company and could cause economic harm to the company, its investors, customers, and other members of the public. *See, City of Nashua*, 91 NH PUC 33, 34 (2006). We conclude that the same protection ought to be applied to the instant forward-looking information provided in response to OCA 2-4, namely, the budget, operating expenses, revenue and balance sheets for the years 2011 to 2014. There is no indication that disclosure of this financial information would

inform the public about the workings of the Commission. In balancing the interests of the public and the interests of Pennichuck Corporation, its investors, and the investing public, we find the interests of the latter outweigh the interests of the public in making the information publicly available. We also note that Pennichuck Corporation seeks protection for the forward-looking information only so long as Pennichuck Corporation remains a publicly traded entity; consummation of the merger will change that status and render protection moot.

Mr. Teeboom filed an objection, Nashua filed a notice of “no position” and other parties and Staff were silent. Mr. Teeboom asserts that concurrent with the completion of the acquisition and public ownership of the companies, the information contained in discovery needs to become public. Mr. Teeboom further asserts that the public is entitled to know who receives the \$2.2 million in severance costs under the settlement agreement and who gains in stock options from this sale. Finally, according to Mr. Teeboom, the public is entitled to examine the financial projections supporting the City’s claim that water rates will lower under its ownership.

In large part, Mr. Teeboom’s concerns do not appear to relate directly to the motion for protective treatment. His argument that the public should be given access to the details of severance payments is misplaced inasmuch as this information is already in the public record and the motion for protective treatment will have no effect on access to the severance terms. Furthermore, the value of stock options relative to officers that will be distributed after closing is also in the public record. Finally, Pennichuck Corporation’s request was to protect forward-looking financial information only to the point the transaction is complete; thus Pennichuck Corporation and Mr. Teeboom are in agreement that the forward-looking projections be public upon completion of the transaction.

Consistent with Puc 203.08(k), our grant of this motion is subject to our on-going authority, on our own motion, on the motion of Staff, or on the motion of any member of the public, to reconsider our determination

B. Settlement Agreement

1. Standards for Review

N.H. Code Admin. Rules Puc 203.20 (b) provides that the Commission shall approve disposition of any contested case by settlement “if it determines that the result is just and reasonable and serves the public interest.” *See also* RSA 541-A:31, V(a). In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise “as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.” *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972, 94 NH PUC 256, 282 (2009) *citing Concord Electric Company*, Order No. 24,072, 87 NH PUC 694, 708 (2002).

The Commission scrutinizes settlement agreements thoroughly regardless of whether a party appears at hearing to raise objections. *Union Telephone Company d/b/a Union Communications*, Order No. 25,045, 94 NH PUC 666, 671 (2009). We evaluate the substantive terms as well as the process that led to a negotiated agreement. The fact that parties to a settlement agreement represented a diversity of interests and that issues were diligently explored and negotiated at length, serves as one indication that the results of the settlement are reasonable and in the public interest. *FairPoint Communications, Inc. et als*, Order No. 25,129 at 57 (July 7, 2010). The Commission will not approve a settlement agreement “without independently determining that the result comports with applicable standards.” *EnergyNorth Natural Gas*,

supra at 282. The issues must be reviewed, considered and ultimately judged according to standards that provide the public with the assurance that a just and reasonable result has been reached. *Id.*

The settlement agreement as summarized in section III. above recommends a series of specific regulatory actions by the Commission. The settling parties seek: 1) approval of the merger transaction, including a favorable public interest finding, approval of the terms of the Merger Agreement, and approval of the stock acquisition; 2) approval of the proposed ratemaking structure, including various related procedures and formulas; 3) approval of the rate stabilization fund for PWW; 4) approval to establish and amortize the MARA and take certain steps related to distributions from paid-in-capital, affiliate transactions, and limitations on dividends, distributions and other transfers to Pennichuck; and 5) other conditions regarding acquisition bonds, corporate governance, and post-closing accounting reporting.

We evaluate the settlement in light of RSA Chapter 38. Among its provisions, RSA 38:2 authorizes a municipality to purchase plant for the distribution of water to its inhabitants. RSA 38:6 authorizes a municipality to take utility plant and property located outside its boundaries if the Commission determines such taking is in the public interest. Pursuant to RSA 38:11, “[t]he Commission need not make any public interest determination when the municipality and utility agree upon the sale or utility plant and property.” The Special Legislation noted above, however, directs the Commission to make a public interest determination prior to Nashua’s purchase of Pennichuck Corporation. It is a well-settled rule of statutory construction “that in the case of conflicting statutory provisions, the specific statute controls over the general statute.” *Appeal of Pennichuck Water Works, Inc.*, 160 N.H. 18, 34 (2010) citing *Appeal of Plantier*, 126 N.H. 500, 510 (1985). Here, to the extent that RSA 38:11 conflicts with the Special Legislation, the

Special Legislation specifically governs Nashua's purchase of the stock of Pennichuck Corporation and controls. Thus, we must make a public interest determination as to the Joint Petitioner's proposal.

Our public interest determination is also informed by the Commission's decision in Docket No. DW 04-048 as well as the statutory requirements of RSA Chapter 369 and RSA Chapter 374 related to similar public utility transactions. The underlying standard for approving the acquisition of a parent company of a public utility is set forth in RSA 369:8, II (b) (requiring no adverse effect on rates, terms, service, or operation of the utility). Transfers and acquisitions involving public utilities are governed by RSA 374:30 (requiring a finding that the transfer of a public utility's "franchise, works or system" serves the "public good"), and RSA 374:33 (requiring the acquisition of ownership of a public utility be lawful, proper, and in the public interest). When applying these standards, we consider all the interests involved and all the circumstances in determining what is reasonable. *See Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539, 540 (1915); *Parker-Young Co. v. State*, 83 N.H. 551, 561-562 (1929); *Appeal of Pinetree Power*, 152 N.H. 92, 97 (2005). Though this transaction does not fall squarely within these statutes, consideration of their standards provides useful guidance.

2. Docket No. DW 04-048 and RSA Chapters 369 and 374

In determining whether the acquisition of Pennichuck Corporation by Nashua is in the public interest, we first consider how certain aspects of the eminent domain proceeding Docket No. DW 04-048 may relate to the transaction, which is now being undertaken with consent of Pennichuck Corporation. We note that in Order No. 24,878 the Commission found Nashua's taking of PWW to be in the public interest, subject to a number of conditions. Many of the conditions concerned Nashua's proposal to contract out the operation of PWW. The

Commission also required Nashua to participate as an operator in the Underground Utility Damage Prevention System, otherwise known as Digsafe if it were to take and operate the PWW system. *See* RSA 374:48 et seq. The Joint Petition, however, makes clear that the utilities will continue to be operated by PWW, PAC and PEU personnel and the utilities will remain corporate entities under RSA Chapter 293, subject to RSA 374:48 *et seq.* These conditions, therefore, are not needed.

In DW 04-048 the Commission found Nashua did not have the authority to take PEU and PAC by eminent domain because the utilities did not provide water service in Nashua. *City of Nashua*, Order No. 24,425, 90 NH PUC 15 (2005). The Commission further found that removing PWW from Pennichuck Corporation would cause harm to customers in PEU and PAC due to lost efficiencies and, therefore, the public interest required Nashua to establish a mitigation fund for the benefit of those customers. As more fully discussed below, we find that the consensual transaction set forth in the Joint Proposal as modified by the settlement agreement is in the public interest and, in light of the essential differences between this proceeding and DW 04-048, the conditions imposed in that proceeding are superseded and not required here.

The established affiliate relationships between the subsidiaries for the sharing of personnel and common assets will remain in place and ensure the continuation of cost sharing arrangements that take advantage of economies of scale that benefit customers. The utilities will continue to have access to intercompany loans through the Money Pool Agreement to ensure that they have the cash flow to meet their obligations. The transaction will leave in place the operational structure of the utility subsidiaries as well as most of the management structure as now exists, resulting in continuity of service to customers. The record thus supports our finding that the transaction will have no adverse effect on the rates, terms, service, or operations of the

regulated utilities consistent with RSA 369:8, II and is otherwise for the public good consistent with RSA 374:22 *et seq.*

3. Proposed Conditions

a. Staff

In testimony concerning the Joint Petitioners' initial proposal, Staff recommended the Commission approve the transaction with modifications. Staff expressed concern, as did the OCA, regarding the Ratemaking Structure and Rate Stabilization Fund. Staff claimed that the mechanisms had the effect of shifting risk from Nashua to customers. Staff noted the Commission's long-standing policy of disfavoring recovery of acquisition premiums, but at hearing stated that even with an acquisition premium, the total return costs may be lower, benefiting all customers. Staff also stated that its concern regarding risk shifting was greatly lessened as it became clear during discovery and settlement discussions that the transaction, as modified by the settlement agreement, could bring benefits to all customers. 10/25/11 p.m. Tr. at 20-21. In testimony, Staff objected to Nashua's inclusion of its eminent domain costs, however, the settlement agreement does not include those costs in the City Acquisition Bonds. Exh. 1 at 6-7. Staff's concerns are thus resolved.

b. OCA

As previously noted, the OCA in its pre-filed testimony recommended that the Commission impose a number of conditions on the transaction. Although not a signatory to the settlement agreement, at hearing the OCA stated it did not oppose the settlement agreement and that the agreement represented an improvement over the initial Joint Proposal. Among the new terms in the settlement agreement is the OCA's recommendation that utilities file simultaneous rate cases by a date certain in order to pass savings on to ratepayers. The OCA stated that the

agreement comes closer to achieving a balance of benefits and burdens between Nashua and residents who live outside of Nashua. The OCA observed that the settlement agreement properly excluded the \$5 million in Nashua's eminent domain costs but expressed disappointment that the City Acquisition Bonds included \$2 million in severance benefits. In its closing the OCA stated that it looked forward to Nashua securing acquisition debt at an interest rate as low as possible and seeing the benefits of lower interest rates passed on to customers.

c. Merrimack

The Town of Merrimack also recommended the Commission approve the transaction, but with the condition that Merrimack be allowed a seat on the board of directors of Pennichuck Corporation. In support of its request, Merrimack argues it is necessary to protect its interests in ensuring that decisions affecting capital improvements and other operations of the core system within the Town of Merrimack are not adversely affected by Nashua's Board of Aldermen having reserved the right to decide whether to incur debt. Nashua refused the Town of Merrimack's request stating that the board would become unwieldy and that the Town of Merrimack can bring any grievance before the Commission. The Town of Merrimack counters that raising issues through a forum at the Commission would be more time consuming and costly than if the Town of Merrimack could raise issues at the board level. It was noted at hearing that other municipalities served by PWW had not participated in this proceeding or had not requested a seat on the board and that this inaction by some municipalities ought not to make the Town of Merrimack's request any less justified. Anheuser-Busch, Inc. also indicated that its participation in the settlement agreement should not be construed to endorse any particular composition of the board. 10/25/11 p.m. Tr. at 69.

Having reviewed Merrimack's arguments, we find that the public interest does not require that a seat on the board be designated specifically for the Town of Merrimack. Essentially, Merrimack's concern is that Nashua will misuse its position to favor economic development in the PWW service territory in Nashua over economic development in the PWW service territory in Merrimack. Such action would be contrary to PWW's obligation to provide safe and adequate service within its franchise areas without discrimination and to serve anyone who requests service, subject to applicable tariff provisions regarding main extensions. There will be no change in obligations of the utilities and rights of the customers in Merrimack, or any other franchise areas of PWW, PEU, and PAC as a result of this transaction. Accordingly, Merrimack will have redress in the event Nashua or PWW acts improperly.

Furthermore, any future changes to PWW's tariff, including its main extension policies, must be reviewed by the Commission. The Department of Environmental Services (DES) will continue to regulate PWW, PEU, and PAC and those utilities must continue to meet DES' water quality and water quantity requirements.

Finally, Nashua is incented to fund capital improvements outside of Nashua because it has a fiduciary responsibility to ensure that adequate dividends flow from the regulated utilities to service its acquisition debt, which runs contrary to Merrimack's position that Nashua may be inclined to undermine capital improvements in Merrimack's commercial and industrial area that Merrimack views as competitive with similar development in Nashua. The possibility that Nashua's political considerations could disadvantage customers in Merrimack therefore appears remote. For these reasons, we deny the Town of Merrimack's request for a seat on the board.

d. Other Parties

As to the remaining parties, none submitted conditions for the Commission's consideration. Mr. Teeboom's pre-filed testimony recommended certain conditions described above in section II. E, however, at hearing he supported the settlement agreement.

C. Conclusion

The parties to this docket represent a diversity of interests and the procedural history indicates that the parties conducted extensive discovery to explore the issues. As we have indicated above, the mere fact of a settlement agreement is not dispositive that the transaction is in the public interest. Having reviewed the evidence and testimony presented at hearing, however, we find that the parties produced evidence to demonstrate that the transaction is in the public interest and will not have an adverse effect on rates, terms, service, or operation of the utilities.

Specifically, there is credible evidence that: 1) the projected range of rates will support each of the utilities' operating and debt service costs as well as the City's obligations under the acquisition bonds; 2) customer rates, over time, will be lower than currently projected, in part because the overall combined cost of equity will be materially lower; and, 3) the ratemaking structure will reasonably provide for the collection of revenues sufficient for the City and the utilities to satisfy operating and debt service costs. In addition, the settlement agreement requires the utilities to file full rate cases in the near future, so that the projected savings will be passed on to customers. Furthermore, each of the utilities will remain subject to the Commission's jurisdiction with no change to the utility's management structure and employees.

Based on the record in this proceeding, we find that the proposed settlement agreement is in the public interest pursuant to the Special Legislation and RSA Chapter 38. We specifically

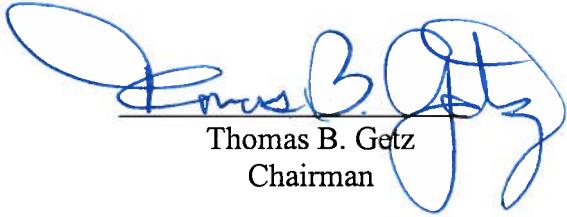
grant the approvals and impose the conditions set forth in the settlement agreement, including, among other things, the Ratemaking Structure and its inclusion of a CBFRR, the Rate Stabilization Fund, the establishment and amortization of a regulatory asset known as the MARA, and the limitation on Nashua's ability to draw dividends or other distributions from Pennichuck Corporation. The inter-company agreements such as the Money Pool Agreement and Cost Allocation and Services Agreement will remain intact. The majority of PWW, PEU, and PAC's employees will remain with the utilities, which will ensure that Nashua's acquisition of the utilities will not be disruptive to the provision of safe and adequate service to PWW, PEU, and PAC's customers.

Based upon the foregoing, it is hereby

ORDERED, that the settlement agreement proposed by the Settling Parties as described above is APPROVED; and it is

FURTHER ORDERED, that within 90 days following the consummation of the City of Nashua's acquisition of Pennichuck Corporation's stock, the City of Nashua file a detailed accounting of the transaction, including copies of fully-executed closing documents, presentation of accounting entries, calculation of the MARA, and accounting of all acquisition costs, as described above.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of
November, 2011.

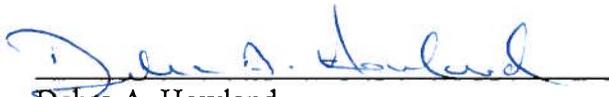


Thomas B. Getz
Chairman



Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 11-026-1 Printed: November 23, 2011

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.