

PENNICHUCK / WATER DISTRICT TIME LINE

Prepared by Barbara Pressly
Latest update – December 5, 2002

- | | |
|----------------|--|
| October 2001 | Pennichuck starts process of selling company
(Telegraph 11/28/02) |
| December 2001 | Pennichuck determines range of value of company |
| March 2, 2002 | PUC grants Pennichuck 19% rate increase |
| April 17, 2002 | Pennichuck considers three offers (2 cash offers) |

Pennichuck selects stock for stock suburban offer in spite of knowing about and discussing the potential vivendi divestiture of 16.8 % of Philadelphia Suburban stock.

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|----------------|--|
| April 29, 2002 | Pennichuck announces sale to Philadelphia Suburban. |
| April 30, 2002 | Arel states Pennichuck <u>will file with PUC AFTER Shareholders OK purchase</u> (Telegraph page 7)

Mayor Streeter announces City purchase of Pennichuck to be studied. |
| May 3, 2002 | Pennichuck Shareholders Meeting. Sale not on agenda but company announces shareholders meeting to vote on sale to take place in a “couple of months”.
(Telegraph – May 4, 2002) |
| May 2002 | Paris-based Vivendi Universal announces plans to sell its 17 percent stake in Philadelphia Suburban. |
| May 28, 2002 | First Meeting of the Pennichuck Watershed Council |

PENNICHUCK WATERSHED COUNCIL MEETS MONTHLY

June 9 – 10 – 11	Telegraph published three day series on history of Water Company.
June 14, 2002	Pennichuck and Suburban send request to PUC (<u>NO SHAREHOLDERS APPROVAL and NO NOTICES SENT TO MUNICIPALITIES</u>)
June 17, 2002	Formal Filing received at PUC (<u>NO SHAREHOLDERS APPROVAL</u>)
June 19, 2002	Senior executives from Pennichuck and Suburban attend 4 ½ hour Nashua Aldermanic meeting. They discuss City Study money and PUC process. <u>Executives NO NOT DISCLOSE that they have ALREADY filed and the PUC clock is ticking.</u>
June 21, 2002	Pressly learns of filing, obtains copy, distributes to Mayor (City) and press
June 25, 2002	Telegraph prints story of filing. Shareholders vote moved from summer to late fall. Telegraph endorses Nashua's Study money.
June 26, 2002	Aldermen approve Study Money with expressions of anger that executives did NOT disclose PUC filing at previous meeting only 7 days earlier.
June 29, 2002	Telegraph prints filing procedures
July 3, 2002	Legal Notice appears in Union Leader day before major holiday (only required PUC notice)

IF FILING OF PETITION HAD NOT BEEN DISCOVERED BY PRESSLY – POSSIBLY NO AFFECTED COMMUNITY WOULD HAVE KNOWN ABOUT THE PUC PROCESS SINCE FEW READ LEGAL NOTICES AND RARELY BEFORE HOLIDAYS.

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|---------------|---|
| July 8, 2002 | Pressly takes PUC petition to selectmen meetings in Amherst, Milford and Hollis, discusses impact on their Communities and encourages them to intervene. |
| July 10, 2002 | Nashua Mayor holds regional meeting on Pennichuck |
| July 15, 2002 | Pennichuck Shareholders express concern about decision to sell (Telegraph July 15, 2002) |
| July 16, 2002 | Deadline for filing to intervene |
| July 18, 2002 | Arel says "Time will tell if the stock recovers, and time will tell if a deal is in place."--- "The key is that our shareholders get their fair value." (Globe 7/18/02) |
| July 19, 2002 | Prehearing Conference in Concord. Many complain of inadequate notification and announce Towns which need to be informed. Nashua and Towns ask for more time . Pennichuck wants September 30, 2002 PUC decision. Consumer Advocate questions quality and appropriateness of petition given the Vivendi situation and no shareholders approval. |
| July 23, 2002 | Philadelphia Suburban stock drops 30% due to Vivendi. Arel says PUC time extension now helpful to Pennichuck. (Telegraph 11/23/02) |
| July 25, 2002 | Pressly buys one share of Pennichuck stock for \$26. |

August 6, 2002 Quote from Arel (Telegraph 8/6/02) “**At first I foresaw having a fairly quick shareholders vote, but then, about a week after we announced the merger, the Vivendi situation cropped up, that changed everything,” he said.**”

August 8, 2002 First meeting of Ad Hoc Water Committee organized by Pressly composed of White, Singleakis, Sullivan, Gill and Wilson.

Ad Hoc Water Group met weekly at Public Library until October.

August 14, 2002 Pennichuck posts quarterly loss due to costs associated with sale of Company. Land sales profit to cover loss.

August 15, 2002 Water people attend SB 437 hearing at State House
Rep. Blanchard files LSR to allow revenue bonding for water districts.

Pennichuck letter to Shareholders delays proxy statement due to Vivendi (Pennichuck does NOT disclose that they knew about Vivendi before they signed the agreement with PSC) and Pennichuck considers negotiating with PSC to extend the **optional** termination date under the merger agreement beyond March 31, 2003.

September 14, 2002 RPC and Nashua host Regional Round Table

September 21, 2002 Pressly requests shareholder list

September 22, 2002 Telegraph article again suggests that possible Vivendi divestiture of Philadelphia Suburban was learned **after** the merger was signed when in fact the **Proxy statement now shows that the Board of Directors of Pennichuck knew about the Vivendi situation before signing and chose to proceed with the agreement.**

October 3, 2002	Water Committee meets with SB 437 and Representative Blanchard who filed bill
October 24, 2002	Ad Hoc Water now meets at Nashua RPC – town lawyers meet to discuss strategy. NRPC creates Web site for Water Committee (nashuarpc.org)
October 29, 2002	Pressly files in Superior Court
November 1, 2002	City Study released.
November 7, 2002	Town of Bedford votes to join Regional Water District
November 8, 2002	Philadelphia Suburban reports record earnings primarily due to nine PUC rate increases
November 13, 2002	Pennichuck Corp reported third quarter earnings primarily due to March rate increase and land sale. Bedford Town Manager meets with Nashua Mayor
November 15, 2002	Aldermen vote and Mayor signs resolution endorsing State legislation enabling bonding for water districts..
November 18, 2002	Londonderry votes to join Regional Water District
November 26, 2002	Nashua Board of Alderman vote to purchase water company, schedule referendum vote and vote money to continue study and appraisal fees.
November 27, 2002	Pennichuck files proxy with the SEC (day before a national holiday again)
December 5, 2002	Bedford holds public meeting with towns and city to draft “Memorandum of Understanding”.
December 10, 2002	Final Statements before the PUC

January 14, 2002

Nashua Referendum VOTE

Business

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Manchester, New Hampshire • October 20, 2002



BARBARA PRESSLY shows the share of Pennichuck Water Works stock she purchased for \$29 earlier this year.

Tracy McGee Photo

Water Fight

With a single share, one woman battles the sale of Nashua-based Pennichuck Water Works.

HUNTER McGEE
Sunday News Correspondent

FORMER STATE SEN. Barbara Pressly says she didn't plan to invest in Pennichuck Water Works when she purchased a single share of stock in the company earlier this year. She bought the stock only to gain information about Pennichuck. Pressly is an outspoken opponent of the pending sale of the nearly 150-year-old water company for \$106 million to Philadelphia Suburban Corp. Because of her publicly expressed opinions, the Nashua-based company is decided to deny her documents she would ordinarily have access to as a shareholder.

Information about Pennichuck is important to Pressly who has waged an intense campaign in recent months to inform surrounding towns of the proposed sale and the plan to form a regional water district. Pressly is receiving help in the effort from Karen White, Bedford planning director.

Pressly bought the stock for \$29 and requested she receive the original stock certificate. After receiving the stock certificate, Pressly said, "It's the best \$29 I ever spent."

Pressly said she wanted to see who her fellow shareholders were and tried to obtain a copy of the shareholders' list, as allowed by the New Hampshire Business Corporation Act.

She sent a letter to Pennichuck on Sept. 21 and asked for the list of all shareholders, along with their addresses, phone numbers

and/or email and fax numbers, and the numbers of shares they own. Pressly clearly stated the reason for wanting the names as follows: "to communicate with them regarding the Corporation's business and in particular the proposed sale of the Corporation to Philadelphia Suburban Corporation."

Pressly received a letter back from the company that was dated Oct. 11 and signed by Maurice Arel, president and CEO of Pennichuck.

In the two-sentence reply, Arel acknowledged that Pressly was a shareholder but denied her request for the shareholder information, citing Section 293-A:16,02 of the New Hampshire Business Corporation Act and "in light of your recent public statements concerning Pennichuck."

In summary, the section Arel cited says that the shareholder must clearly state the purpose for requesting the information, the request must be made in writing and the request must have a "proper purpose."

Contacted Friday, Arel said the matter was turned over to Michael Krebs, an attorney in Boston. When asked why the attorney recommended the request be denied, Arel consulted notes and said the attorney gave the reason that Pressly is "working counter to the sale."

Pressly has gone on record at public meetings and been quoted in area newspapers as opposing the sale.

In a Sept. 29 article in the Sunday News on the proposed sale, Pressly cited various reasons she opposes the sale, saying it's possible Philadelphia Suburban could itself be acquired by a foreign water company and local control of the company would be lost.

"Water is a natural resource, it belongs to the people," Pressly said in the article. "The

issue of drinking water is the subject across the country; many people feel that water is becoming precious, and it's a commodity that people want to control and move around."

As an alternative to the sale, Pressly has developed a plan where area towns would float bonds, purchase the water company and form a regional water district.

"What I'm proposing is an alternative offer, a competitive offer," Pressly said.

Arel, a former mayor of Nashua, did not say if the release of the letter was timed in response to Pressly's comments in the Sunday News article.

Pressly said she was shocked when she received the letter and baffled that her request was denied. She said she has examined the section cited in the letter and is unsure how it relates to her request.

She said she also doesn't understand how any comments she made could be used as a basis to deny the request.

"I didn't buy the share as an investment," she said. "The only argument I can think of I'm not an investor and I might be doing something to 'injure the stock.'"

An attorney for the New Hampshire Bureau of Securities Regulation could not be reached for comment on the matter.

Pressly said she isn't sure where she will turn next concerning the denial of her request.

However, she said she is certain her efforts have angered people who are close to the sale.

"They are really mad at me, but you know what — we are going to buy the company... we can feel it."

The New Hampshire Public Utilities Commission is scheduled to reach a decision concerning the pending sale on Feb. 28 of next year.

State of New Hampshire

Hillsborough County South

Superior Court
No. 02-E-

Barbara B. Pressly

v.

Pennichuck Corporation

PETITION FOR A COURT ORDER UNDER RSA 293-A:16.04
FOR ACCESS TO, AND COPIES OF, THE SHAREHOLDER LIST OF
PENNICHUCK CORPORATION

NOW COMES your Petitioner, Barbara B. Pressly, by and through her attorney, Eugene F. Sullivan, III, and respectfully requests that this Honorable Court issue an order pursuant to the provisions of RSA 293-A:16.04 requiring the Pennichuck Corporation to allow for the inspection and copying of the Corporation's shareholder list. In support thereof your Petitioner states as follows.

1. Petitioner, Barbara B. Pressly, is a shareholder of the Pennichuck Corporation and a resident of Nashua, New Hampshire with an address of 11 Orchard Avenue, Nashua, New Hampshire 03060.

2. Respondent, Pennichuck Corporation, is a publicly traded New Hampshire corporation with a principal place of business, or office, located at 4 Water Street, Nashua, New Hampshire 03060. Its registered agent is John T. Pendleton at 39 E Pearl Street, Nashua, New Hampshire, 03060.

3. Pennichuck Corporation is a holding company principally comprised of subsidiary water utilities providing water service to approximately 30,000 customers in 23 communities throughout New Hampshire under the regulatory supervision of the New Hampshire Public Utilities Commission.

4. On April 29, 2002, Pennichuck Corporation issued a press release announcing that its Board of Directors had entered into a "a definitive agreement to merge in a stock transaction [with Philadelphia Suburban Corporation] which, including the assumption of \$27 million of debt, has a total enterprise value of approximately \$106 million, and represents \$33.00 per Pennichuck share based on a PSC share price of \$23.00 to \$25.00."

5. Philadelphia Suburban Corporation is the second largest publicly-traded water utility holding company in the Nation.

6. Since the announcement of the proposed merger the stock of Philadelphia Suburban Corporation has ranged in value from approximately \$30.00 per share on April 29, 2002 to its current market price of approximately \$20.00 per share.

7. Ms. Pressly was informed by Pennichuck Corporation that the proposed merger agreement must be, and will presently be, presented to the shareholders of the corporation at a duly noticed shareholder meeting for its approval.

8. Ms. Pressly was also informed by Pennichuck Corporation that the directors and shareholders of Pennichuck Corporation are free to entertain counter offers or proposals for the purchase of the corporation at that same meeting.

9. Barbara Pressly has publicly formed an ad hoc group designed to bring together the New Hampshire communities served by Pennichuck Corporation's water subsidiaries to make a counter-offer to purchase the stock and/or assets of the Pennichuck Corporation. Ms. Pressly's goals and efforts toward that end has received some notoriety in the New Hampshire press. See e.g., Appendix 1.

10. On September 21, 2002, Ms. Pressley wrote to Charles Staab, the Vice President, Treasurer and Principal Financial Officer of Pennichuck Corporation as a shareholder of

Pennichuck Corporation formally requesting a list of all shareholders, their addresses or other means of contact, and the number of shares owned by each shareholder. See, Appendix 2.

11. Ms. Pressly's request further stated that,

[t]his information will be used exclusively to communicate with [shareholders] regarding the Corporation's business and in particular the proposed sale of the Corporation to Philadelphia Suburban Corporation.

12. On October 11, 2002, Marice L. Arel, President and CEO of Pennichuck Corporation, responded to Ms. Pressly's formal request by stating that based on the provisions of 293-A:16.02 of the New Hampshire Business Corporation Act,

and in light of your recent public statements concerning Pennichuck, we respectfully deny your request for the [shareholder list], as your request does not meet the requirements of the Act.

Appendix 3.

13. The letter sets forth no detail to support his conclusion, and is a bad faith attempt by the Corporation's officers and directors to prevent Ms. Pressly from communicating with her fellow shareholders to inform them of the substantial efforts and accomplishments by her group toward forming a joint municipal compact to acquire Pennichuck Corporation.

14. Pursuant to the provisions of RSA 293-A:16.02(a) a shareholder of a New Hampshire corporation is entitled to inspect and copy a list of shareholders and their addresses provided the following three criteria are met;

- (1) His demand is in writing, and is made in good faith and states a proper purpose;
- (2) He describes with reasonable particularity his purpose and the records he desires to inspect; and
- (3) The records are directly connected with his purpose.

RSA 293-A:16.02(c)

15. In the case at hand, Ms. Pressly's requested the shareholder list in writing.

16. She stated that her purpose was to communicate with shareholders concerning the proposed merger with Philadelphia Suburban Corporation.

17. Moreover, Mr. Arel's reference to Ms. Pressly's "recent public statements", reveals that the Corporation was aware that Ms. Pressly was preparing an alternative to the offer from Philadelphia Suburban Corporation, which, while it may be contrary to the wishes of current management that supports that proposal, may ultimately be in shareholders' best interest.

18. Attempting to communicate with shareholders regarding a proposed offer of purchase and alternatives is a good faith request and a proper purpose under New Hampshire law. *See Davey v. Unitil Corporation*, 133 N.H. 833(1991) (Decided under prior law.)

19. In *Davey v. Unitil Corporation*, Mr. Davey, a Unitil shareholder, sought a copy of the shareholder list of the Unitil Corporation which he planned to provide to Eastern Utilities Associates. Eastern Utilities Associates had made a hostile tender offer for the shares of Unitil which Unitil management was opposing and actively fighting.¹

20. In upholding Mr. Davey's right to the shareholder list the Supreme Court stated that,

Communication with other shareholders *concerning the merits of a pending tender offer is recognized as a "proper purpose" for demanding a corporation's shareholder list and is considered a shareholder's right.* (Emphasis added)

Davey v. Unitil Corporation, 133 N.H. 833, at 838.

¹ "The purpose of this request is to permit me to communicate with other stockholders with respect to matters of mutual interest, including EUA's tender offer for all Unitil shares...." *Davey v. Unitil Corporation*, 133 N.H. 833, at 836.

21. Pursuant to the provisions of RSA 293-A:16.04,

[i]f a corporation does not within a reasonable time allow a shareholder to inspect and copy [a shareholder list], the shareholder who complies with RSA 293-A:16.02(b) and (c) may apply to the superior court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded

RSA 293-A:16.04(b).

22. Ms. Pressly has clearly established that she is entitled to the requested shareholder list as she has complied with all of the provisions of RSA 293-A:16.04(b) and is entitled to an order of this Court requiring Pennichuck Corporation to provide her with that list to communicate with shareholders regarding the current offer of merger by Philadelphia Suburban Corporation and potential alternative offers.

23. Moreover, pursuant to the provisions of RSA 293-A:16.04,

If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.
(Emphasis added)

RSA 293-A:16.04(c).

24. The case at hand is indistinguishable from the facts in *Davey v. Unitil Corporation* in which a shareholder requested a shareholder list to communicate with fellow shareholders regarding a pending offer to purchase the stock of that corporation.

25. Mr. Arel's letter denying Ms. Pressly access to the shareholder list is intentionally vague and designed to avoid stating a reason for such a denial.

26. The denial on its face and otherwise, therefore, was not made in good faith, and does not state any reasonable basis to doubt Ms. Pressly's right to the shareholder list.

WHEREFORE, Barbara B. Pressly respectfully requests that this Honorable Court:

- A. Issue an Order requiring Pennichuck Corporation and its appropriate record keepers to allow Ms. Pressly access to copies of the shareholder list as requested in her letter of September 21, 2002;
- B. Issue an Order awarding reasonable costs and attorney fees under RSA 293-A:16.04;
- D. Grant such other relief as is just and equitable.

Respectfully submitted,
Barbara B. Pressly,
By and through her attorney,

October 29, 2002



Eugene F. Sullivan, III
87 North State Street
Concord, New Hampshire 03301
603.227.0600

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Officials are investigating the fire that started early Monday as a possible case of arson.

Fire Inspector Rick Wood said the fire could have been started with newspaper or with the use of an accelerant, such as gasoline.

FIRE | PAGE 10

Pressly pushing for water authority

Nashua: Activist wants group to take over Pennichuck

By BRAD LEIGHTON
Telegraph Staff

NASHUA - Community activist Barbara Pressly is trying to pull together a committee whose goal would be to establish a regional water authority that would acquire Pennichuck Corp.

"All the towns have an interest in the water, so I think this is an idea that needs to be looked at," said Pressly, who has been critical of the proposed \$100

WATER | PAGE 9

Kerren McKeeman of Hollis warms up for her routine outside t
Circus Smirkus in Milford.

Circus

By MARRIAH SHIELDS
Telegraph Staff

MILFORD - The fresh popcorn and cotton candy, which tickles your nose all day. The ringing laughter. The smiles and attentive eyes.

The music, the lights, the huge, colorful tent.

The close friendships formed over the eight-week performance season.

These are some reasons the 35 teenagers who form Circus Smirkus dedicate themselves to the show.

Plus, they love to perform.

As part of Circus Smirkus, a circus troupe for teens, the kids learn all the tricks of the trade, even the not-so-

great parts.

Circus Smirkus hit town Tuesday for two performances, and will have two more shows today at 2 and 7 p.m. at the intersection of Old Wilton Road and Route 101. The circus is from Greensboro, Vt., and has been in town since 1987.

The troupe travels eight or nine weeks in the summer, and learns that even though the other things in their lives, eight weeks there is nothing more important as Smirkus.

"You're on the road all the time," said 17-year-old Jacob Skeffington of Greenfield. "If there's anything

Sununu says experience, not Smith, is reason

By KEVIN LANDRIGAN
Telegraph Staff

U.S. Rep. John E. Sununu said Tuesday that the decision by Sen. Bob Smith to leave the Republican Party and mull over a third-party campaign for president ranks far down a list of reasons

Sununu said of Smith's switch to become an independent for five months back in July 1999.

Earlier this week, Smith questioned if Sununu was running to punish Smith for exiting the GOP and launching a vocal attack accusing party leaders of abandoning its core, conservative principles.

graph editorial "They respect House. They respect vice chairman accident."

In 2000, Sununu was on the panel but Nussle.

VOTE

Telegraph
Wed.
Aug. 7, 2002

8

Water: Regional authority is in earliest stages, according to Pressly

CONTINUED FROM PAGE 1

million acquisition of Pennichuck by Bryn Mawr, Pa.-based Philadelphia Suburban Corp.

Pressly hopes the committee could back the introduction of a bill in the legislative session starting in January that would enable the creation of regional water authorities.

The former state senator and alderman emphasized that her idea is only in its beginning stages and that the committee has not met. Yet already people from the city and the surrounding towns are involved, she said.

While Pennichuck is based in the city, the utility supplies water to several surrounding towns. Pressly and other advocates are concerned that the acquisition of Pennichuck by an out-of-state company may adversely affect the quality and quantity of the area's drinking water. They are also concerned about what effect out-of-state control might have on the local environment.

The state Public Utilities Commission is reviewing the proposed merger with Philadelphia Suburban, and the city has commissioned a \$99,600 study of the local water utility.

All the communities should have control over their drinking water, Pressly said.

"A regional water authority would certainly solve the issue of local control versus out-of-state or out-of-country control," Pressly said.

Mayor Bernie Streeter said the city's consultants, George E. Sansoucy and Rizzo Associates, are still studying the issue. The city will not develop a

INTERESTED IN THE CAUSE?

Barbara Pressly can be reached at 880-7752.

position on the proposed acquisition until at least November, the mayor said.

"There are a number of possibilities, and establishing a regional water authority is clearly one of them," Streeter said. Other options include a city acquisition of Pennichuck, establishing a joint partnership with Philadelphia Suburban to run the local water utility, or establishing another kind of partnership with the Pennsylvania company, the mayor added.

"We really need to take a careful look at what other water companies this size have done," he said.

Dean Shankle, Merrimack's town manager, said the towns should keep all of their options open, but establishing a regional water authority would not be easy.

"This town has never been involved in water before, but it does make sense to look at all our options and weigh both the positives and negatives," Shankle said. "It never hurts to look at things, including a regional water authority, but I'm not for jumping on any bandwagons."

Maurice Arel, president and chief executive officer of Pennichuck, said Pressly asked if he would appoint a member of his staff to sit on the committee, but there may be legal issues that could prevent that.

There are some regional water authorities in existence in the country, but there are a number of obstacles that Pressly's committee would have to overcome, Arel said.

There are now different

rate structures between Pennichuck's two subsidiaries, Pennichuck Water Works and Pennichuck East Utilities, which the company acquired from the now-defunct Consumers New Hampshire in 1998, Arel said.

If a regional authority were to blend those rates, then water rates in the city would probably have to rise, since the towns under Pennichuck East pay about twice as much as Nashua for water, Arel said.

Different communities also have different needs for capital improvements, and a regional authority would have to work out a way to divide up those costs, Arel said.

The authority also would have to bond the cost of buying Pennichuck, and the process of appointing authority members would have to be established, Arel said.

"It could be done. It would just be difficult," Arel said.

Pressly agreed there are obstacles to overcome.

"That's why we had better start talking about it," she said.

Even if the city and surrounding communities don't establish a regional water authority, state legislation would enable other communities to have that option, she said.

But she believes area communities could establish a regional water authority, and that they could work together to resolve rate and cost issues.

"We're just starting out," she said. "I'd welcome ideas from anyone who is interested."

Brad Leighton can be reached at 594-6446 or leightonb@telegraph-nh.com.

BOB HAMMERSTROM
Milford.

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Peterson of

Other board members said one train each day wouldn't make much of a difference in terms of noise.

"We're talking about a train a

who buys in that development should be aware of the railroad track noise and should be ready.

"It doesn't bother us. We enjoy it," she said. No one showed

ing units in five developments, and a sixth development with 45 units is under construction. Town planners have approved 45 elderly attached condos at

Subj: The Bond Buyer newspaper story
Date: 10/1/02 10:33:04 AM Eastern Daylight Time
From: Michael.McDonald@thomsonmedia.com (McDonald, Michael)
To: barbaravia@aol.com ('barbaravia@aol.com')

October 1, 2002

Planned Water District to Ask New Hampshire for Bonding Power

By

Michael McDonald <mailto:michael.mcdonald@tn.com>

A proposed municipal water district in southern New Hampshire will ask the state legislature in January to pass a bill clarifying its ability to operate and issue bonds, which if successful could lead to the sale of more than \$100 million in new municipal debt.

"They need legislation to give them bonding authority that would not in any way impair the credit of the individual communities that comprise the district," said Eugene Sullivan, a lawyer in Concord and a former state Public Utilities Commission lawyer who drafted the bill. "Right now, it's not clear. This legislation would make it clear."

The proposed water district grew out of local resistance to the sale of Pennichuck Corp., the area's private water monopoly, to Philadelphia Suburban Corp., which until recently was partially owned by the French conglomerate Vivendi Universal.

The water monopoly, which has existed for 150 years and taps much of its supply from watersheds along the Merrimack River, is being sold for \$106 million. In June, Pennichuck asked the state PUC to approve the sale, which is structured as a stock for stock merger of the two companies, and the commission has set a Feb. 28 date for a decision.

The publicly traded company also needs shareholder approval of the sale. The next board of directors meeting is Friday. Pennichuck sells water to more than 20,000 customers in southern New Hampshire. Philadelphia Suburban, which is based in Bryn Mawr, Pa., and is one of the largest water and sewer companies in the country, has more than 2 million customers in six states east of the Mississippi.

The companies announced the deal in the spring.

Pennichuck's largest customer is Nashua. Backers of the proposed district have asked the city and the 25 other communities that buy water from Pennichuck to help create the district. Earlier this year, Nashua hired a consultant to study the creation of a municipal water district, and the results of the study are expected in two weeks.

The Nashua Region Planning Commission is also studying the proposed district, at the request of the 26 communities served by the water monopoly.

"We have no particular interest but to see if we can find a new entity controlled by the ratepayers to purchase and manage the water supply," said Barbara Pressly, former Nashua alderman and state senator who is heading the ad hoc water group.

The group is seeking to change an existing state law, RSA 53:A, which allows cities and towns to join together in municipal contracts. The change would give the agreements the legal status of a municipality, opening the door to an independent governmental entity that would have bonding authority distinct from the communities it would serve.

If created, it would be the first such regional district in the state.

While a group of communities would need the legislative clarification, Nashua could set up its own individual water operations without any change to the law. It already controls its own sewage operations. The consultant, Rizzo Associates, is studying this option as well as the larger regional district.

However, a city official said Nashua would find it stressful raising the capital if it decided to go it alone. David Fredette, the city's treasurer, said Nashua is just coming off an ambitious bonding campaign to build new schools, which came on top of other ongoing needs.

He said the city has sold \$110 million in bonds in the last couple of years and plans to sell another \$60 million for infrastructure and the local fire department in the next couple of years. "That's going to be the biggest part of the study," Fredette said. "Can we afford to purchase the whole thing?"

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Barbara Pressly
11 Orchard Avenue
Nashua, N.H. 03060
(603) 880-7752

Mr. Charles Staab
Pennichuck Corporation
4 Water Street
Nashua, N.H. 03060
September 21, 2002

Dear Chuck,

As a share holder of Pennichuck Corporation I formally request a list of all the other share holders, their addresses, phone numbers and/or their email and fax numbers, and the number of shares they own.

This information will be used exclusively to communicate with them regarding the Corporation's business and in particular the proposed sale of the Corporation to Philadelphia Suburban Corporation.

Please send this to me as soon as possible. Thank you for your time and attention.

Sincerely,

Barbara Pressly

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Pennichuck Corporation

October 11, 2002

Ms. Barbara Pressly
11 Orchard Avenue
Nashua, NH 03060

Dear Ms. Pressly,

I am in receipt of your letter to Chuck Staab, dated September 21, 2002, requesting "a list of all other share holders, their addresses, phone numbers and/or email and fax numbers, and the number of shares they own."

Although I understand that you are a shareholder of Pennichuck Corporation, based on the provisions of Section 293-A:16.02 of the New Hampshire Business Corporation Act and in light of your recent public statements concerning Pennichuck, we respectfully deny your request for the above-listed shareholder information, as your request does not meet the requirements under the Act.

Sincerely,



Maurice L. Arel
President and CEO

1150639.1

cc. C. Staab
M. Krebs

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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

Barbara Pressly

v.

Pennichuck Corporation

Docket No.: 02-E-0381

**JOINT MOTION TO ENTER PROPOSED SETTLEMENT, STIPULATIONS
AND ORDER AS AN ORDER OF THE COURT**

NOW COMES Petitioner Barbara B. Pressly and Respondent Pennichuck Corporation, by and through their respective counsel, and respectfully submit this Joint Motion to Enter Proposed Settlement, Stipulations and Order as an Order of the Court. In support of this Joint Motion, Petitioner and Respondent state the following:

1. This case relates to Petitioner's request, as a shareholder of Respondent Pennichuck Corporation, for access to a shareholder list pursuant to RSA 293-A:16.02.
2. Petitioner and Respondent have reached an agreement regarding the final resolution of this matter. The terms of Petitioner's and Respondent's agreement are contained within the Proposed Settlement, Stipulations and Order signed by the parties and submitted herewith as Exhibit A.
3. The parties respectfully request that the Proposed Settlement, Stipulations and Order be enter as an Order of the Court so as to bind the parties thereto.
4. Pursuant to this Court's Order dated November 8, 2002, the State of New Hampshire is not a party to the settlement.

WHEREFORE, Petitioner and Respondent respectfully requests that this
Honorable Court:

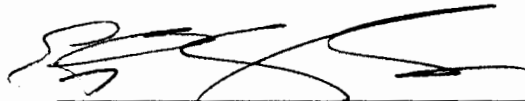
- A. Enter the Proposed Settlement, Stipulations and Order as
attached at Exhibit A as an Order of the Court;
- B. Take no further action regarding this docket; and,
- C. Grant such further relief as this Court deems just.

Respectfully submitted,

BARBARA B. PRESSLY, PETITIONER

By Her Attorneys,

Dated: 1/10/03



Eugene F. Sullivan, III, Esq.
87 North Main Street
Concord, NH 03301
(603) 227-0600

PENNICHUCK CORPORATION, RESPONDENT

By Its Attorneys,

GALLAGHER, CALLAHAN & GARTRELL
Professional Association

Dated: 1/8/03

By: A.B. Pollack

Ari B. Pollack, Esq.
P.O. Box 1415
Concord, NH 03302-1415
(603) 228-1181

NUTTER, MCCLENNEN & FISH, LLP

Dated: 1/8/03

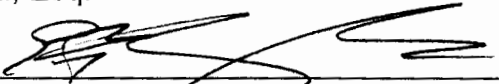
By: M.K. Krebs

Michael K. Krebs, Esq.
World Trade Center West
155 Seaport Blvd.
Boston, MA 02210-2604

CERTIFICATE OF SERVICE

I hereby certify that I have this date forwarded via U.S. Mail, postage prepaid, a copy of the foregoing Motion to Jeffrey D. Spill, Esq.

Dated: 1-10-03

By: 
Eugene F. Sullivan, III, Esq.

STATE OF NEW HAMPSHIRE

Hillsborough County
Southern District

Superior Court
No. 02-E-0381

Barbara B. Pressly
v.
Pennichuck Corporation

PROPOSED SETTLEMENT, STIPULATIONS AND ORDER

Petitioner, Barbara B. Pressly ("Pressly"), a shareholder of the Respondent, Pennichuck Corporation (the "Corporation" and, collectively with Pressly, the "Parties"), having filed a Petition for access to the Corporation's shareholder list pursuant to RSA 293-A:16.04 and the Corporation having agreed to provide the Shareholder List under this agreement, the Parties hereby stipulate as follows:

1. A shareholder list must be provided to a shareholder under RSA 293-A:16.02 et seq. only if the demand for the shareholder list is in writing, made in good faith, states a proper purpose, and the shareholder describes with reasonable particularity the purpose for seeking the Shareholder List.

2. Pressly, a shareholder, having made a written demand setting forth the purposes for which she was seeking access to the shareholder list, and the Corporation, believing that it was acting in good faith and in the best interest of its shareholders and that it had reasonable doubt about whether Pressly had a proper purpose within the meaning of RSA 293-A:16.02, the Parties hereby settle the dispute relating to Pressly's demand for access to the Corporation's shareholder list on the terms set forth in this Proposed Settlement, Stipulations and Order.

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3. The Corporation shall provide Pressly with a list of the shareholders of the Corporation (the "Shareholder List") within five (5) days of the Court's entry and adoption of this Proposed Settlement, Stipulations and Order, provided Pressly is a shareholder of the Corporation and only uses the Shareholder List to communicate with the Corporation's shareholders (the "Shareholders").

4. Pressly may use the Shareholder List solely for one or both of the purposes set forth in this Paragraph, subject in any case to the terms and conditions set forth elsewhere in this Proposed Settlement, Stipulations and Order:

- A. To communicate to the Shareholders Pressly's opinion regarding the merits of the Agreement and Plan of Merger dated April 29, 2002 to which the Corporation and Philadelphia Suburban Corporation are parties (as the same may be amended from time to time, the "Merger Agreement"); and
- B. To communicate to the Shareholders Pressly's opinion regarding any bona fide plan or intent for acquisition of the stock or assets of the Corporation made by one or more of the communities served by any of the Corporation's water subsidiaries, provided that Pressly has a reasonable good faith belief that such an acquisition would be in the best interests of the Corporation's shareholders.

5. Pressly shall not intentionally or recklessly distribute to the Shareholders any communication that contains any untrue statement of a material fact or material omission. Pressly shall provide to the Corporation's President a copy of any written communication distributed to the Shareholders as soon as reasonably practicable after such communication is sent.

6. Pressly shall not disclose the Shareholder List to any other individual or entity, except individuals assisting her in the clerical task of preparing for mailing any communication to the Shareholders. Pressly shall take all reasonable measures, at no cost to the Corporation, to prevent any use or disclosure of the Shareholder List that is unauthorized or prohibited by this Proposed Settlement, Stipulations and Order.

7. Within five (5) days of the Court's entry and adoption of this Proposed Settlement, Stipulations and Order, the Corporation shall pay a portion of Pressly's reasonable costs and attorney fees incurred in relation to this Proposed Settlement, Stipulations and Order in accordance with the terms of a letter agreement between Pressly and the Corporation dated as of January 9, 2002.

8. Nothing herein shall prevent Pressly from subsequently requesting a list of the shareholders of the Corporation for any other "proper purpose".

9. The Shareholder List is hereby deemed "confidential, commercial, or financial information" within the meaning of RSA Chapter 91-A and shall not be subject to public disclosure or dissemination by virtue of reference or inclusion in any public proceeding or any record thereof.

10. The term "Shareholder List" as used in this Proposed Settlement, Stipulations and Order shall include all notes, interpretations, analyses, compilations, studies or other documents that contain or otherwise reflect or are based, in whole or in part, on information contained in the list of the shareholders of the Corporation that shall be provided to Pressly pursuant to Paragraph 3 of this Proposed Settlement, Stipulations and Order.

PENNICHUCK CORPORATION

By its Attorneys,

GALLAGHER, CALLAHAN AND GARTRELL
Professional Association

Dated: 1/8/03

By: C.B. Pollack
Ari B. Pollack, Esq.

NUTTER, MCCLENNEN & FISH, LLP

Dated: 1/8/03

By: C.B. Pollack for
Michael K. Krebs, Esq.

BARBARA B. PRESSLY

By her Attorney,

Dated: 1-10-03

Eugene F. Sullivan III
Eugene F. Sullivan III, Esq.

The above-stated Settlement, Stipulations and Order is hereby adopted and entered as an Order of this Court.

Dated:

So Ordered,

Presiding Justice



CHRISTOPHER C. GALLAGHER
MICHAEL R. CALLAHAN
DONALD E. GARTRELL
W. JOHN FUNK
EDWARD E. SHUMAKER, III
MICHAEL D. RUEDIG
ANNE G. SCHEER
DENIS J. MALONEY
DAVID A. GARFUNKEL

DONALD J. PFUNDSTEIN
ANDREW B. ELLIS
DONALD R. SAXON
SUSAN B. HOLLINGER
ANDREA K. JOHNSTONE
MICHAEL D. RAMSDELL
DODD S. GRIFFITH
WALTER L. MARONEY
ARI B. POLLACK

SETH L. SHORTLIDGE
LYNNARIE C. CUSACK
JEANNE P. HERRICK
CELIA LEONARD WAGNER
INGRID E. WHITE
JAMES D. KEROUAC
JON M. GARON
OF COUNSEL
ROBERT E. KIRBY
1961-1996

January 8, 2003

Eugene F. Sullivan, III, Esq.
Ingersoll & Sullivan
87 North State St.
Concord, NH 03301

Re: Barbara B. Pressly v. Pennichuck Corporation
Docket No. 02-E-0381

Dear Attorney Sullivan:

In accord with our recent telephone conversation, and in consideration of our agreement to resolve the above-referenced Superior Court litigation by entry of the Proposed Settlement, Stipulations and Order to the Court, Pennichuck Corporation agrees to reimburse \$2,000.00 of Ms. Pressly's litigation fees and expenses upon entry of the Proposed Settlement, Stipulations and Order as an Order of the Superior Court. Upon entry of the Order, and with your acknowledgement as indicated below, Pennichuck will forward a check in the amount of \$2,000.00 payable to "Eugene F. Sullivan, III, Attorney-At-Law" directly to your attention. This letter agreement between counsel shall operate as the parties' entire agreement regarding reimbursement of legal fees and expenses and shall release Pennichuck Corporation from further obligations regarding the same. Kindly acknowledge the terms of this letter agreement by signing below. Please call with any questions.

Very truly yours,

Ari B. Pollack

ABP/dmh

Cc: Michael K. Krebs, Esq.
Maurice Arel
Charles Staab

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A Feeding Frenzy At The Public Trough

Published: Saturday, Dec. 18, 2004 in the Nashua Telegraph

The outcome of an investigation by federal and state security regulators into the conduct of Pennichuck Corp. and its former CEO Maurice Arel confirmed what many in the Nashua area have known for years - that Arel, his son and other close associates derived huge benefits from the development of hundreds of acres that should have been used to protect water quality for future generations.

KEY POINTS

BACKGROUND: State and federal security regulators announced a \$390,000 settlement with Pennichuck Corp. and its former CEO Maurice Arel stemming from SEC violations.

CONCLUSION: The fact that Arel denies any wrongdoing is consistent with the arrogance that marked his tenure as Pennichuck CEO.

In the ultimate act of arrogance, both the corporation and Arel deny any wrongdoing despite agreeing to a \$390,000 settlement. The \$270,000 portion of the fines that Arel will pay personally is a pittance compared to the fortune he amassed while converting watershed lands into housing and commercial developments. It's a classic tale of abuse of power, of personal enrichment at the cost of the public good. As early as 1984, as Nashua's mayor, Arel was planting the seeds for the conversion of a low-profile water utility into a real estate development cash cow. He led the effort to rezone Pennichuck-owned land off the F.E. Everett Turnpike from rural-residential to industrial park.

The stage set, he left public office to become Pennichuck CEO and the feeding frenzy began. The land that would become the Southwood Park had been successfully rezoned, but a new turnpike exit at Tinker Road would be necessary to complete the picture. Thanks to the influence of real estate developer John Stabile, then chairman of the Senate Capital Budget Committee, the \$8.5 million exit won a place on the state's highway plans.

Stabile's efforts were generously rewarded in the years to come, as he became exclusive contractor for development of Pennichuck-owned land which, in a corporate shell game approved by regulators, was transferred to the for-profit and unregulated Southwood Corp. over the protests of Nashua's public officials.

Stabile was given the land with no money up front. After the houses or commercial properties were built, he paid Southwood. Not a cent of those profits went to help ratepayers in the Pennichuck system. Instead the 10 partnership agreements worth more than \$36 million enriched a handful of insiders while converting more than 1,000 acres of open land in Nashua and Merrimack into sprawl. Stabile, in turn, built Arel a \$390,000 home with a \$70,000 discount.

In filings with the Securities and Exchange Commission, Arel obscured the fact that all the Southwood work was going out on a no-bid basis to a single developer, that he had received favors from that developer, and that his son, Matthew, had obtained exclusive management rights on the properties. Had these facts been made known at the time, the public outcry would have brought this travesty to a halt. The motive behind the deception is obvious.

Finally, when the land available for development was exhausted and there was nothing left for Pennichuck to do but manage a water system, Arel and his associates decided it was time to bail out. They negotiated a sale with an out-of-state water company that would have made them millionaires many times over. That sale fell through only because of the city's attempt to acquire the utility so that it could be managed, finally, in the public interest.

For Arel to now claim no wrongdoing while asserting his Fifth Amendment rights is consistent with the arrogance that marked his conduct as Pennichuck CEO. Fortunately, we live in a country where no one is untouchable and even those who think they are above the law may some day be called to account.

4/15/2005

proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and over the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds that:

A. RESPONDENT

Pennichuck Corp. is a New Hampshire corporation based in Merrimack, New Hampshire, with approximately \$97 million in total assets as of December 31, 2003. Pennichuck's principal operating subsidiaries are regulated public utilities that provide drinking water to customers in southern and central New Hampshire. Pennichuck's subsidiary, The Southwood Corporation ("Southwood"), directly or through joint ventures with real estate developers, develops, leases, and sells land holdings that Pennichuck formerly owned in connection with its water operations. During the relevant period, Pennichuck's stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ National Market System.

B. FACTS

1. Summary

This matter involves false and misleading disclosures

in Pennichuck's filings with the Commission concerning Pennichuck's real estate operations. Pennichuck's Form 10-KSB for the fiscal year ended December 31, 1998, which was filed on March 26, 1999, contained the false statement that an executive officer of Pennichuck purchased a home from one of Pennichuck's real estate joint ventures on the same terms that were available to any independent third party. In fact, in 1998, Pennichuck's then-chief executive officer (the "Former CEO") purchased a home from Pennichuck's joint venture, and obtained favorable terms worth approximately \$70,000 that were not available to other purchasers.¹ Pennichuck's false statement went uncorrected until early 2003. In addition, Pennichuck's public filings for the period 1998 through 2002 also failed to disclose that its real estate joint ventures paid a company controlled by the Former CEO's son (the "Former CEO's son") approximately \$800,000 for landscaping work during the relevant period.²

Pennichuck further failed to disclose certain other material information concerning its real estate joint ventures. During the period 1996 through 2002, Pennichuck participated in six separate real estate joint ventures with a single partner, a New Hampshire real estate developer ("the Developer"). Pennichuck's public filings during the period were inaccurate and incomplete concerning its real estate ventures with the Developer because, among other things, they failed to inform investors that all of the above real estate joint ventures were with the same joint venture partner (the Developer), and that the company and/or the joint ventures had multiple loans and contracts all with the same developer. Pennichuck's public filings also failed to disclose that the Developer was the joint venture partner who provided the Former CEO with favorable terms on his home purchase and repeatedly hired a company

controlled by the Former CEO's son to perform landscaping work.

2. Background Concerning Pennichuck's Real Estate Operations

At all relevant times, Pennichuck conducted its real estate operations through its wholly owned subsidiary, Southwood. Beginning in the 1980s, Pennichuck transferred to Southwood approximately 1,088 acres of undeveloped land in southern New Hampshire that the company had owned for decades, and which had a very low cost basis. Pennichuck's Former CEO had primary responsibility for Pennichuck's real estate operations, and devoted the majority of his time to the real estate portion of Pennichuck's business.

From 1996 to 2002, the Former CEO recommended to Pennichuck's board of directors, and the board approved, the formation of six separate real estate joint ventures with the Developer (collectively, the "Joint Ventures"). Southwood was a 50% owner in each of the joint ventures with the Developer. Between 1996 and 2002, Southwood obtained total revenue of approximately \$3.6 million from three residential Joint Ventures with the Developer. Since 1999, the Joint Ventures also have developed three commercial office buildings which have provided revenue to Southwood totaling approximately \$370,000.

3. Pennichuck Made False Disclosures in its 1998 Form 10-KSB and a 1999 Proxy Statement

In 1998, the Former CEO purchased land and a custom-built home in Nashua, New Hampshire from one of Pennichuck's Joint Ventures for \$339,600. In connection with the purchase, the Former CEO knowingly obtained from the Joint Venture at least

\$70,000 worth of benefits that were not available to others who purchased homes in the same real estate development from the same Joint Venture. First, the Former CEO obtained his home "at cost," meaning that he did not pay the Joint Venture the standard mark-up on construction costs of approximately 10% paid by other purchasers in the same development. That benefit was worth approximately \$30,000. Second, the Former CEO obtained a \$10,000 discount off the cost of the home, resulting in a \$10,000 benefit to the Former CEO. Third, the Former CEO did not pay the standard real estate commission of 6% that other purchasers paid. That benefit was worth approximately \$20,000. Fourth, the Former CEO did not pay a lot premium for one of the largest and most desirable lots in the development. Other purchasers paid lot premiums of between \$7,000 and \$12,000. Fifth, unlike other purchasers, the Former CEO reserved that lot without providing any down payment. Sixth, the Former CEO was allowed to custom select the design for his home and negotiate multiple change orders during the construction while other purchasers chose from a few pre-selected home designs. Finally, unlike other purchasers, the Former CEO was allowed to contract directly with his son for landscaping work on the property, rather than paying the Joint Venture a mark-up for landscaping. In total, those benefits to the Former CEO were worth at least \$70,000.

Despite the special benefits the Former CEO obtained, the notes to the financial statements reported in Pennichuck's Form 10-KSB for the fiscal year ended December 31, 1998 contained the following statement:

During 1998, one of the residential joint venture partnerships sold land and a home to an executive officer of the Company. The terms of that sale were the same as the terms which would

be given to any independent third party purchaser.

That statement was false because the special terms described above were not available to other purchasers. Pennichuck's filing contained this false statement because the Former CEO made false representations concerning his home purchase to Pennichuck's chief financial officer, who prepared the filing.³

The Former CEO misled Pennichuck's CFO in late 1998, by stating that he obtained no special deal in connection with his home purchase from Pennichuck's Joint Venture. Furthermore, while the CFO was preparing the company's Form 10-KSB for 1998, the CFO informed the Former CEO that his home purchase would have to be disclosed, and that the CFO planned to state in the public filing that it was an arms-length transaction. The Former CEO failed to correct the CFO's misunderstanding, and later reviewed and approved the proposed disclosure about his home purchase without making any correction. As a result, Pennichuck's Form 10-KSB for 1998, filed with the Commission on March 26, 1999, contained the false statement that the Former CEO's home purchase from Pennichuck's Joint Venture was on the same terms given other purchasers.⁴

In addition to the false filing on Form 10-KSB, Pennichuck's proxy statement, filed with the Commission on March 18, 1999, set forth an incomplete and inaccurate statement concerning the Former CEO's compensation for 1998. The proxy statement contained a chart of the Former CEO's compensation during 1998 that included the Former CEO's salary of \$159,327, a bonus of \$50,000, and \$42,293 under the category "all other compensation." A footnote explained that the amount of "all other

compensation" included: (1) the cost to the company for the Former CEO's life insurance policy; (2) contributions to the Former CEO's elective savings plan; and (3) contributions made pursuant to a deferred compensation agreement with the Former CEO. The proxy statement's chart of the Former CEO's compensation omitted the benefits totaling at least \$70,000 that the Former CEO obtained in 1998 in connection with his home purchase from Pennichuck's Joint Venture.

4. Pennichuck Failed to Disclose Transactions Involving the Former CEO's Son

Between 1998 and 2002, Pennichuck's Joint Ventures repeatedly hired a landscaping company controlled by the Former CEO's son to perform landscaping work for the various real estate development projects. During the relevant period, the Joint Ventures paid approximately \$800,000 for the work, with approximately \$258,000 paid in 1999 alone. However, Pennichuck's public filings during that period failed to disclose these ongoing transactions between its Joint Ventures and the Former CEO's son.

The Former CEO knew that the Joint Ventures hired his son to perform a significant amount of landscaping work. On at least one occasion since 1998, the Developer discussed with the Former CEO problems with the quality of the Former CEO's son's work at the largest of Pennichuck's residential Joint Venture projects. In addition, the Former CEO attended a meeting of homeowners of that residential Joint Venture at which the quality of his son's landscaping work was discussed. Nonetheless, between 1998 and 2002, Pennichuck failed to disclose in any public filing information concerning the transactions between Pennichuck's Joint Ventures and the CEO's son.

5. Pennichuck Failed to Adequately Disclose

The Extent of Its Relationship with the Developer

Between 1996 and 2002, Pennichuck's public filings failed to disclose all material information concerning the company's real estate transactions involving the Developer, and Pennichuck's filings failed to provide investors a full picture of Pennichuck's extensive real estate transactions with the Developer. During that period, Southwood formed six real estate joint ventures with the Developer and the Joint Ventures awarded the Developer at least \$23 million in construction contracts for the Joint Venture projects, all without use of a competitive bidding process. Pennichuck also financed construction and development loans to the Joint Ventures totaling approximately \$3.3 million between 1996 and 1999, through approximately \$1.25 million in interest-free loans and an additional \$2.05 million in loans with interest. Pennichuck further conveyed land to the Joint Ventures without obtaining independent appraisals of the value of the land.

In addition, Pennichuck's quarterly and annual public filings repeatedly failed to inform shareholders that the multiple transactions disclosed in those filings involved a single developer. For example, in its Form 10-KSB for the fiscal year ended December 31, 1999, filed with the Commission on March 22, 2000, Pennichuck failed to disclose that a single developer (the Developer) was involved in each of the following: a) the company earned \$714,000 from its 50% interest in two residential joint ventures; b) it recorded a pretax gain of \$72,000 from sale of one-half interest in a land parcel to a local developer; and c) the company's 50%-owned venture, HECOP I, owned a 39,000 square-foot office building which was partially occupied by a local developer. Similarly, Pennichuck's Form 10-KSB for the fiscal year ended December 31, 2000, filed with the Commission on

March 28, 2001, reported that Southwood was: a) a 50% partner in two joint ventures that built and owned separate office buildings; b) a 50% partner in an 87-unit residential condominium joint venture; and c) a 50% partner in another smaller residential development. Pennichuck failed to disclose that the Developer was its partner in each transaction.

Further, Pennichuck reported in its Form 10-K for the fiscal year ended December 31, 2001, filed with the Commission on March 29, 2002, that commercial properties owned by its Joint Ventures were subject to mortgage notes totaling \$9.6 million, and that Pennichuck and its Joint Venture partner each had provided the bank with guarantees of the notes. Again, Pennichuck failed to disclose that the Developer was its partner in those commercial ventures. Throughout the relevant period, Pennichuck failed to disclose that numerous seemingly unrelated real estate transactions disclosed in its Commission filings, which often made general references to a "local developer" or a "regional developer," in fact all involved a single developer, and that, during the same period, that developer provided benefits to the Former CEO and his son.

C. LEGAL DISCUSSION

1. Pennichuck Violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 prohibit, among other things, the making of material misrepresentations or omissions, with scienter, in connection with the purchase or sale of any security. The scienter of a corporation may be established based on the knowledge and conduct of its officers. See, e.g., *Sharp v. Coopers & Lybrand*, 649 F.2d 175, 182 n.8 (3d Cir. 1981); *SEC v. Manor Nursing Homes*, 458 F. 2d 1092 n. 3 (2nd Cir. 1972);

In re. Sunbeam Litigation, 89 F. Supp. 2d 1326, 1340 (S. D. Fla 1999). These provisions also make it unlawful to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. A statement is material if there is a "substantial likelihood that a reasonable investor would consider it important" in deciding whether to purchase or sell securities or that a reasonable investor would have viewed disclosure of the omitted fact as altering the "total mix" of information available. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

The Former CEO's purchase of a home from one of Pennichuck's Joint Ventures and the Joint Ventures' payments to a company controlled by the Former CEO's son were material transactions that Pennichuck was required to disclose accurately. Pennichuck made at least two disclosures in two Commission filings concerning the Joint Ventures' sale of homes to company insiders. Those disclosures demonstrate Pennichuck's determination that information about transactions between the Joint Ventures and company insiders was important to investors and therefore material. Transactions between the Joint Ventures and close relatives of company insiders, such as the Former CEO's son, are similarly material.

Pennichuck's Form 10-KSB for the year 1998 contained the false statement that the Former CEO's home purchase was on the same terms as provided to other purchasers, and the Former CEO knew at the time that this statement was false. Based on the Former CEO's scienter, which is imputed to the company, Pennichuck knowingly violated Section 10 (b) of the Exchange Act and Rule 10b-5 thereunder by making that false statement in its public filing.

In addition, Pennichuck's public filings for the period 1998 through 2002 failed to disclose that the company's real estate joint ventures with the Developer repeatedly hired a company controlled by the Former CEO's son to perform landscaping work during the period. The Former CEO's knowledge that his son performed extensive landscaping work for the Joint Ventures, and that those payments were not disclosed in Pennichuck's filings with the Commission, is imputed to Pennichuck. As a result, Pennichuck's repeated failure to disclose extensive transactions with the Former CEO's son violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

2. Pennichuck Violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder

Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder make it unlawful to solicit proxies "by means of any proxy statement...which, at the time...it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading...." See *Shaev v. Saper, et al.*, 320 F.3d 373, 378; 2003 U.S. App. LEXIS 3272 (3rd Cir. 2003).

Pennichuck's March 1999 proxy statement contained a chart setting forth the Former CEO's compensation during 1998. The chart included the Former CEO's salary, bonus, and identified \$42,293 under the category "all other compensation." The chart in the proxy statement did not disclose the benefits the Former CEO obtained in his home purchase transaction with the Joint Venture. Accordingly, the proxy statement contained a false statement concerning the Former CEO's compensation and omitted material information concerning approximately \$70,000 in benefits the Former CEO obtained in 1998. For the same reasons as stated

above concerning the violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, this information was material. The false statement and material omission violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder.

3. Pennichuck Violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 Thereunder

Section 13(a) of the Exchange Act requires issuers of registered securities to file periodic reports with the Commission containing information prescribed by specific Commission rules. Rule 13a-1 requires the filing of annual reports on Form 10-K. Rule 13a-13 requires the filing of quarterly reports on Form 10-Q. Rule 12b-20 requires, in addition to information required by Commission rules to be included in periodic reports, such further material information as may be necessary to make the required statements not misleading. These reports are required to be complete and accurate. See *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978).

Pennichuck violated Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 by filing its Form 10-KSB for 1998 containing a materially false statement about the Former CEO's home purchase. In addition, Pennichuck violated these provisions and Rule 13a-13 by failing to disclose material transactions with the Former CEO's son throughout the period 1998 through 2002.

Pennichuck also violated these reporting provisions by making incomplete and misleading disclosures concerning its relationship with the Developer. Rather than providing investors a full picture of Pennichuck's real estate transactions with the Developer, between 1998 and 2002, Pennichuck's disclosures in its quarterly and annual public filings repeatedly failed to

inform its shareholders that multiple real estate projects, financings, and contracts all involved the same developer, and that during the same period, the Developer provided benefits to the Former CEO and his son. As a result, the company violated Exchange Act Section 13(a) and Rules 13a-1, 13a-13, and 12b-20 thereunder.

D. PENNICHUCK'S SETTLEMENT WITH THE STATE OF NEW HAMPSHIRE

In determining to accept the Offer, the Commission considered Pennichuck's agreement to pay a monetary fine and a special distribution to shareholders to resolve an enforcement proceeding brought by the State of New Hampshire, Bureau of Securities Regulation that alleged, in part, conduct identical to that found in this Order.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Pennichuck's Offer.

Accordingly, it is hereby ORDERED that Respondent Pennichuck cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(a), and 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13, and 14a-9 thereunder.

By the Commission.

Jonathan G. Katz
Secretary

Endnotes

¹ The Former CEO was president, CEO, and a director of Pennichuck from October 1984 until April 2, 2003, when he was forced to terminate his employment with Pennichuck, effective May 2, 2003.

² At all relevant times, the Former CEO's son controlled and operated a Nashua, New Hampshire-based landscaping company, although another person was its nominal owner.

³ Pennichuck made a nearly identical disclosure in its Form 10-KSB for 1999, which stated that an executive officer purchased a home from one of Pennichuck's joint ventures on the same terms that were available to other purchasers. That statement, regarding a home purchase in 1999 by Pennichuck's vice president and controller, appears to have been accurate.

⁴ That false statement went uncorrected until Pennichuck filed its Form 10-K for the fiscal year ended December 31, 2002, on March 31, 2003, disclosing that, "The Audit Committee has obtained information indicating that [the Former CEO's] 1998 home purchase in fact was not on terms that would have been available then to any independent third-party purchaser."

<http://www.sec.gov/litigation/admin/34-50869.htm>

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FOR IMMEDIATE RELEASE

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SECURITIES EXCHANGE COMMISSION AND NH SECURITIES REGULATORS ANNOUNCE SETTLEMENT WITH PENNICHUCK CORPORATION

Concord, NH (December 16, 2004) - The New Hampshire Bureau of Securities Regulation and the U.S. Securities and Exchange Commission held a press conference today in Concord to announce details of a securities settlement with Pennichuck Corporation and former company CEO, Maurice Arel. SEC District Administrator Walter Ricciardi and Senior Council Sandra Bailey joined NH Securities Director Mark Connolly and Deputy Director Jeffrey Spill to announce results of their collaborative effort. "I'm pleased to bring this case to a conclusion, and appreciate Mr. Ricciardi and Ms. Bailey taking the time to be in New Hampshire today to discuss this settlement," said Connolly. "We have worked closely with the SEC on this important case and it's an excellent example of State and Federal regulators working together to provide the best possible result for investors and shareholders."

As a result of the agreement, Pennichuck and Arel agree to pay an administrative fine in the amount of \$50,000 to the State of New Hampshire, along with a \$60,000 fee to the State to cover the costs of the investigation. In addition, the company agrees to distribute a specially declared payment to Pennichuck stockholders in the amount of \$280,000. Connolly indicated he was particularly pleased with the \$280,000 stockholder

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reimbursement component of the settlement, as it is a novel approach by regulators to pass settlement monies directly into the pockets of shareholders.

As a result of the SEC's agreement, Arel is also prohibited from serving as an officer or director of any publicly traded company.

The case against Pennichuck and Arel centered on the company's efforts over the years to develop land in the company's watershed. During this time, CEO Arel negotiated the terms of 10 partnership agreements with a local developer under the name Southwood Corporation for the purpose of developing hundreds of house lots and constructing accompanying homes. The Developer, John Stabile, was Pennichuck's partner in all ten joint ventures and Pennichuck never disclosed to investors its ongoing relationship with the Developer. Instead it referred to him as a "local developer," "local builder," or "major regional builder." Stabile was never referred to by name.

"The Pennichuck board of directors had a duty to implement controls, policies and audit procedures to avoid the abuse of corporate assets and other improprieties," said Mark Connolly. "The Pennichuck board of directors failed to adequately do so. As a result of this oversight, Southwood land was sold as a one-half interest to the Developer without formal appraisal of the land value."

In a related issue, CEO Arel's son, Matthew Arel, controlled a company (MGM Plus Grounds Maintenance, Inc.) which from 1996-2002 received 1.2 million dollars worth of ground maintenance contracts from Southwood and the Stabile Companies. The transactions with the Southwood Joint Ventures should have been disclosed to investors as material transactions, and Arel and Pennichuck failed to do so. The NH Bureau made inquiry with Pennichuck and Arel about this relationship and they asserted that the relationship was "from time to time" and that Matthew Arel acted only as an employee of MGM. In fact, Mathew Arel was directing MGM, and responsible for obtaining all of the

-MORE-

contracts with Southwood. In 1999 alone, MGM received over \$258,000 in business from the Southwood Joint Ventures.

In addition, in 1998, the Stabile Company and Arel entered into an agreement in which Stabile agreed to build a custom home for Arel on land owned by one of the Southwood developments. The public disclosure required to be made by Pennichuck appeared as follows in its 1998 annual report to share Shareholders.

“During 1998, one of the residential joint venture partnerships sold land and a home to an executive officer of the company. The terms of that sale were the same as the terms which would be given to any independent third party purchaser.”

This public disclosure statement was material, false and misleading in a number of respects. The home purchase was not made on the same terms as available to a third party purchaser. In fact, the home was built for Arel by the Developer at cost, minus a \$10,000 discount. In addition, Arel did not pay a 6% real estate fee and a lot premium of approximately \$12,000 for one of the largest lots in the subdivision. As a result, Arel received an estimated \$70,000 benefit relative to what would be paid by an independent third party purchaser.

Connolly said the \$110,000 to be paid to the State of New Hampshire and the \$280,000 reimbursement to Pennichuck stockholders will be shared by the Pennichuck Corporation and Arel.

-END-

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Utility, Arel fined \$390k

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Published: Friday, Dec. 17, 2004

[ENLARGE PHOTO](#)



Staff file photo by Don Himsel

Maurice Arel, shown in this undated file photo, will pay \$270,000 in fines as part of a \$390,000 settlement among Pennichuck Corp., the state and the U.S. Securities and Exchange Commission. [Order this photo](#)

CONCORD - Maurice Arel, the former president and chief executive officer of Pennichuck Corp., will pay \$270,000 in fines to the utility as part of a \$390,000 settlement between Pennichuck, the state and the U.S. Securities and Exchange Commission.

Arel is also banned for life from serving as an officer or director of any publicly traded company, officials from the SEC and New Hampshire Bureau of Securities Regulation said at joint press conference Thursday in Concord.

The SEC alleged that both Arel and Pennichuck made "false and misleading disclosures" to regulators and shareholders during his time as chief executive officer and a director of the company. Neither Pennichuck nor Arel admitted any wrongdoing.

Arel, a former Nashua mayor, had no direct comment on the settlement agreement Thursday.

"I apologize for any embarrassment, especially to my family and to Pennichuck and to the (Democratic) party," Arel said in a telephone interview.

Regulators would not comment on possible criminal charges by other agencies.

Among the SEC allegations was that Arel failed to disclose a \$70,000 discount on a Nashua home built for him at cost by real estate developer John Stabile in 1998.

"He used his position to receive personal, valuable benefits - benefits that were not disclosed," New Hampshire Securities Director Mark Connolly said at the joint press conference with the SEC.

SEC District Administrator Walter Ricciardi added: "It's a privilege to work for a publicly traded company, but if you can't protect shareholders, you're out of the business."

Under the settlement:

- Arel will pay the bureau an administrative fine of \$50,000 and investigation costs of \$60,000.

- Pennichuck shareholders as of March 31, 2003, will receive a payment totaling \$280,000, of which Arel will be responsible for \$160,000. Pennichuck will pay the remaining \$120,000. Pennichuck expects that the payment to shareholders will be made in March.

THE SETTLEMENT

Here is a summary of the \$390,000 settlement announced Thursday between federal and state securities officials and Pennichuck Corp.:

- Pennichuck agrees to pay a \$50,000 administrative fine to the state of New Hampshire, which the company said will be paid by former CEO Maurice Arel.

- Pennichuck agrees to pay a \$60,000 fee to the state to cover the cost of the investigation, which the company said also will be paid by Arel.

- Pennichuck agrees to distribute \$280,000 to Pennichuck stockholders; Arel will be responsible for \$160,000 of that amount, according to the company.

- Arel is prohibited from ever serving as an officer or director of a publicly traded company.

- Neither Arel nor any director of the company who was a shareholder as of March 31, 2003, will receive a portion of the shareholder payment.

Stabile, whose companies are not publicly traded, was not accused of fraud, and the businessman fully cooperated with the investigation, regulators said. Arel, however, invoked his Fifth Amendment rights and did not answer regulators' questions, according to Connolly.

"I have the utmost respect for Maurice and his wife Joyce," Stabile said Thursday. "I feel very sorry about what has occurred. I know Maurice Arel to be a person of very high integrity. He's given his life to the city of Nashua and to charities. My heart goes out to him."

Arel, who headed Pennichuck from 1985 to April 2003, said he is proud of his record at the water utility.

"Look at the record of this company since when I started and you will see it's been substantially improved for the customers, employees and the shareholders," Arel said. "This was what I was judged on."

Don Correll, Pennichuck's current president and CEO, said he was relieved the investigation is over.



ENLARGE PHOTO
Staff photo by Kevin Jacobus
Maurice Arel failed to disclose a \$70,000 discount on his Nashua home at 6 Fireside Circle. [Order this photo](#)

"This has been a matter that the company has been dealing with for the better part of two years," Correll said. "We're relieved and pleased we could close this book now and just end this matter and just get back to doing what we need to do to run and grow our business and have our business prosper."

Pennichuck is currently embroiled in an eminent domain proceeding with the city of Nashua, which wants to take control of Pennichuck Water Works and turn its management over to a newly established regional water district. That process, which is before the state Public Utilities Commission, is unrelated to the securities investigation.

Morton Goulder of Hollis, a Pennichuck shareholder, said he is glad the SEC case is settled, but that Pennichuck shouldn't have been fined.

"I'll welcome the money from Arel," Goulder said. "I think it's outrageous that the company should be plagued for this."

Goulder said he has known Arel for a long time.

"I think Arel is a fine guy, and I don't know really what happened here . . . Contractors would probably favor him in a situation like that."

The SEC had been investigating Pennichuck since December 2002. Arel abruptly stepped down from the company in April 2003.

The investigation centered on Arel's negotiation of 10 partnership agreements worth

more than \$36 million with local developer John Stabile involving 1,088 acres of Pennichuck land in Nashua and Merrimack.

Pennichuck never disclosed to investors that it had an ongoing relationship with Stabile, who was Pennichuck's partner in all 10 joint ventures. Stabile was never referred to by name. Instead, Pennichuck referred to him as "local developer," "local builder," or "major regional builder."

Regulators said the relationship between Pennichuck and Stabile - the sole developer of the 10 ventures - also should have been disclosed.

Another part of the investigation centered on Matthew Arel, the son of Maurice Arel. Matthew Arel ran MGM Plus Grounds Maintenance, which was awarded more than \$833,000 worth of contracts by Southwood Corp. - Pennichuck's real estate division - and more than \$1.2 million worth of ground maintenance by Southwood and The Stabile Cos. combined.

Maurice Arel failed to disclose the transactions between MGM and Southwood, regulators said.

The state Office of Securities Regulation concluded Arel and Pennichuck broke two state laws by making untrue or misleading statements to state regulators about the profit Arel made on purchase of a home built by Stabile and about relationship Stabile had with MGM.

"You ought to know if they're hiring relatives," said Ricciardi, the SEC's district administrator. "If not, it's SEC fraud."

John Kreick, chairman of the board and the company's former interim president and chief executive officer, could not be reached for comment Thursday.

Correll said the company has reorganized its board of directors and brought on three new members. Pennichuck also has strengthened its internal controls and has stronger disclosure requirements and conflict of interest disclosure requirements internally, he said.

"We'll just try to make sure that something like this doesn't happen in the future," Correll said.

The federal Sarbanes-Oxley Act of 2002, an accounting reform measure that took effect in July 2002, requires the SEC to permanently bar someone from serving on a board of publicly traded company if he or she makes material false statements, according to Jeffrey Spill, deputy director of the state Bureau of Securities Regulation.

"That is my understanding," he said.

As for his future, Arel said the outcome of the settlement won't change his involvement in the local community.

"I will continue to serve my community in any way I can and in any way people want me to participate," he said.

PENNICHUCK TIMELINE

April 2, 2003: Maurice Arel, president and chief executive officer of Pennichuck Corp., abruptly resigns after the water utility's annual report discloses that state and federal investigators are looking into Pennichuck's real estate transactions, including Arel's purchase of a home in 1998. John Kreick, former president of Sanders Associates, is named interim president and CEO.

Aug. 5, 2003: Don Correll, former president and CEO of United Water Resources of Harrington Park, N.J., is named president and CEO of Pennichuck Corp.

November 2003: Pennichuck discloses six of its partnerships gave more than \$500,000 worth of business to a landscaping company managed by Arel's son, Matthew. The company also reveals the U.S. Securities and Exchange Commission and New Hampshire Bureau of Securities Regulation are investigating whether the utility should have disclosed this information between 1996 and 2002.

August 2004: Pennichuck Corp. reports it is close to reaching an agreement with federal and state officials over the Arel real estate transactions and landscaping contracts.

November 2004: Pennichuck reports part of any proposed settlement would be the establishment of fund to benefit company shareholders.

Dec. 16, 2004: Federal and state regulators hold a press conference in Concord to announce \$390,000 in sanctions against Pennichuck and Arel.

Kevin Landrigan contributed to this report. Karen Spiller can be reached at 594-6446 or spillerk@telegraph-nh.com.

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