

DW 04-048

CITY OF NASHUA

Petition for Valuation Pursuant to RSA 38:9

**Order Approving Procedural Schedule, Waiving Puc 204.04(b),
and Granting Intervention**

ORDER NO. 24,457

April 22, 2005

I. BACKGROUND

This docket involves the petition filed by the City of Nashua, New Hampshire (Nashua) to take the assets of Pennichuck Water Works, Inc. (PWW) by eminent domain, pursuant to N.H. RSA 38:9. In Order 24,447 (March 31, 2005), the New Hampshire Public Utilities Commission (Commission) ordered Staff and the Parties to meet in a technical session on April 8, 2005 for the purpose of developing a procedural schedule. On April 12, 2005, Staff, on behalf of itself and the Parties, filed a proposed procedural schedule with the Commission. In addition to requesting approval of the proposed procedural schedule, Staff and the Parties requested that the Commission waive N.H. Admin. Rules, Puc 204.04 relating to objections to discovery requests.

With respect to the procedural schedule, Staff and the Parties propose the following:

Testimony on public interest by parties supporting taking April 22, 2005

Data requests to PWW on valuation by Nashua only – 1st May 6, 2005
round

Data requests by any party to Nashua and supporting
parties on technical, financial, and managerial capabilities
and public interest - 1st round

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| Responses to first round of all data requests | June 10, 2005 |
| Data requests to PWW on valuation, by Nashua only– 2nd round | June 24, 2005 |
| Data requests by any party to Nashua and supporting intervenors on technical, financial, and managerial capabilities and public interest - 2nd round | |
| Responses to second round of all data requests | July 22, 2005 |
| Depositions on technical, financial, and managerial capabilities and public interest issues complete | August 29, 2005 |
| Technical session – 9 a.m. | July 27, 2005 |
| Testimony by Nashua on valuation and public interest issues dependent upon valuation | October 14, 2005 |
| Testimony by Pennichuck on valuation | |
| Testimony by Pennichuck and parties opposing taking, and neutral parties on technical, financial, and managerial capability and public interest | |
| Data requests from any party on 10/14/05 testimony - 1st round | October 28, 2005 |
| Responses to 1st round of data requests on 10/14/05 testimony | November 18, 2005 |
| Technical session - 9 a.m. | November 21, 2005 |
| Data requests from any party on 10/14/05 testimony - 2 nd round | November 29, 2005 |
| Responses to 2 nd round data requests | December 20, 2005 |
| Staff and OCA testimony on valuation, technical, financial, and managerial capability and public interest | January 13, 2006 |
| Data requests from any party on 1/13/06 testimony – 1 st round | January 27, 2006 |
| Responses to first round data requests | February 17, 2006 |
| Reply testimony by PWW and Nashua on valuation and public interest | February 21, 2006 |

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| Data requests from any party on January 13 testimony – 2 nd round | March 3, 2006 |
| Responses to second round data requests | March 24, 2006 |
| Depositions on valuation issues complete | April 7, 2006 |
| Technical session - 9 a.m. | April 10, 2006 |
| Reply testimony regarding Staff/OCA on January 13 testimony by any party | April 21, 2006 |
| Capstone testimony joining public interest and valuation issues | May 19, 2006 |
| Data requests on capstone testimony and reply testimony | June 2, 2006 |
| Responses to data requests on capstone and reply testimony | June 23, 2006 |
| Capstone rebuttal testimony | July 17, 2006 |
| Settlement discussions | July 21, 2006 |
| Pre-hearing briefs | August 2006 |
| View | September 2006 |
| Hearings (reserve a month, subject to further discussion at a later date) | September 2006 |

With respect to the request for waiver of Puc 204.04, Staff and the Parties request permission to extend the four day time limit within which to file objections to discovery requests to ten days. Presently, Puc 204.04 requires objections to data requests to be served in writing on the propounder of the requests within four days following receipt of the request. Staff and the Parties aver that the complexity of the subject matter in this proceeding necessitates extending the deadline and that this extension is not onerous. Staff and the Parties state that the time extension will not disrupt the orderly proceeding of this docket and that such an extension will

facilitate the instant proceeding. Staff and the Parties aver the extension serves the public interest in that it allows parties more time to access the material sought and minimizes perhaps hasty decisions on the eve of the four-day deadline as to whether an objection is needed. Staff and the Parties argue the proposed alternative of ten days within which to object satisfies the intent of the rule that discovery objections be made in a timely manner.

On April 5, 2005, Pennichuck Corporation (PC), Pennichuck Water Services Corporation (PWSC), Pennichuck East Utility, Inc. (PEU), and Pittsfield Aqueduct Company, Inc. (PAC) (together, the Pennichuck Companies) filed a joint Petition to Intervene. The Pennichuck Companies state that PC is the parent company of PWSC, PEU, PAC, as well as Pennichuck Water Works, Inc. (PWW), the utility subject to the City of Nashua's RSA 38 valuation petition. PWSC, PEU, and PAC state they have no employees of their own and rely extensively on the employees and assets of PWW. PWSC, PEU, and PAC aver that the contractual arrangements with PWW are dependent upon PWW's assets and that they "will suffer direct harm in the form of lost economies of scale, increased operating and capital costs, loss of access to capital markets and other substantial damage." Petition at 2. The Pennichuck Companies state that they will be represented by the same counsel as PWW and that their participation in the docket will not impair the interest of justice or the orderly and prompt conduct of this proceeding.

On April 14, 2005, the City of Nashua filed a Response and Objection to the Petition to Intervene. Nashua stated that it did not oppose the Pennichuck Companies' intervention. Nashua did object, however, to the Pennichuck Companies' statement that "[s]uch a taking would result in a substantial deprivation of the use and enjoyment of the property rights of the Pennichuck Intervenors, resulting in direct damage for which just compensation would be due." Petition at 3. Nashua stated that to the extent the Pennichuck Companies seek to clarify that they

may introduce evidence related to their private economic interests or claims for damages, as distinct from the public interest of their customers, their petition to intervene should be denied. Nashua avers that evidence in this proceeding is limited to the issues of valuation and public interest. Nashua characterizes the intervention as an attempt to litigate damages that have been either dismissed or held in abeyance by Federal and Superior Courts. Nashua further asserts that only PWW is entitled to damages. Nashua argues the Pennichuck Companies intervention petition evidences that PWW ratepayers have been subsidizing PEU, PAC, and PWSC. Nashua requests the Commission limit the Pennichuck Companies intervention to valuation and public interest and not allow the Pennichuck Companies to conduct discovery into areas not relevant to the issues before the Commission.

II. COMMISSION ANALYSIS

A. Procedural Schedule

Having reviewed the proposed procedural schedule, we find that it is reasonable and will aid in the orderly review of this docket. Accordingly, we will approve the procedural schedule for the duration of this proceeding.

B. Waiver of Puc 204.04

As stated above, N.H. Code Admin. R. Puc 204.04 requires objections to data requests to be served in writing on the propounder of the requests within four days following receipt of the request. In order to waive a rule, N.H. Code Admin. R. 201.05 requires the Commission to first find that the waiver serves the public interest and that the waiver will not disrupt the orderly proceeding of the Commission. We agree with the arguments of the Parties and Staff; extending the objection time period to ten days serves the public interest and the extension will not disrupt the orderly proceeding of this docket. Accordingly, we will grant the waiver request.

C. Intervention

The Commission may grant intervention requests if the petitioner submits, in writing, facts demonstrating that the petitioner's rights, duties, privileges, immunities, or other substantial interest may be affected by the proceeding. The Commission must make a finding that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by the intervention. N.H. Rev. Stat. Ann. § 541-A:32 (1994). N.H. Code Admin. R. Puc 203.02. The Pennichuck Companies identify contractual arrangements with PWW that are placed at risk by virtue of Nashua's pursuit of the assets PWW uses to perform those contracts. The Pennichuck Companies further state that they will use the same legal counsel as PWW and will coordinate presentation of positions with PWW. We believe the Pennichuck Companies have met the threshold of RSA 541-A:32 and we find, based on the Pennichuck Companies' representations, that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by the intervention. We will, therefore, grant the petition to intervene.

In addition to requesting intervention, the Pennichuck Companies seek to clarify that the Pennichuck Companies' interests in this proceeding and the impact on the Pennichuck Companies' customers and shareholders be presented for Commission consideration. The City of Nashua objected to the Pennichuck Companies' intervention to the extent the Pennichuck Companies claim damages in this proceeding. Nashua argued such damages are beyond the scope of this proceeding. The Pennichuck Companies and the City of Nashua have raised issues concerning the proper scope of testimony in this proceeding as implicated by the intervention of the Pennichuck Companies. We will address issues regarding scope in a subsequent order.

Based upon the foregoing, it is hereby

ORDERED, that the intervention request of Pennichuck Corporation, Pennichuck Water Services Corporation, Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc. is GRANTED; and it is

FURTHER ORDERED, that the procedural schedule set forth above is APPROVED; and it is

FURTHER ORDERED, that the request for waiver of N.H. Admin. Rules, Puc 204.04 regarding objections to data requests is APPROVED; and it is

FURTHER ORDERED, that the Executive Director is authorized to make adjustments to the procedural schedule as appropriate to promote the efficient resolution of the issues before the Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director & Secretary