

DW 04-048

CITY OF NASHUA

Petition for Valuation Pursuant to RSA 38:9

**Order Addressing Nashua's Motion to Compel Responses
from Pennichuck Water Works, Inc.**

ORDER NO. 24,494

July 29, 2005

I. INTRODUCTION

The New Hampshire Public Utilities Commission (Commission) opened this docket upon the March 25, 2004 filing by the City of Nashua, New Hampshire (Nashua) to take the utility assets of Pennichuck Water Works, Inc. (PWW), Pennichuck East Utility (PEU) and Pittsfield Aqueduct Company (PAC), pursuant to N.H. RSA 38:9. The Pennichuck companies opposed the petition and challenged Nashua's interpretation of the reach of RSA Chapter 38:9. The Commission determined that RSA 38 authorized Nashua to pursue the taking of PWW, but not PEU or PAC, in Order No. 24,425 (January 21, 2005). The case is now in the discovery stage and is scheduled for hearing in September 2006. For the full procedural history and procedural schedule, see Order No. 24,457 (April 22, 2005).

This order addresses data requests posed by Nashua to PWW to which PWW and Pennichuck Corporation (collectively, the Pennichuck Entities) objected, pursuant to N.H. Admin. Rules, Puc 204.04(f). Nashua responded with a Motion to Compel responses to 11 requests, filed on June 20, 2005, to which the Pennichuck Entities objected on June 27, 2005. Nashua did not state if any party or Staff objects to or supports the Motion. In

response to the Motion, the Pennichuck Entities supplemented their responses to data requests 1-47 and 1-62. Therefore, there now appear to be nine data requests in dispute.

Amy Ignatius, General Counsel to the Commission, was designated by the Commission to act as Hearings Examiner on this discovery dispute and make a recommendation to the Commissioner. On July 26, 2005, she submitted a memorandum recommending particular rulings in these matters.

II. RESPONSES NASHUA SEEKS TO COMPEL FROM PWW

Nashua's Motion to Compel seeks response to three requests that relate to appraisals of PWW's property and six that relate to the Pennichuck Entities' experts and opinions regarding valuation. The Pennichuck Entities object to questions 1-59, 1-60, 1-64 (involving property appraisals or valuations from 1999 forward) and 1-66, 1-67, 1-68, 1-69, 1-70, and 1-71 (involving experts and opinions on valuation of the system). According to the Pennichuck Entities, their testimony on valuation is to be filed on October 14, 2005, after which Nashua will be able to submit data requests and conduct depositions to clarify and, as such, the questions are premature. In addition, the Pennichuck Entities argue that Nashua is not entitled to information regarding experts who are not expected to testify and that some of the questions call for information that is privileged work product.

The Hearings Examiner reviewed these requests and agreed with the Pennichuck Entities that the questions are premature, given the agreed upon procedural schedule. Consistent with the Commission's ruling on a similar dispute regarding data requests on valuation issues posed to Nashua by the Pennichuck Entities, she recommended that the Motion be denied without prejudice, as being premature. She also agreed that Nashua will have the burden to show that exceptional circumstances are present to require

the Pennichuck Entities to respond to the questions regarding experts not expected to testify. Further, Nashua will have the burden to demonstrate why it is entitled to obtain documents that the Pennichuck Entities claim are privileged, but recommended no ruling on these issues until such requests are made during the valuation phase of discovery.

III. COMMISSION ANALYSIS

We have reviewed the pleadings, the report of the Hearings Examiner and our administrative rules governing data requests. While the Commission allows broad leeway in data requests, there must be some showing that the information being sought is or is likely to lead to relevant evidence that would be admissible in the proceeding. *Re Investigation into Whether Certain Calls are Local*, 86 NH PUC 167 (2001). Though the rules of evidence do not apply in Commission proceedings, pursuant to RSA 365:9, the New Hampshire Rules of Evidence adopt a similar rule regarding the scope of discovery. *See* NHRE 35(b)(1).

We concur with the recommendation of the Hearings Examiner that the questions identified by the Pennichuck Entities as involving valuation are premature and the Motion should be denied without prejudice. As we found in the request by the Pennichuck Entities' Motion to Compel Nashua, discovery on valuation is yet to come, after testimony on that issue is filed. *See* Order No. 24,488 (July 18, 2005). Nashua should review the valuation testimony filed by the Pennichuck Entities on October 14, 2005 and pursue the data requests it feels are necessary and permissible. We will not rule on relevance or any possible privilege protections at this time.

Based upon the foregoing, it is hereby

ORDERED, that Nashua's Motion to Compel PWW is DENIED without prejudice, as discussed herein.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary