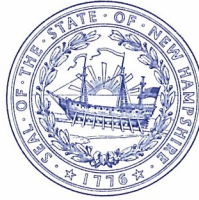


THE STATE OF NEW HAMPSHIRE

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August 31, 2010

Re: DW 04-048, City of Nashua
Petition for Valuation Pursuant to RSA 38:9
Request for Briefs

To the Parties:

On June 30, 2010, the City of Nashua and Pennichuck Water Works, Inc. (PWW) filed a Joint Motion to Establish Schedule to Update Valuation and Make Final Determination of Price (Joint Motion). They assert that the Commission set a value in Order No. 24,878 (July 25, 2008) as of December 31, 2008, which "must be further updated." The parties also assert that "[u]nless the Commission establishes a process by which the preliminary price for PWW's plant and property...can be updated, the city will not be in a position to schedule and take the ratification vote required by RSA 38:13."

In Order No. 24,878, issued on July 25, 2008, at 92-93, in discussing the income approach to valuation the Commission stated:

Further, we note that in eminent domain proceedings, the relevant date for valuation purposes is "the day of the taking." *Dow v. State*, 107 N.H. 512, 514-15 (1967) (quoting *Edgcomb Steel of New England, Inc. v. State*, 100 N.H. 480, 486 (1957)). Of course, a specific date for the taking, or closing, has not been established. Any date after December 31, 2004, which was the date the parties set for initially valuing PWW's assets, requires an update to the valuations. The procedural schedule called for updates to the valuation testimony and the parties filed updates on November 14, 2006 to bring the values forward to 2005. We now modify PWW's appraisal to bring the valuation date forward from 2005 to 2008. We take this step in anticipation of additional procedural steps that, to the extent Nashua prevails in any rehearing or appeal and elects to proceed, would likely result in a ratifying vote pursuant to RSA 38:13 in the last quarter of 2008 or the first quarter of 2009. Accordingly, we apply the same present value factor of 5 percent that PWW used to discount 2008 amounts to 2005 amounts. PWW used .8850 to discount 2008 to 2005. The reciprocal to bring 2005 amounts forward to 2008 is 1.1299, (i.e., $1/.8850 = 1.1299$). The adjustment brings the values forward to 2008 from \$169,974,131 to \$192,053,771.

Likewise in discussing the asset approach to valuation the Commission stated (*id at 89*):

In addition, we must modify PWW's appraisal to bring the valuation date forward from December 31, 2005. Accordingly, we incorporate an adjustment for additions and retirements and accumulated depreciation reserves for the years 2006, 2007, and 2008 as identified in PWW's annual reports, filed with the Commission, for 2006 and 2007. Bringing the valuation date forward to December 31, 2008, we determine the value of PWW's assets using the asset approach to be \$210,349,285 as of December 31, 2008.

In reconciling the asset and income approach the Commission concluded that the value was \$203 million as of December 31, 2008. (*Id at 93 and 98.*)

The Joint Motion raises certain questions of law, most fundamentally:

I. What constitutes a "final determination of price" pursuant to RSA 38:13 and RSA 38:9?

(a) Is a "final order." or the exhaustion of appeals of a final order, equivalent to a "final determination of price"?

(b) Was Order No. 24,878 a final order?

(c) Even if Order No. 24,878 is a final order, or if a final determination of price to be paid has been made pursuant to RSA 38:13 and RSA 38:9, do applicable statutes, case law, or State or Federal constitutional due process or private property right protections require or allow updating the value determined in Order No. 24,878?

(d) Does RSA 498-A, and in particular the provision in RSA 498-A:4, III (b) (5) that states: "[j]ust compensation for the taking shall be based on the value of the property as of the date of taking or at the sole election of all condemnees, compensation may be based upon the property's value based upon the date the governmental entity, with the statutory authority to condemn, votes to acquire the condemnee's property" have any applicability in this case, notwithstanding the jurisdictional venue specified in RSA 498-A:3?

(e) When does the 90 day time limit for a vote by a municipality to "decide whether or not to acquire the plant and property at such price" begin to run in the context of a Commission order and exhaustion of possible appeals?

II. If the value determined in Order No. 24,878 must or may be updated, what is the appropriate process and under what authority would the Commission act to set and carry out such a process?

(a) Do applicable statutes, case law, or constitutional protections allow the continuation of the valuation method previously employed in Order No. 24,878, or use of some other approach, through a non-adjudicative process, to reflect increases or decreases in value through the use of PWW's annual reports relative to, for instance, plant additions, retirements, and depreciation?

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(b) Do applicable statutes, case law, or constitutional protections require an adjudicative process, which would allow for a full range of due process, including testimony, cross-examination, rehearing, and appeal?

The Commission has determined that these legal questions must be addressed in order to respond properly to the Joint Motion. Accordingly, pursuant to N.H. Code Admin. R. Puc 203.32, all parties in Docket No. DW 04-048 will have until September 30, 2010 to file briefs addressing these or other questions of law relevant to the Joint Motion. If necessary, the Commission will schedule oral argument.

Sincerely,



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Docket #: 04-048 Printed: August 31, 2010

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