

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

DW 11-__

Re: City of Nashua Acquisition of Pennichuck Corporation

**JOINT PETITION FOR APPROVAL OF THE ACQUISITION OF PENNICHUCK
CORPORATION BY THE CITY OF NASHUA**

Under the provisions of Chapter 347, Section 5 of 2007 New Hampshire Laws, as amended by Chapter 1, Section 118 of the 2010 Special Session (this law, as amended, is referred to herein as the “Special Legislation”) and RSA Chapter 38, and RSA 374:30, to the extent required, the City of Nashua (the “City”), Pennichuck Corporation (“Pennichuck”), Pennichuck Water Works, Inc. (“PWW”), Pittsfield Aqueduct Company, Inc. (“PAC”) and Pennichuck East Utility, Inc. (“PEU”)(collectively the “Joint Petitioners”) hereby seek approval of (1) the indirect acquisition of PWW, PAC, and PEU by the City of Nashua pursuant to the terms of an Agreement and Plan of Merger dated November 11, 2010 (the “Merger Agreement”) under which the City proposes to acquire all outstanding shares of Pennichuck Corporation, the parent corporation of PWW, PAC and PEU, and (2) a ratemaking structure designed to establish rates that balance customer interests with the City’s need to obtain sufficient cash flow to meet its debt service obligations on the general obligation bonds it intends to issue to finance the costs of the proposed merger transaction. In support hereof, the Joint Petitioners state as follows:

THE JOINT PETITIONERS

1. The City of Nashua, New Hampshire is a New Hampshire municipal corporation with offices at 229 Main Street, Nashua, New Hampshire. The City is the second largest city in New Hampshire and is the center of a diverse and dynamic region of more than 175,000 people.

2. Pennichuck Corporation is a New Hampshire business corporation, organized pursuant to RSA 293-A, with offices at 25 Manchester Street, Merrimack, New Hampshire. Penninchuck is a holding company that owns 100 percent of the common stock of PWW, PAC and PEU. Pennichuck also owns two other subsidiaries, Pennichuck Water Service Company and The Southwood Corporation, neither of which is a public utility as defined by RSA 362:2.

3. PWW is a New Hampshire business corporation organized pursuant to RSA 293-A and a public utility as defined in RSA 362:2, with a principal place of business in Merrimack, New Hampshire. PWW serves approximately 26,000 customers in the City of Nashua and the Towns of Amherst, Hollis, Merrimack and Milford, New Hampshire. PWW also owns and operates community water systems in Bedford, East Derry, Epping, Milford, Newmarket, Plaistow and Salem, New Hampshire.

4. PAC is a New Hampshire business corporation organized pursuant to RSA 293-A and a public utility as defined in RSA 362:2 with a principal place of business in Merrimack, New Hampshire. PAC serves approximately 650 customers in the Town of Pittsfield, New Hampshire.

5. PEU is a New Hampshire business corporation organized pursuant to RSA 293-A and a public utility as defined in RSA 362:2 with a principal place of business in Merrimack, New Hampshire. PEU serves approximately 6,800 customers in the Towns of Atkinson, Barnstead, Bow, Chester, Conway, Derry, Exeter, Hooksett, Lee, Litchfield, Londonderry, Middleton, Pelham, Plaistow, Raymond, Sandown, Tilton, Weare, and Windham, New Hampshire.

BACKGROUND

6. The City and Pennichuck seek approval of a Merger Agreement which is the product of a negotiated settlement of an eminent domain action initiated by the City and currently pending before this Commission in Docket No. DW 04-048 (the “Eminent Domain Action”).

7. The City commenced the Eminent Domain Action on or about March 22, 2004 when it filed with this Commission a Petition for Valuation pursuant to RSA 38:9. RSA Chapter 38 empowers municipalities, after PUC approval, to take by eminent domain private electric, gas and water utilities and to maintain and operate them as publicly-owned facilities. See RSA 38:2, I, II.

8. In the Eminent Domain Action, the City had sought to acquire Pennichuck Water Works, Inc. (PWW), Pennichuck East Utilities (PEU) and Pittsfield Aqueduct, Inc. (PAC), all of which are wholly owned subsidiaries of Pennichuck and each of which are utilities regulated by this Commission.

9. On July 25, 2008, this Commission entered an Order: (1) finding that the taking of the property of PWW within the City’s borders was in the public interest; (2) finding that the taking of PWW’s property outside the City’s borders was in the public interest under certain conditions; (3) determining the fair market value of the assets in question; and (4) conditioning approval of the City’s Petition upon certain conditions. The Commission also dismissed the City’s Petition against PEU and PAC, ruling that the City could not condemn the property of these utilities because they did not provide water service to City residences.

10. After the PUC denied motions for rehearing filed by both parties, both parties appealed to the New Hampshire Supreme Court which issued a Decision on March 25, 2010 finding that: (1) the PUC properly determined that the taking of PWW assets both inside and

outside the City's borders was in the public interest; (2) RSA Chapter 38 did not allow the City to take the property of PEU and PAC; (3) the PUC properly imposed certain conditions on its approval of the Valuation Petition; and (4) the PUC's determination of fair market value was supported by the record.

THE TRANSACTION

11. On November 11, 2010, the City and Pennichuck entered into a definitive agreement, the Merger Agreement, under which the City will acquire all of the outstanding shares of Pennichuck for a cash price of \$29.00 per share. This acquisition will be accomplished through a merger of a newly-organized subsidiary owned by the City into Pennichuck. Pennichuck will be the surviving corporation in this merger transaction. Accordingly, pursuant to this merger, the City will become the sole shareholder of Pennichuck.

12. Upon completion of the merger, Pennichuck will continue to own all of the outstanding shares of its current corporate subsidiaries, including PWW, PAC and PEU (the "Regulated Utilities"). The City will not acquire direct ownership of any stock of any of Pennichuck's corporate subsidiaries.

13. Upon completion of the merger, Pennichuck and its subsidiaries will continue their existence as separate legal entities, with the only change being that the City will become the sole shareholder of Pennichuck. PWW, PAC and PEU will continue their legal status as business corporations organized under RSA Chapter 293-A that engage in the ownership and operation of a water distribution business. Accordingly, the Regulated Utilities will continue to be "public utilities" within the meaning of RSA 362:2 and RSA 362:4 and thus subject to the Commission's jurisdiction. The proposed transaction will not result in any change in the legal or regulatory status of Pennichuck or any of its subsidiaries.

14. Consummation of the merger is conditioned on several customary provisions contained in the Merger Agreement, as well as the following conditions precedent that must be satisfied prior to consummation of the merger: (1) the Board of Aldermen of the City must approve by two-thirds vote the issuance of bonds and make findings of fact required by the Special Legislation and ratify the purchase price pursuant to RSA 38:13 (which votes have already occurred as described below); (2) Pennichuck shareholders must approve the merger by a two-thirds vote; (3) the Commission must approve the merger; and (4) the City must be able to obtain financing at reasonable interest rates and on reasonable terms.

15. The City intends to finance the costs of the merger, including reasonable transaction costs, the cost of establishing a rate stabilization fund and the cost of reimbursing the City for certain costs incurred in connection with the Eminent Domain Action, through the issuance of general obligation bonds issued by the City.

PUBLIC INTEREST APPROVAL

16. The Commission's authority to approve the direct acquisition by the City of Pennichuck stock and the indirect acquisition of the Regulated Utilities stems primarily from the Special Legislation. Specifically, the Special Legislation provides in relevant part as follows:

I. Notwithstanding the provisions of any law to the contrary, the city of Nashua is authorized to purchase the stock of Pennichuck Corporation or one or more of its subsidiaries upon agreement with such corporation. The public utilities commission shall make a public interest determination prior to any such purchase. For the purpose of obtaining control of the plant and property of Pennichuck Corporation or its subsidiaries, the city may acquire and hold such stock, or establish one or more business corporations under RSA 293. Except as otherwise provided in this section, the provisions of RSA 38 shall apply to the acquisition of stock by the city.

II. The acquisition of such stock shall be deemed to be within the policy and purposes of RSA 38 if, prior to the acquisition of stock as provided in this section, the board of aldermen of the city finds that:

(a) the acquisition of stock, rather than the direct acquisition of plant and property, will provide a more orderly method for the city to establish, own and operate a municipal water utility consistent with the purposes of RSA 38.

(b) The acquisition of stock, rather than the direct acquisition of plant and property, will be financially beneficial to the city and its customers and will, therefore, be in the best interests of the city and provide a public benefit.

17. The Special Legislation affords the City an alternative to the direct purchase of utility plant and property through the acquisition of Pennichuck's stock provided that the Commission determines that such a stock purchase is in the public interest. As the Commission is aware, it has already ruled that the taking of the assets of PWW is in the public interest. *See* Order 24,878 in Docket No. DW 04-048

18. On January 11, 2011, the City of Nashua Board of Aldermen approved by a vote of 14 to 1 the plan to acquire Pennichuck at the price established in the Merger Agreement and to issue bonds to finance the costs of the merger transaction. Also on January 11, 2011, the City's Board of Aldermen made the findings of fact required by the Special Legislation. The vote approving these findings of fact was unanimous (15-0).

REASONS WHY THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST

19. The Joint Petitioners will submit written direct testimony demonstrating why the proposed merger transaction is in the public interest. This testimony will be sponsored by the following persons:

(a) Donnalee Lozeau, Mayor of the City of Nashua, who will describe the City's participation in the development and negotiation of the Merger Agreement and the reasons why the City has entered into the Merger Agreement;

(b) John Patenaude, Special Transaction Executive to the City for this transaction, who will describe the terms and conditions of the Merger Agreement, the structure

and financing of the proposed transaction, and the “corporate governance approach” to the management of Pennichuck following the merger;

(c) Donald L. Ware, President, Regulated Subsidiaries, and Bonalyn J. Hartley, Vice President, Administration & Regulatory Affairs of Pennichuck, who, based upon certain assumptions and representations set forth in the direct testimony submitted by the City, will address the impact of the proposed transaction on the operations of the Regulated Utilities, the impact of the transaction on the rates charged by the Regulated Utilities, and a proposed method for determining revenue requirements and rates for each of the Regulated Utilities that meets the operating needs of each utility and the debt service obligations arising from the City’s general obligation bonds;

(d) Arthur Gottlieb, a Managing Director of C.W. Downer & Co., the investment banking firm that has assisted the City in its negotiation of the Merger Agreement, who will present information regarding the fairness and reasonableness of the purchase price set forth in the Merger Agreement and financial analysis demonstrating the feasibility of the merger and the proposed financing both in the short and long terms, while at the same time resulting in rates to customers of all three Regulated Utilities that will be no higher than those that would be charged under current ownership; and

(e) John Griffin, the Chief Financial Officer of the City, who will provide testimony regarding the feasibility and marketability of the proposed general obligation bond financing and the impact of the proposed financing upon the financial status of the City.

20. As will be demonstrated in the Joint Petitioners’ direct testimony, as described above, approval of the City’s acquisition of Pennichuck’s stock is in the public interest for many reasons, including:

(a) the City, as will be described in Mayor Lozeau's testimony, will secure and protect a reliable long-term water supply and watershed land as a valuable public resource for current and future generations of its citizens and other customers of the Regulated Utilities;

(b) under City ownership, as will be described in Mr. Gottlieb's testimony, water rates for PWW, PAC and PEU will be stabilized, and over the long term, will be lower than under current ownership;

(c) under City ownership, as will be described in Mr. Patenaude's testimony, Pennichuck and its corporate subsidiaries will save on annual operating costs because the company will no longer require certain officer-level personnel whose backgrounds, duties and responsibilities related directly to Pennichuck's status as a publicly-traded company, and other costs related to maintaining Pennichuck's status as a publicly-traded company;

(d) under the proposed acquisition of stock, as will be described in Mayor Lozeau's and Mr. Patenaude's testimony, the City will acquire more assets and property, including the valuable watershed land owned by The Southwood Corporation, for a lower overall cost than the value of \$203 million initially set by the Commission for the taking of solely the assets of PWW and such higher amounts as would have resulted from updating that value through the actual date of the taking;

(e) under the proposed transaction, as will be described in Mr. Ware's testimony, the current management and employees responsible for operating the Regulated Utilities will stay the same, their jobs will be preserved, and customers will contact the exact same people they always have with questions or concerns;

(f) as will be described in the testimony of Mayor Lozeau and Mr. Patenaude, because the current operating management and employees will be preserved, the synergies from common, integrated management of the three Regulated Utilities will be retained, and there will

no need for a third-party operator and related contractors or for a special mitigation fund to compensate for the loss of such synergies;

(g) as will be described in the testimony of Mayor Lozeau and Mr. Patenaude, the Commission will continue to regulate PWW, PAC and PEU, which will provide protection to customers outside of the City's limits with regard to water utility service; and

(h) as will be described in the testimony of Mayor Lozeau and Mr. Patenaude, the City intends to continue to provide the highest quality water and related services by establishing a "corporate governance structure" under which the operations of Pennichuck and its corporate subsidiaries will be managed by a qualified corporate board of directors.

21. In order for the City to finance the stock acquisition contemplated by the Merger Agreement, the rates for the Regulated Utilities will need to generate sufficient cash to cover their proper share of the debt service on the general obligation bonds that the City expects to issue. As will be described in more detail in the Joint Petitioners' pre-filed direct testimony, the Joint Petitioners believe that the rates that are likely to result from the rate cases now pending for PWW and PAC in Docket No. DW 10-090 and DW 10-091, and respectively, and the rates currently in effect for PEU, will be sufficient to meet the cash requirements associated with their operations including their proper share of the debt service on the City's anticipated bond financing. The Joint Petitioners' direct testimony will demonstrate that the application of this ratemaking structure in future rate cases while the City's debt is outstanding will result in rates that are just and reasonable.

22. For the reasons described above, the City's acquisition of Pennichuck's stock is in the public interest and should be approved by the Commission, and the ratemaking structure to be set forth in the Joint Petitioner's direct testimony will result in rates that are just and reasonable.

WHEREFORE, the Joint Petitioners respectfully request that the Commission:

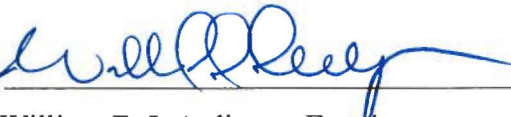
- A. Determine that the proposed transaction set forth in the Merger Agreement is in the “public interest” pursuant to the Special Legislation and in the “public good” pursuant to RSA 374:30, to the extent required;
- B. Approve the ratemaking structure described above for application to PWW, PEU and PAC;
- C. Issue any and all other approvals or authorizations, if any, necessary to conclude the Merger Agreement; and
- D. Grant such further relief as may be just and proper.

Respectfully submitted this
4th day of February, 2011

CITY OF NASHUA

By Its Attorneys

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By: 


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PITTSFIELD AQUEDUCT COMPANY, INC.
PENNICHUCK EAST UTILITY, INC.

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Certificate of Service

I hereby certify that a copy of this Joint Petition, including the prefiled testimony referred to in the Petition, have this day been hand delivered to Meredith Hatfield, Esq., Consumer Advocate.

Dated: February 4, 2011


William F. J. Ardinger