

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

ORIGINAL	
N.H.P.U.C. Case No.	PW 11-026
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Re: City of Nashua Acquisition of Pennichuck Corporation

Docket DW 11-026

DIRECT TESTIMONY OF  
MAYOR DONNALEE LOZEAU

February 18, 2011

**Table of Contents**

Introduction and Purpose for Testimony ..... 1  
Description of the Proposed Transaction ..... 3  
Participation by the City and Mayor in the Negotiation of this Transaction ..... 5  
Proposed Governance Structure for Pennichuck Corporation ..... 8  
Reasons Supporting the City’s Acquisition of Pennichuck Corporation ..... 10  
Conclusion ..... 14

1 **Introduction and Purpose for Testimony**

2 **Q. Please state your full name, title and office address.**

3 A. My name is Donnalee Lozeau. I am currently the Mayor of the City of Nashua, New  
4 Hampshire (the "City"). My office address is City Hall, 229 Main Street, Nashua, New  
5 Hampshire 03060.

6 **Q. How long have you served as Mayor of the City of Nashua?**

7 A. I was elected as the 55<sup>th</sup> Mayor of the City in November 2007. My term officially began  
8 in January 2008.

9 **Q. What are your duties as Mayor of the City of Nashua?**

10 A. The Mayor serves as the chief administrative officer of the City and the head of the  
11 administrative branch of the City government. The Mayor supervises the administrative  
12 affairs of the City and carries out the policies enacted by the Board of Aldermen. The  
13 Mayor is responsible for enforcing the ordinances of the City, the City's charter, and all  
14 general laws applicable to the City.

15 **Q. Please describe your background and other experience?**

16 A. My career in public service began in 1984 when I was elected to the New Hampshire  
17 House of Representatives from Ward 5 of the City. I served 16 years as a member of the  
18 New Hampshire House of Representatives on various committees, and as Deputy Speaker  
19 of the House from 1996 to 2000. From 1994 to 2008, I was employed as the Director of  
20 Program and Community Development at Southern New Hampshire Services, Inc.,  
21 where I worked to develop housing opportunities for seniors and the homeless, to expand  
22 child care and Head Start programs and to establish an Economic Opportunity Center.

23 **Q. Have you testified before the New Hampshire Public Utilities Commission on any  
24 previous occasions?**

25 A. No.

26 **Q. What is the purpose of your testimony?**

1 A. The purpose of my testimony is to provide an overview of the proposed transaction by  
2 which the City will acquire control of Pennichuck Corporation and all of its subsidiaries.  
3 First, I will introduce the other witnesses who will present testimony on behalf of the City  
4 and Pennichuck Corporation. Second, I will briefly describe the proposed merger  
5 transaction by which the City will acquire control of Pennichuck Corporation. Third, I  
6 will summarize the participation by the City and the Mayor in the development and  
7 negotiation of this transaction. Fourth, I will describe the proposed governance structure  
8 for Pennichuck Corporation under City ownership. Fifth, I will explain why the City  
9 believes that the proposed merger is consistent with the public interest and the special  
10 legislation that governs the Commission’s review of the proposed merger. While I will  
11 provide background and overview information, other witnesses will address a number of  
12 the points addressed in more detail.

13 **Q. Would you please identify the other witnesses presented by the Petitioners in this**  
14 **case?**

15 A. Yes. In addition to my testimony, the Joint Petition is supported by the following  
16 witnesses:

- 17 • John Patenaude, who serves as Special Consultant (Transaction Executive) to the City for  
18 this transaction, and will be appointed as the City’s Interim Chief Executive Officer with  
19 respect to Pennichuck Corporation upon completion of the acquisition, who will describe  
20 the terms and conditions of the Merger Agreement, the structure and financing of the  
21 proposed transaction, and Pennichuck Corporation’s management and corporate  
22 governance structure following the merger;
- 23 • Donald L. Ware, President of Pennichuck Water Works, Inc. (“PWW”), Pennichuck East  
24 Utility, Inc. (“PEU”) and Pittsfield Aqueduct Company, Inc. (“PAC”), who will describe  
25 how the Pennichuck Utilities will be operated under City ownership and the resulting  
26 benefits of the change in ownership to their customers.
- 27 • Bonalyn J. Hartley, Vice President, Administration & Regulatory Affairs of Pennichuck  
28 Corporation, who will address the impact of the proposed transaction on the rates and  
29 operations of Pennichuck Corporation’s three regulated utilities, PWW, PEU and PAC,  
30 and a proposed method for determining the revenue requirements and rates for each of

1 the three utilities in the future that reflects the special circumstances of City ownership  
2 and financing and demonstrates that rates required under City ownership will be at or  
3 lower than the level that would be required if the current ownership structure were to  
4 remain in place;

- 5 • Arthur Gottlieb, Managing Director of C.W. Downer & Co., the investment banking firm  
6 that has assisted the City in its negotiation of the merger agreement, who will present  
7 information regarding the fairness and reasonableness of the purchase price set forth in  
8 the merger and financial analysis demonstrating the feasibility of the merger and the  
9 proposed financing both in the short and long terms, while at the same time resulting in  
10 rates to customers of all three utilities that are lower than those that would be charged  
11 under current ownership; and
- 12 • John Griffin, Chief Financial Officer of the City, who will provide testimony regarding  
13 the feasibility and marketability of the proposed general obligation bond financing and  
14 the impact of the proposed financing upon the financial status of the City.

15 **Description of the Proposed Transaction**

16 **Q. Are you familiar with the Agreement and Plan of Merger (“Merger Agreement”)**  
17 **between the City and Pennichuck Corporation?**

18 A. Yes.

19 **Q. When was the Merger Agreement executed by the parties?**

20 A. The parties executed the Merger Agreement effective as of November 11, 2010. A copy  
21 of the executed Merger Agreement, including all of its exhibits and attachments, is  
22 attached as Exhibit DL-1. Mr. Patenaude describes the terms of the Merger Agreement  
23 and each of its exhibits in more detail in his testimony.

24 **Q. Mayor Lozeau, would you please summarize the essential elements of the**  
25 **transaction contemplated by the Merger Agreement?**

26 A. Yes. As described in more detail in Mr. Patenaude’s testimony, the Merger Agreement  
27 provides for the City to acquire all of the outstanding shares of Pennichuck Corporation  
28 for a price of \$29.00 per share, subject to the terms and conditions of that agreement.

1 The City currently projects that the total amount of cash consideration to be paid to  
2 Pennichuck Corporation's shareholders will be approximately \$137,793,398. The  
3 acquisition of the shares will be accomplished pursuant to a merger between a  
4 corporation formed by the City solely for the purpose of participating in the merger and  
5 Pennichuck Corporation. After the merger, the City will be the sole stockholder of  
6 Pennichuck Corporation. The City will not directly acquire any of the shares or assets of  
7 any of Pennichuck's five subsidiaries. These subsidiaries – PWW, PEU, PAC,  
8 Pennichuck Water Service Company and The Southwood Corporation – will continue to  
9 be wholly owned by Pennichuck Corporation. In all respects that affect the quality of  
10 service being provided to customers, the acquisition of Pennichuck Corporation by the  
11 City will result in no change for customers of the company's utility subsidiaries.

12 **Q. Please provide some additional detail regarding your statement that customers will**  
13 **see no change as a result of the City's acquisition of Pennichuck Corporation.**

14 A. Pennichuck Corporation and each of its five subsidiaries will continue their existence as  
15 separate legal entities. PWW, PAC and PEU will continue to be regulated by this  
16 Commission and subject to Commission assessments because they will remain "public  
17 utilities" as that term is defined by RSA 362:2 and 362:4. PWW, PAC and PEU will  
18 continue to pay municipal property and state utility taxes. PWW, PAC and PEU will  
19 continue to be operated and staffed by the same employees and at the same locations.  
20 The same employees will continue to provide customers service on a day-to-day basis,  
21 and there are no plans to change the Company's field operations or the managerial  
22 functions of the Company other than the elimination of several positions that will no  
23 longer be required because Pennichuck Corporation will no longer be a publicly traded  
24 company.

25 **Q. Can you explain why the Pennichuck utilities will not be exempt from regulation**  
26 **under RSA 362:4 when they are owned by a municipality?**

27 A. I am not a lawyer, but my understanding is that PWW, PEU, and PAC will remain for-  
28 profit business corporations that are owned by Pennichuck Corporation. They will not be  
29 municipal corporations, and therefore they do not qualify for the exemption created by  
30 the Legislature.

1 **Q. What will change after the Merger?**

2 A. As a result of acquisition by the City, Pennichuck Corporation will no longer be a  
3 publicly-owned and publicly-traded company and, accordingly, will no longer be  
4 required to incur certain significant personnel and compliance costs related to that status.  
5 For example, and as described in more detail in Mr. Patenaude’s testimony, this change  
6 in status will result in the elimination of a number of officer-level positions whose duties  
7 and responsibilities relate directly to Pennichuck Corporation’s status as a publicly traded  
8 company. That said, it will still be a private, for-profit corporation, but it will have only  
9 one shareholder, which will be the City of Nashua.

10 **Q. Does the City have the authority to acquire the shares of Pennichuck Corporation in**  
11 **the proposed transaction?**

12 A. Yes, subject to the Commission’s review and approval. The New Hampshire Legislature  
13 adopted and the Governor signed legislation that expressly authorizes the City “to  
14 purchase the stock of Pennichuck Corporation or one or more of its subsidiaries upon  
15 agreement with such corporation.” This special legislation is, Section 5 of Chapter 347  
16 of the 2007 session laws of the State of New Hampshire, as amended by Section 118 of  
17 Chapter 1 of the 2010 special session laws, which I will refer to as the “Special  
18 Legislation.” The entire Special Legislation is attached to my testimony as Exhibit DL-2.  
19 The Special Legislation empowers the City to enter into a consensual acquisition with  
20 Pennichuck Corporation for its stock to resolve the longstanding eminent domain dispute  
21 between the City and Pennichuck Water Works. While other laws and statutes apply to  
22 the transaction, or certain aspects of the transaction, the Special Legislation, which  
23 expressly and directly addresses the circumstances of the proposed merger, is the  
24 principal law that authorizes the City to acquire the shares of Pennichuck Corporation  
25 and provides for the Commission’s review of it.

26 **Participation by the City and Mayor in the Negotiation of this Transaction**

27 **Q. Mayor Lozeau, please summarize the history of the City’s involvement in the**  
28 **development of this transaction.**

1 A. On November 26, 2002, the City’s Board of Aldermen voted 14 to 1 to establish a  
2 municipal water system and to acquire the assets of the Pennichuck utilities. This vote  
3 came just 7 months after Pennichuck Corporation had announced that it had reached  
4 agreement to be acquired by a large utility holding company, Philadelphia Suburban  
5 Corporation. This announcement, which led many in the City to fear the impacts of loss  
6 of local management control on the City’s water service, along with concern among  
7 many in the City regarding whether certain real estate development activities by  
8 Pennichuck Corporation were adversely impacting the watershed lands that supported the  
9 City’s water supply, led to a groundswell of public support for the City to acquire control  
10 over Pennichuck Corporation and its assets. On January 14, 2003, City voters approved a  
11 resolution to authorize the City to proceed with the acquisition of the water utility assets  
12 by a vote of 6,525 to 1,867. On March 25, 2004, the City filed a Petition for Valuation  
13 pursuant to RSA 38:9 (the “Eminent Domain Proceeding”, docketed as Docket No. DW  
14 04-048) to take by eminent domain the assets of PWW, PEU and PAC. Prior to hearings  
15 in the Eminent Domain Proceeding, the State Legislature passed and the Governor signed  
16 on September 16, 2007 the first component of the Special Legislation. The Commission  
17 held hearings in the Eminent Domain Proceeding in January 2007 and then in September  
18 of 2007, and ultimately issued its Order No. 24,878 Approving Taking and Determining  
19 Value on July 25, 2008. Both parties appealed aspects of this order, and the Supreme  
20 Court affirmed the order by opinion issued on March 25, 2010.

21 **Q. Would you please describe your involvement in the development and negotiation of**  
22 **the proposed merger transaction?**

23 A. Yes. Following the issuance of Commission Order 24,878 on July 25, 2008, I assembled  
24 a team of advisors to assist the City in developing a financial and legal strategy with  
25 respect to the Pennichuck matter. This team has consisted of:

- 26 • C.W. Downer & Co., an investment banking firm, which has advised the City on  
27 financial, valuation, capital markets and strategic aspects of the proposed transaction;
- 28 • First Southwest, the City’s customary financial advisory firm;

- 1 • Rath, Young and Pignatelli, P.C., a law firm, which has provided legal advice to the City  
2 on all aspects of the proposed transaction, including tax, corporate, regulatory, financing  
3 and municipal matters;
- 4 • Edwards, Angel, Palmer and Dodge, L.L.P., which serves as the City's customary legal  
5 counsel on bond issuance matters;
- 6 • R.W. Beck, an engineering and consulting firm, which has advised the City with respect  
7 to various aspects of the water utility businesses owned by Pennichuck Corporation;
- 8 • John Patenaude, a consultant to the City who has served as the City's Transaction  
9 Executive, responsible for coordinating all aspects of the City's efforts with respect to the  
10 proposed transaction; and
- 11 • A number of key City employees who have worked with me and the entire team.

12 Following establishment of this team, I participated directly and indirectly in a long series  
13 of negotiations with the senior corporate management of Pennichuck Corporation.

14 **Q. Did you work with the City's Board of Aldermen during the period that the**  
15 **transaction was being negotiated with Pennichuck Corporation?**

16 A. Yes. I and members of the negotiations team worked directly with the City's Board of  
17 Aldermen to keep the Board members apprised of developments and to get the Board's  
18 input regarding an acceptable framework for the proposed transaction. From July 2008  
19 until the announcement of the transaction on November 12, 2010, the City's Board of  
20 Aldermen and special committees of the Board met many times to hear updates on the  
21 progress of negotiations and to provide guidance to me and the negotiations team  
22 regarding acceptable parameters for the proposed transaction.

23 **Q. Have you been directly involved in any aspect of the enactment of the Special**  
24 **Legislation?**

25 A. Yes. The Special Legislation was originally enacted in 2007, before I became Mayor, so  
26 I did not have any involvement at that time. In 2010, however, our transaction  
27 negotiation team brought to my attention the fact that the City could realize financing  
28 benefits if it were authorized to issue general obligation bonds to finance the merger

1 transaction. I worked with members of the Nashua state legislative delegation and  
2 members of the New Hampshire House and Senate to obtain an amendment that would  
3 permit the City to issue general obligation bonds to finance the merger transaction  
4 without impacting the City's overall debt limit. This amendment to the Special  
5 Legislation was enacted as Section 118 of Chapter 1 of the 2010 special session laws of  
6 the State of New Hampshire. Mr. Patenaude discusses this aspect of the proposed  
7 transaction in more detail in his testimony.

8 **Q. Do you have an opinion on the Legislature's intent regarding the enactment of this**  
9 **2010 amendment to the Special Legislation?**

10 A. Yes. Based on my review of the language of the Special Legislation, the context of its  
11 enactment, discussions with numerous legislators, including members of key legislative  
12 committees and the legislative leadership, and my testimony before the House Finance  
13 Committee, it is clear to me that the Legislature enacted the 2010 amendment to facilitate  
14 a consensual resolution of the long-standing dispute between the parties and to enable the  
15 use of all financing options that could reduce the costs of financing such a consensual  
16 resolution.

17 **Proposed Governance Structure for Pennichuck Corporation**

18 **Q. Please describe how the City proposes to govern, manage and operate Pennichuck**  
19 **Corporation and its subsidiaries, including the three regulated utilities, following**  
20 **the Merger?**

21 A. As described in more detail in Mr. Patenaude's testimony, the City proposes to establish a  
22 corporate governance system for the purposes of managing Pennichuck Corporation. As  
23 I stated earlier, Pennichuck Corporation and each of its subsidiaries will continue their  
24 current status as separate legal corporations. The City's proposed corporate governance  
25 system would be very similar to the one that currently governs the holding company and  
26 its subsidiaries. It will be established pursuant to articles of incorporation and corporate  
27 by-laws substantially in the form attached to the Merger Agreement. Under this  
28 corporate governance system, the City will exercise its control over Pennichuck  
29 Corporation in its capacity as sole shareholder of Pennichuck Corporation in accordance

1 with New Hampshire laws governing for profit corporations. Pennichuck Corporation's  
2 business affairs will be overseen by a board of directors, which, after the initial board  
3 members are appointed, will be elected by the City in its capacity as sole shareholder  
4 from individuals nominated by the Pennichuck Corporation board.

5 **Q. How will the day-to-day operations of the Pennichuck utilities be conducted**  
6 **following the Merger?**

7 A. The day-to-day operations of the Pennichuck utilities will be conducted under the  
8 direction of officers elected by the board, and through the same operational employees of  
9 Pennichuck Water Works who carry on the day-to-day operations of each of the  
10 Pennichuck utilities under current ownership.

11 **Q. Mayor Lozeau, please explain the City's intent in adopting this corporate**  
12 **governance system for Pennichuck Corporation and its subsidiaries.**

13 A. During deliberations concerning the governance system, the Board of Aldermen  
14 expressed its intent that upon completion of the Merger, the Pennichuck businesses  
15 should be conducted in a business-like manner, and should not be conducted as a  
16 traditional component instrumentality of the City. Both the Board and I were concerned  
17 that decisions regarding the Pennichuck businesses should be based on business and  
18 financial analysis, and political considerations should be minimized. The proposed  
19 corporate governance system, which incorporates well-established principles regarding  
20 fiduciary obligations of board members to the purposes of the corporate institution was  
21 structured to provide this "buffer" between the Pennichuck businesses and the City's  
22 political process.

23 **Q. Can you cite a specific example of this intended separation between business and**  
24 **City politics?**

25 A. Yes. The Board of Aldermen and I spent a great deal of effort drafting the proposed by-  
26 laws for Pennichuck Corporation that would take effect upon completion of the Merger,  
27 and those by-laws include strict prohibitions on elected officials, key public employees or  
28 members of their families serving as members of the Pennichuck Corporation Board of

1 Directors. The one exception to this prohibition is that the City's Mayor may serve on  
2 the initial board following the Merger for a period of not longer than two years.

3 **Q. Do you have any other comments regarding the City's intent to establish a**  
4 **governance structure for Pennichuck Corporation?**

5 A. As I indicated, the City intends that Pennichuck Corporation and each of its subsidiaries  
6 will retain their current legal status as separate corporations following the Merger, and  
7 that each of the three water utilities will remain public utilities as defined by RSA 362:2,  
8 subject to the jurisdiction of this Commission. This continued regulatory status will  
9 provide a further assurance that the operations of the water utilities will be conducted in a  
10 transparent manner subject to review under well-established regulatory rules that properly  
11 balance the interests of the City as Pennichuck's shareholder and customers of the three  
12 utilities.

13 **Reasons Supporting the City's Acquisition of Pennichuck Corporation**

14 **Q. Mayor Lozeau, would you please summarize the reasons why the City supports**  
15 **acquiring the stock of Pennichuck Corporation in the proposed merger transaction?**

16 A. Yes. The proposed merger transaction makes good sense for the City, its citizens, our  
17 region and all of the customers of the Pennichuck water utilities. My reasons for  
18 supporting this transaction boil down to five main points.

19 First, this transaction allows the City to gain control of its water supply and watershed  
20 land so that the City can preserve and protect this public resource now and long into the  
21 future. As I stated earlier, this was the fundamental driving force behind the City's long-  
22 standing effort to acquire these important public resource assets.

23 Second, the Merger ends the eminent domain dispute between the City and Pennichuck  
24 Corporation that has been pending for nearly nine years and provides a better outcome for  
25 all parties than the eminent domain alternative approved by the Commission in Docket  
26 No. DW 04-048. Under this agreement, the City would acquire control of more assets  
27 (including the public resource represented by the watershed land) at a lower cost and the  
28 efficiencies of operating all three utilities together are preserved. Mr. Patenaude's  
29 testimony addresses this point in greater detail. However, I can summarize this point by

1 noting that under eminent domain, the City was authorized to buy only the assets of  
2 PWW at a total cost of \$203 million, plus a further adjustment to be determined by this  
3 Commission to reflect changes between the date of the Commission's 2008 order and the  
4 closing of the taking, and plus any transaction costs. For that cost, the City was not  
5 authorized to obtain control over the watershed land or the other water utility subsidiaries  
6 owned by Pennichuck Corporation. In addition to the purchase cost, the Commission  
7 ordered the funding of a \$40 million mitigation fund. Accordingly, the aggregate funding  
8 required for the eminent domain taking of solely the PWW assets was \$243 million plus  
9 any further adjustment to update the 2008 cost to reflect the investment in net assets after  
10 2008.

11 In contrast, under the proposed merger transaction, the City will obtain control over all  
12 the companies and businesses owned by Pennichuck Corporation, including the  
13 watershed land, for a total value of just under \$200 million, plus transaction costs.  
14 Because the proposed transaction retains the integrated management and operational  
15 structure and synergies among the three public utilities, there is no longer any basis for a  
16 mitigation fund. Very simply, this deal is better for the City and Pennichuck  
17 Corporation's shareholders than eminent domain and, as I explain below, is better for  
18 customers too.

19 Third, the proposed transaction will over time result in lower rates for customers of each  
20 of the three utilities than that under current ownership. Indeed, assuming that the  
21 Commission approves the increases in rates currently under consideration for PWW and  
22 PAC in Docket Nos. DW 10-090 and DW 10-091, the Petitioners are not proposing any  
23 current change to the rates of any of the three regulated utilities in connection with this  
24 proceeding to approve the merger transaction. The rates being sought in the pending rate  
25 cases are required to pay for recent capital investments and operational costs that will  
26 continue to be incurred following completion of the merger transaction. However, as  
27 detailed by Mr. Gottlieb, our financial analysis projects that, based on reasonable  
28 assumptions, the customer rates charged by all of the utilities under City ownership are  
29 expected to be lower than those that are anticipated to be charged under current  
30 ownership. While I am not the proper person to discuss the details of the financial  
31 models, these lower rates occur for three reasons, all of which are discussed in more

1 detail in testimony by Ms. Hartley and Mr. Gottlieb. First, Pennichuck Corporation  
2 under City ownership will save approximately \$1,700,000 in annual operating costs after  
3 the completion of the acquisition because the company will no longer incur the costs  
4 related to maintaining status as a publicly-traded company. Second, the City intends to  
5 finance future utility capital improvements with debt, as opposed to the mix of debt and  
6 equity that would be used under current ownership, and the rate of return on debt will be  
7 lower than the combined rate of return for debt and equity. Finally, under the fixed  
8 annual revenue requirement methodology described in Ms. Hartley's testimony, the  
9 overall weighted average cost of capital for the utilities under City ownership will be  
10 lower than under current ownership.

11 Fourth, under the proposed transaction, the current operating management and employees  
12 responsible for operating the water utilities will stay the same, their jobs will be  
13 preserved, and customers will contact the exact same people they always have with  
14 questions or concerns. Under eminent domain, the City would have had to bring in a  
15 third party to operate the assets and provide customer support. This caused concern  
16 about the future of many long-time, dedicated Pennichuck employees. In this tough  
17 economy, which has brought challenges to all of our friends and neighbors, I believe it is  
18 important to preserve good jobs, and this transaction does just that.

19 Finally, the proposed transaction would resolve this long-standing dispute and restore  
20 stability to the question of water service in the City and the other communities served by  
21 Pennichuck Water Works.

22 **Q. Does the City's Board of Aldermen agree with these reasons supporting the**  
23 **proposed transaction?**

24 A. Yes. On January 11, 2011, after public hearings by the Board's Finance Committee and  
25 Special Pennichuck Water Committee, the Board of Aldermen passed two resolutions  
26 approving the proposed transaction.

27 The first resolution, Nashua Board of Aldermen Resolution No. R-10-81, "confirms that  
28 acquisition of stock is within the policy and purpose of RSA 38" and makes the following  
29 two findings of fact as required by the Special Legislation:

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

4 2. That the acquisition of stock, rather than the direct acquisition of plant and  
5 property will be financially beneficial to the city and its customers and will,  
6 therefore, be in the best interests of the city and provide a public benefit.”

7 The Board of Aldermen approved this resolution by a vote of 15 to 0. A copy of the  
8 resolution as approved by the Board of Aldermen is attached as Exhibit DL-3.

9 The second resolution, Nashua Board of Aldermen Resolution No. R-10-82, authorizes  
10 the Mayor and the City Treasurer “to issue and sell general obligation bonds of the City,  
11 in an aggregate principal not to exceed Two Hundred Twenty Million Dollars  
12 (\$220,000,000.00).” The City’s Board of Aldermen approved this resolution by a vote of  
13 14 to 1. A copy of the resolution as approved by the Board of Aldermen is attached as  
14 Exhibit DL-4.

15 The approval of these two resolutions, unanimously in one case and by a substantial  
16 majority in the other, evidences the City’s strong support for the proposed transaction for  
17 the reasons stated earlier.

18 **Q. Are there any circumstances under which the City would not proceed with the**  
19 **proposed Merger?**

20 A. Yes.

21 **Q. Please describe some of these circumstances.**

22 A. As described in more detail in Mr. Patenaude’s testimony, Article VII of the Merger  
23 Agreement sets forth a number of conditions that must be satisfied before the parties may  
24 proceed forward with the Merger. From the City’s perspective, the most important of  
25 these conditions are the requirement that the City be able to obtain satisfactory financing  
26 and that the Commission’s approval of the proposed Merger transaction not contain any  
27 “burdensome conditions.” Accordingly, if interest rates were to rise significantly prior to  
28 closing of the Merger, the cost of the financing may rise to the point where the projected

1 lower rates under City ownership would not be possible. In that case, the City would not  
2 proceed with the merger.

3 **Q. Would you please describe an example of a condition that would constitute a**  
4 **“burdensome condition” within the meaning of the Merger Agreement?**

5 A. If the Commission were to require a change in the amount of the rates of the Pennichuck  
6 utilities such that there was not sufficient cash to cover all of the operating cash flow  
7 obligations of each of the utilities and to allow the City to make all of its payments on the  
8 general obligation bonds issued to finance the merger, such a decision would constitute a  
9 burdensome condition within the meaning of the Merger Agreement. As described in  
10 more detail in Ms. Hartley’s and Mr. Gottlieb’s testimonies, the City is requesting that  
11 the Commission leave in effect current rates for each of the Pennichuck utilities subject to  
12 the determinations in rates currently under consideration for PWW and PAC in Docket  
13 Nos. DW 10-090 and DW 10-091, and approve a methodology for the establishment of  
14 rates for the Pennichuck utilities in the future that provides the Pennichuck utilities with  
15 the ability to obtain sufficient revenues to service their portion of the debt required to  
16 consummate the proposed transaction. If the Commission failed to provide such rate  
17 relief or rejected the proposed ratemaking framework for the future, the City would not  
18 proceed with the merger.

19 **Q. Does the City believe that the method for future ratemaking described in Ms.**  
20 **Hartley’s testimony is consistent with the public interest?**

21 A. Yes. The City believes that the method for future ratemaking proposed in Ms. Hartley’s  
22 testimony properly balances investor and customer interests in this unique context where  
23 the ultimate investor is a municipality that finances the acquisition entirely with general  
24 obligation bonds and would provide a proper method of ensuring that rates are reasonable  
25 and are sufficient to satisfy the cash requirements of utility operations and the City’s  
26 bond financing.

27 **Conclusion**

28 **Q. Mayor Lozeau, do you have an opinion whether the proposed merger is consistent**  
29 **with the public interest?**

1 A. Yes. I believe the proposed merger transaction is consistent with the public interest and  
2 should be approved under the standard set forth in the Special Legislation and other  
3 governing statutes. This proposal will resolve the long-standing dispute between the  
4 parties. It will allow the City to acquire control over its public water supply and  
5 watershed land. It will ultimately result in lower rates for all customers of each of the  
6 utilities than under current ownership. It will continue the current management and  
7 employees responsible for operating the water utilities and will avoid the need for a new  
8 third-party operator, thereby preserving the positive operating synergies enjoyed by the  
9 three utilities. And perhaps most importantly, this proposal represents a long-term  
10 investment by the City in its future that will benefit future generations of water  
11 customers. Once the City's acquisition debt is paid off, we will own the water supply and  
12 watershed land assets free and clear. While many of us may not be here to witness the  
13 day when that becomes a reality, our children and grandchildren will.

14 **Q. Mayor Lozeau, do you have an opinion why this transaction is in the public interest**  
15 **for customers who reside outside of the City?**

16 A. Yes. For the same reasons I just described, I believe that the transaction is in the public  
17 interest for customers who reside outside of the City. First, for the reasons describe  
18 earlier, the proposed transaction will result in lower rates for all customers of each of the  
19 regulated utilities. Second, the proposed transaction preserves the current operational  
20 synergies of the combined group of utilities that benefit all customers through lower rates  
21 and continued stable and good service. Third, the proposed transaction preserves the  
22 current regulatory status of the three utilities, so that the Commission will continue to  
23 have full regulatory jurisdiction over each of the utilities so that all customers may count  
24 on careful and transparent oversight as the City commences its ownership of Pennichuck  
25 Corporation.

26 **Q. Is there anything further you wish to say about the proposed merger?**

27 A. The City of Nashua is very committed to this opportunity to secure and protect an  
28 essential public water supply resource. The City looks forward to the opportunity to  
29 present this case to the Commission and to work with all parties to obtain the approvals  
30 necessary to proceed forward with this merger.

1 Q. **Do you have any further testimony at this time?**

2 A. No.