Fred S. Teeboom
24 Cheyenne Drive
Nashua, NH 03063
(603) 889-2316
fredtee@comcast.net

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NH PUBLIC UTILITIES COMMISSION

15 February 2011

Commissioners
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Subject: Petition to Intervene in Hearings on Acquisition of Pennichuck Corporation by the City of Nashua, Docket DW 11-026

I herewith file my Petition to Intervene in Docket #DW 11-026, pursuant to PUC Order of Notice dated 9 February 2011

By letter 24 January, preceding the PUC Order, I had filed my Petition to Intervene. The attached letter is a revision to that letter by adding several exhibits derived from the **Financial Model** prepared by the city's consultants, C.F. Downer.[1]

I have consistently supported the acquisition of Pennichuck Corporation through the purchase of all of its outstanding shares, in opposition to Eminent Domain. However, I am concerned that the Merger Agreement presented to the PUC by the Joint Petitioners is NOT in the public interest.

The attached letter with attachments supports the rational for my petition, as required under PUC Administrative Rule 203.17 and RSA 541-A:32, I (b):

> *"The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding ....."*

I stand ready to address my concern during the Prehearing Conference scheduled on 24 February.

Sincerely,

Fred. S. Teeboom
Former Alderman-at-Large
Water Ratepayer in City of Nashua

CERTIFICATE OF SERVICE

I hereby certify that on this date 15 February 2011, seven (7) copies of my Petition to Intervene in Docket DW 11-026 were mailed by USPS to the PUC Commissioners, one copy to the PUC Office of the Consumer Advocate, one copy to Attorney William F. J. Ardinger who represents the City of Nashua and one copy to Attorney Steven V. Camerino who represents Pennichuck Corporation and its subsidiaries, in compliance with PUC Order of Notice dated 9 February 2011.

Fred S. Teeboom, Petitioner

[1] The **Financial Model** (posted on the city's web site) was discussed with the Nashua Board of Aldermen prior to their requisite 2/3 affirming vote to proceed with the acquisition, and authorize a general obligation bond for up to $220 million for the purchase (R-10-82). The introduction to the **Financial Model** states that the model will be updated before submittal to the PUC, but this revision has not been made public.

Fred S. Teeboom
24 Cheyenne Drive
Nashua, NH 03063
(603) 889-2316
fredtee@comcast.net

Revised 15 February 2011

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 N. Fruit Street, Suite 10
Concord, NH 03301

Subject: Petition to Intervene in Acquisition of Pennichuck by Nashua, Docket DW 11-026

Ref: (1) NH RSA 541-A:32, I, (b)
(2) PUC Rule Puc 203.17

Dear Director Howland:

The City of Nashua and Pennichuck Corporation aim to jointly file a Docket with the PUC to obtain approval of a Merger Agreement concerning Nashua's acquisition of Pennichuck Corporation through the purchase of stock authorized under New Hampshire law.[2]

I have consistently been against Eminent Domain, in favor of acquisition of the entire company through purchase of its stock.

There are a number of troubling aspects to the proposed Merger Agreement, however, that appear greatly disadvantageous to the ratepayers. For example:

- The financial terms and conditions of the acquisition. Attached is my Op. Ed. published in the Sunday Telegraph on 16 January 2011 (see attached) that summarizes my concerns over the cost of the acquisition totaling $220 Million, of which $160 million represents new debt plus $60 million assumption of existing long-term Pennichuck Corporation debt. This entire debt is financed at up to 6.5%.

- The Merger Agreement establishes an independent **for-profit taxable** corporation. It is unclear why the consultants now propose this arrangement, **of great cost to the ratepayer**, considering the corporate tax rate is 39.6%.

- Previous discussion always contemplated for the water utility to become a part of the city, thus taking advantage of the city's non-profit status. IRS Section 115 permits a utility that is part of a political subdivision such as a city to operate non-profit, thus requiring no payment of corporate or property taxes.[3]

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[2] Chapter 347 of the Acts of 2007, as amended and supplemented by Section 118 of Chapter 1 of the Special Session of the Acts of 2010.

[3] US Title 26 Internal Revenue Code Chapter 1, Subchapter B, Part III, Section 115 Income of States, municipalities, etc.: Gross income does not include "income derived from any **public utility** or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof........."

- **Nothing under RSA 38, the NH Special Laws cited or the IRS Code cited prevent organizing the newly acquired water utility under the city's Division of Public Works**, same as the Solid Waste and Wastewater Treatment utilities currently operate. The arrangement proposed during the Eminent Domain Hearings for the city to hire Veolia and Beck to manage and operate the water services during a transitional period would apply equally well under the stock acquisition.

- The proposed arrangement to keep the entire Pennichuck operation intact as a **for-profit entity**, except for its top managers, may favor Pennichuck's current employees and its unions but is highly disadvantageous to the ratepayers. Furthermore, the ratepayers do not elect the directors of the new for-profit entity. Discussion in the unsealed minutes to change federal tax law to favor the Nashua acquisition seems irrelevant if not naïve. Communities who currently receive property taxes from Pennichuck Corporation could be compensated through negotiated "payment in lieu of taxes."

- The city's consultants briefed the public that revenues under city ownership will always be less than under Pennichuck ownership, starting day one following the acquisition (see Exhibit #1). However, this is in variance with the Financial Model prepared by C. F. Downer (see Exhibit #2). Considering the large debt to finance the acquisition, coupled to annual financing of capital expenses that grow to $149 million in year 2041, this is highly suspect. Not until the $160 million debt is paid 30 years following the acquisition can revenues be expected to fall below Pennichuck ownership. (see Exhibits #3, #4 and #5). [4]

- Close examination of the Financial Model indicates manipulation of data to contrive a desired outcome, such as deferral of taxes to cover an operating loss for the initial 18 years (see Exhibit #6)

I am a water utility customer and ratepayer in the City of Nashua with an interest in obtaining a lowest possible cost of water services following the acquisition I herewith petition to be granted Intervenor status at the PUC Hearing when it is docketed, under PUC Rule Puc 203.17 Intervention and under NH RSA 541-A:32, I, (b).

Sincerely,

Fred S. Teeboom
Former Alderman-at-Large
Former Intervenor in Pennichuck DW 04-048 Eminent Domain Hearing
Water Ratepayer in City of Nashua

Attached: (1) Op. Ed. Sunday Telegraph, 16 January 2011.
(2) Exhibit #1: Comparing Revenue Requirements, Pennichuck vs. Nashua Ownership.
(3) Exhibit #2: Comparing Revenue Requirements, Financial Model Projection
(4) Exhibit #3: Total EOY Debt
(5) Exhibit #4: Accumulating Debt for Capital Expenses.
(6) Exhibit #5: Total Debt Service
(7) Exhibit #6: Earnings

[4] Refinancing $160 million with a municipal **tax-exempt** bond of 3% (the rate paid by the City of Nashua) for 30 years calculates to an immediate 7% water rate increase; with a **taxable** bond of 6.5% for 30 years calculates to an immediate 18% water rate increase. Both calculations account for $5.6 million in recurring operational savings (see attachment #1).

Attachment #1

GUEST COMMENTARY

Numbers behind the Pennichuck deal don't seem to add up

By FRED S. TEEBOOM

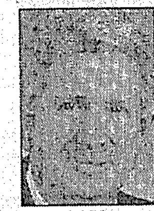
I was always against the eminent domain/hostile takeover of Pennichuck Corp. and in favor of the city of Nashua purchasing the entire company.

But the agreed-upon acquisition for $220 million has troubling aspects:

■ The original plan was to make the acquired waterworks a tax-exempt division within the city. Now an independent taxable corporation is set up under Nashua ownership. Aside from issues of governance, the difference is highly significant to the ratepayers.

A tax-exempt $220 million bond at the city's current rate of 3 percent would cost $11.22 million in equal annual payments for 30 years, whereas at the assumed taxable bond rate of 6.5 percent, the equal annual payments would come to $16.85 million for 30 years. The added cost is $5.63 million in annual payments and $169 million in total payments.

■ Pennichuck now carries a debt of $60 million, which must be absorbed with the acquisition. Included in the $220 million bond is $160 million in new debt not carried by Pennichuck that must be carried for 30 years by the ratepayers. Payments on $160 million at 6.5 percent are $12.25 million annually.


TEEBOOM

These payments are partially offset by efficiencies such as eliminating high executive salaries and not requiring exhaustive reporting of a stock-traded company (about $2 million) and not having to pay $3.6 million dividends to shareholders (4.662 million shares at 78 cents per share), for a total of $5.6 million in recurring operational savings.

■ The additional $6.65 million for the annual $12.25 debt payments not offset by operational savings must be paid by the ratepayers, assuming the current $60 million Pennichuck tax-exempt debt is not refinanced. Current revenues are $37 million, so rates must increase by 18 percent above Pennichuck's after the purchase is consummated.

■ If tax-exempt, the $160 million new debt carried at 3 percent would cost $8.16 million in annual payments, which is $2.56 million higher than the $5.6 million operational savings, representing an immediate 7 percent rate increase – much less than an 18 percent rate hike under a taxable debt.

Nashua's consultants claim that required revenues under Nashua ownership always fall below Pennichuck ownership, thus rates would always be lower. The model behind this claim was never shared with the public or even shared with the aldermen. The mayor published the printed pages, but these do not show the formulas used in the model.

Examination of the printout of the model raises more questions:

■ The new company runs at a loss for the first 19 years, deferring corporate taxes, after which it begins to pay nearly $1 million in corporate taxes annually, rising to $4.7 million annually after 30 years. None of these taxes would need to be paid if the entity were a tax-exempt division within the city.

■ The new company pays $3.3 million in property taxes in 2011, not required if it were a division within the city.

■ Some $7.75 million for capital expenses for maintenance and upgrades is taken out each and every year and placed on a 30-year interest payment schedule of 5.5 percent, resulting in constantly escalating debt. In fact, when the $220 million acquisition debt is finally paid off after 30 years, a new debt of $149 million has accumulated.

The model is obviously contrived to force a favorable outcome, surely the reason the formulas for the model are not made public.

Is $220 million for this acquisition a reasonable price to pay?

■ In December 2009, the mayor announced the fair market price to pay for a share was $25, based on a thorough evaluation by the city's consultants. Why now pay $29, an additional $18.6 million for 4.662 million outstanding shares?

■ Why pay "closing" costs of $24.8 million, the difference between $160 million additional debt and the price paid for the stock of $135.2 million? Buried here is the cost of golden parachutes for the executives, employee termination costs, consultant fees of $3 million, and $5 million to pay for Nashua's eminent domain costs.

Is this the best deal? That depends how eager Nashua wants to own a water company. No question, there are upsides.

■ After 30 years of paying off the $220 million debt, the city can begin to pay down the $149 million debt incurred by bonding all capital expense costs.

■ Nashua will own the entire water company and the remaining conservation land.

■ Pennichuck's stewardship has been harmful to Nashua, having sold a thousand acres of precious watershed land for enormous windfall profit. Not profit motivated, Nashua will be a far better protector of our natural resources.

After 30 years, citizens will look on this purchase as farsighted. But, meanwhile, let's be honest and admit the rates will climb under Nashua ownership higher than under Pennichuck for 30 years under the proposed arrangement. After the $220 million debt is paid, the rates should drop below Pennichuck ownership.

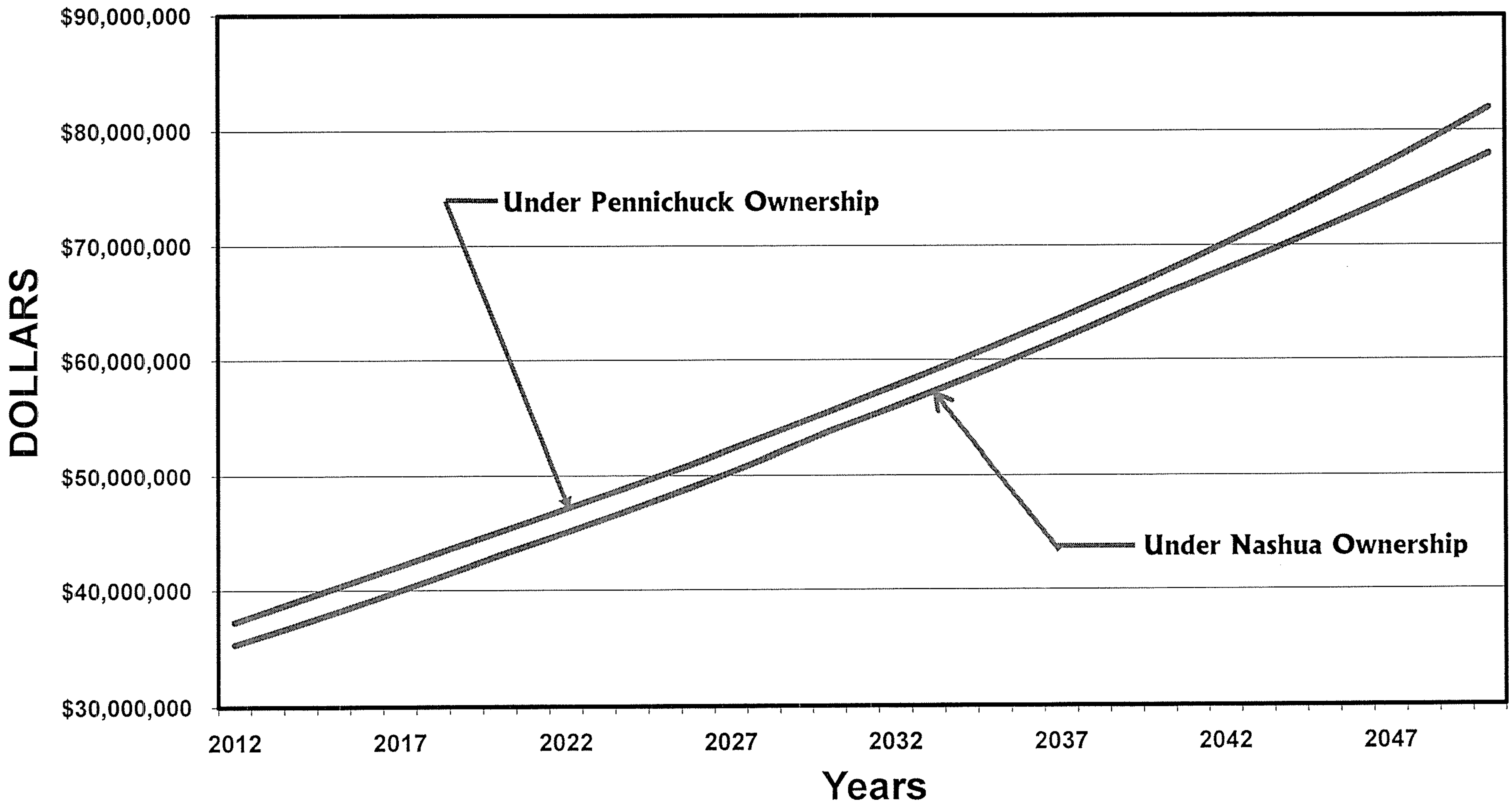
Next, the state Public Utilities Commission must conclude the financial terms of this acquisition are in the public interest, conditional to its approval. I plan to reserve myself a front-row seat.

Fred S. Teeboom is a former alderman-at-large and intervenor with the Public Utilities Commission.

Exhibit #1

Comparing Revenue Requirements

2012 to 2050

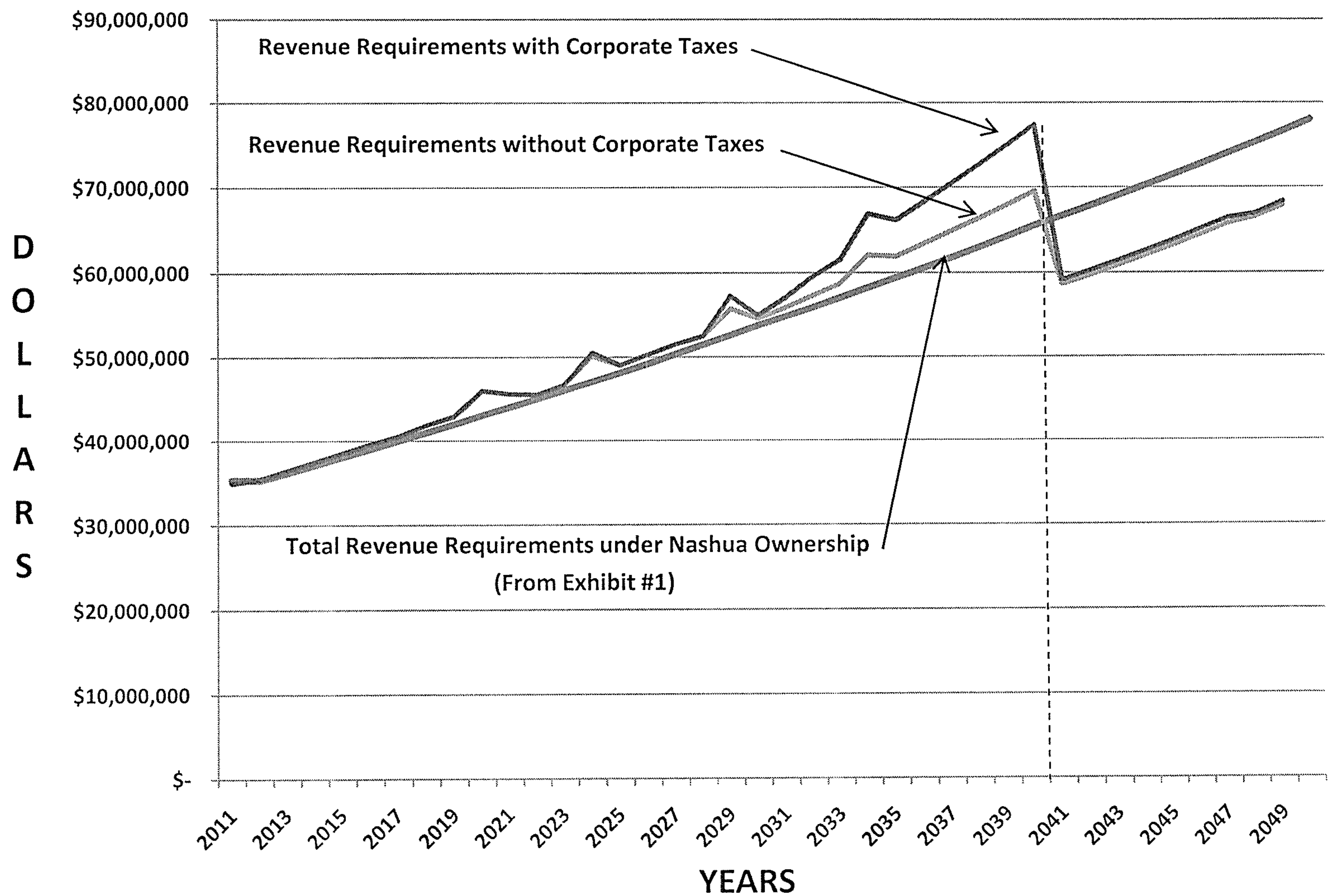


From Financial Model prepared by C. F. Downer

This chart, presented in public briefings by the city's consultants, shows that revenue requirements under Nashua ownership (assumed to grow between 1.75% and 2.5%) are always below Pennichuck ownership, even under the massive $160 million additional debt carried by Nashua to finance the purchase.

Exhibit #2

Comparing Revenue Requirements

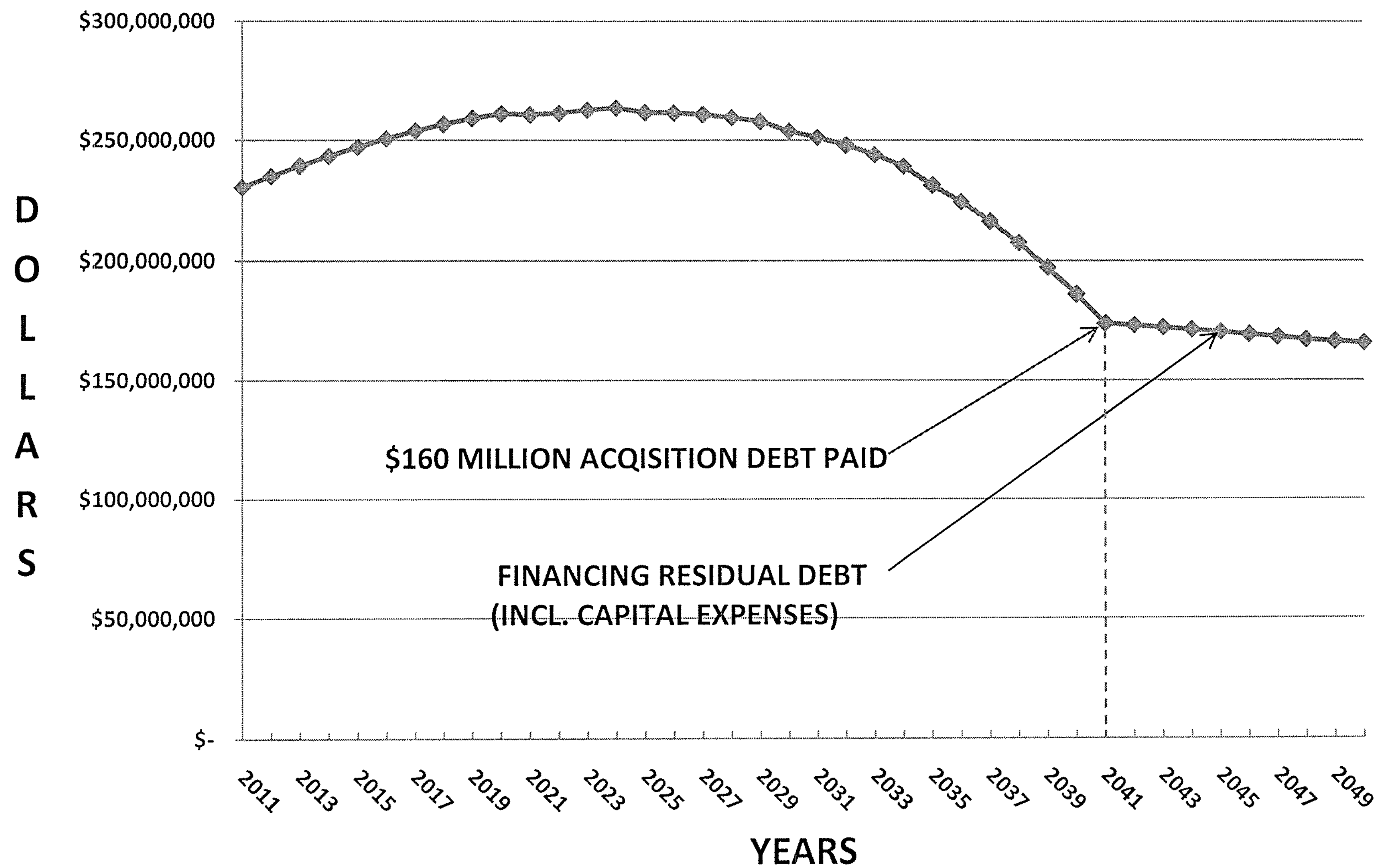


From Financial Model prepared by C. F. Downer

This chart shows that revenue requirements presented in Exhibit #1 are higher than the revenues projected in the model, until the $160 million acquisition debt is paid off in year 2041.

Exhibit #3

Total End-of-Year Debt

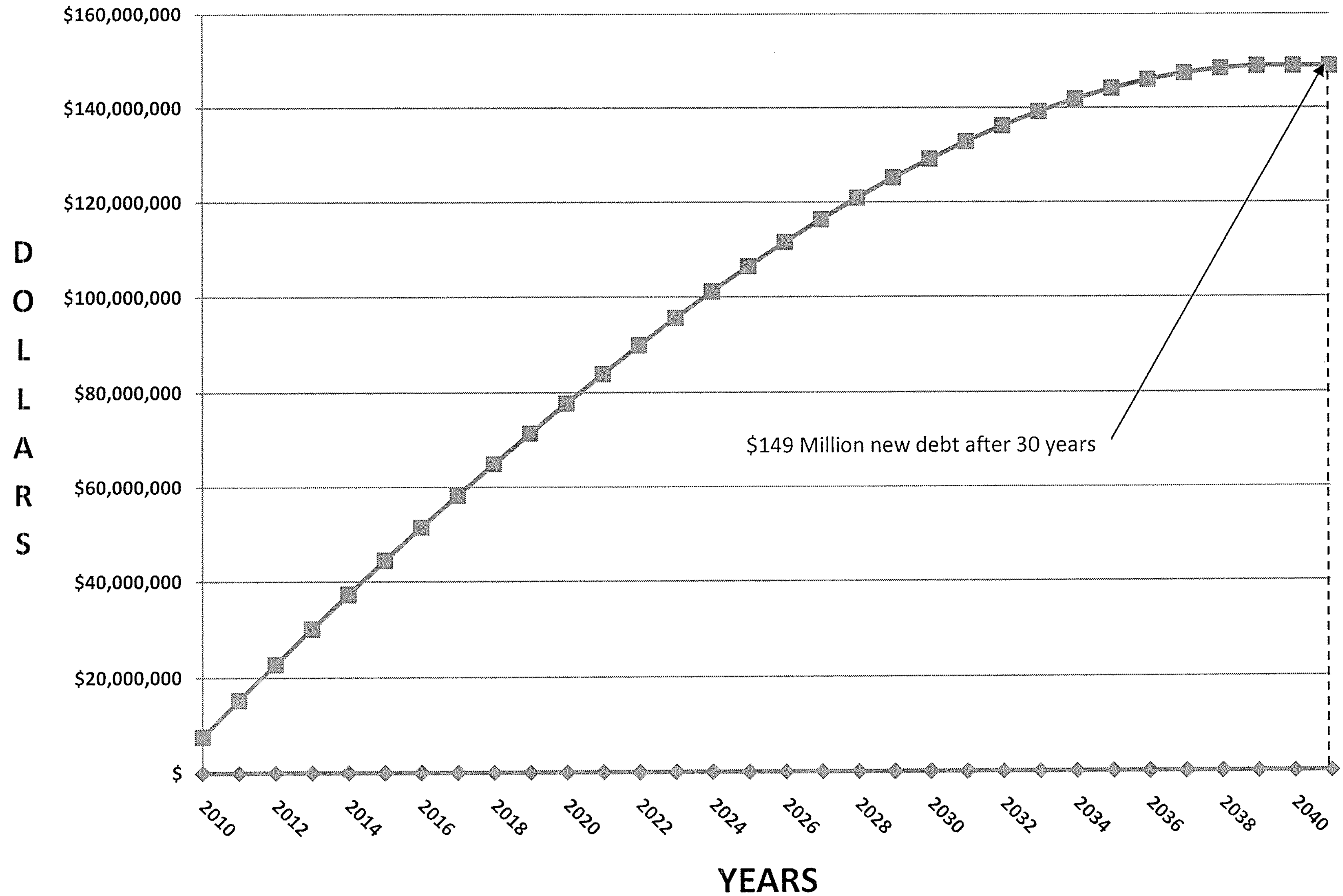


From Financial Model prepared by C. F. Downer

This chart shows the accumulated total debt carried under Nashua ownership over the period 2011 to 2050. When the $160 million acquisition debt is paid off in year 2041 a residual of $60 million Pennichuck long-term debt and the accumulated debt due to annual financing of capital expenses remains.

Exhibit #4

Accumulated Principal Debt for Capital Expenses

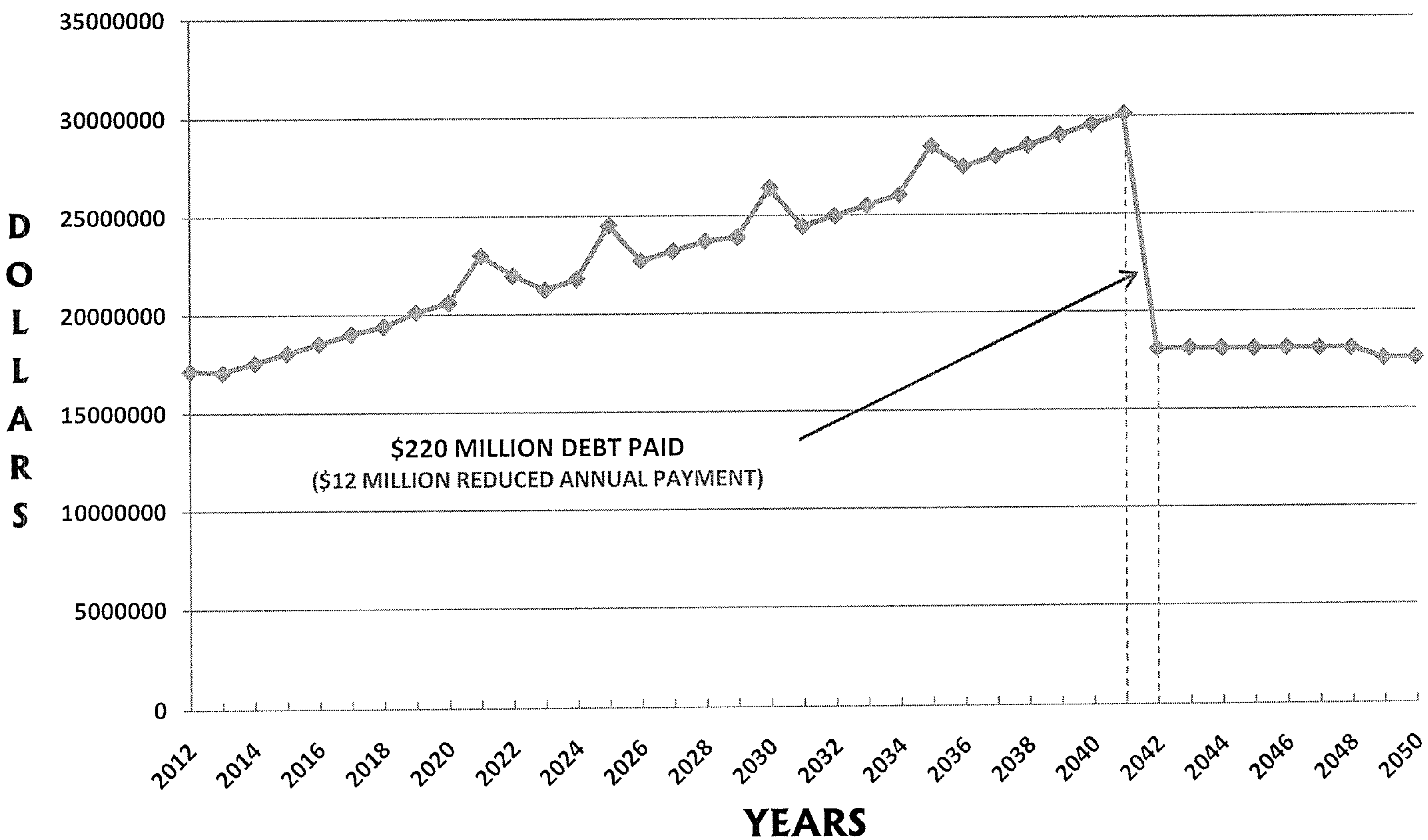


From Financial Model prepared by C. F. Downer

This chart shows the accumulated principal debt due to annually financing $7.7 million for 30 years to finance Capital Expenses

Exhibit #5

Total Debt Service

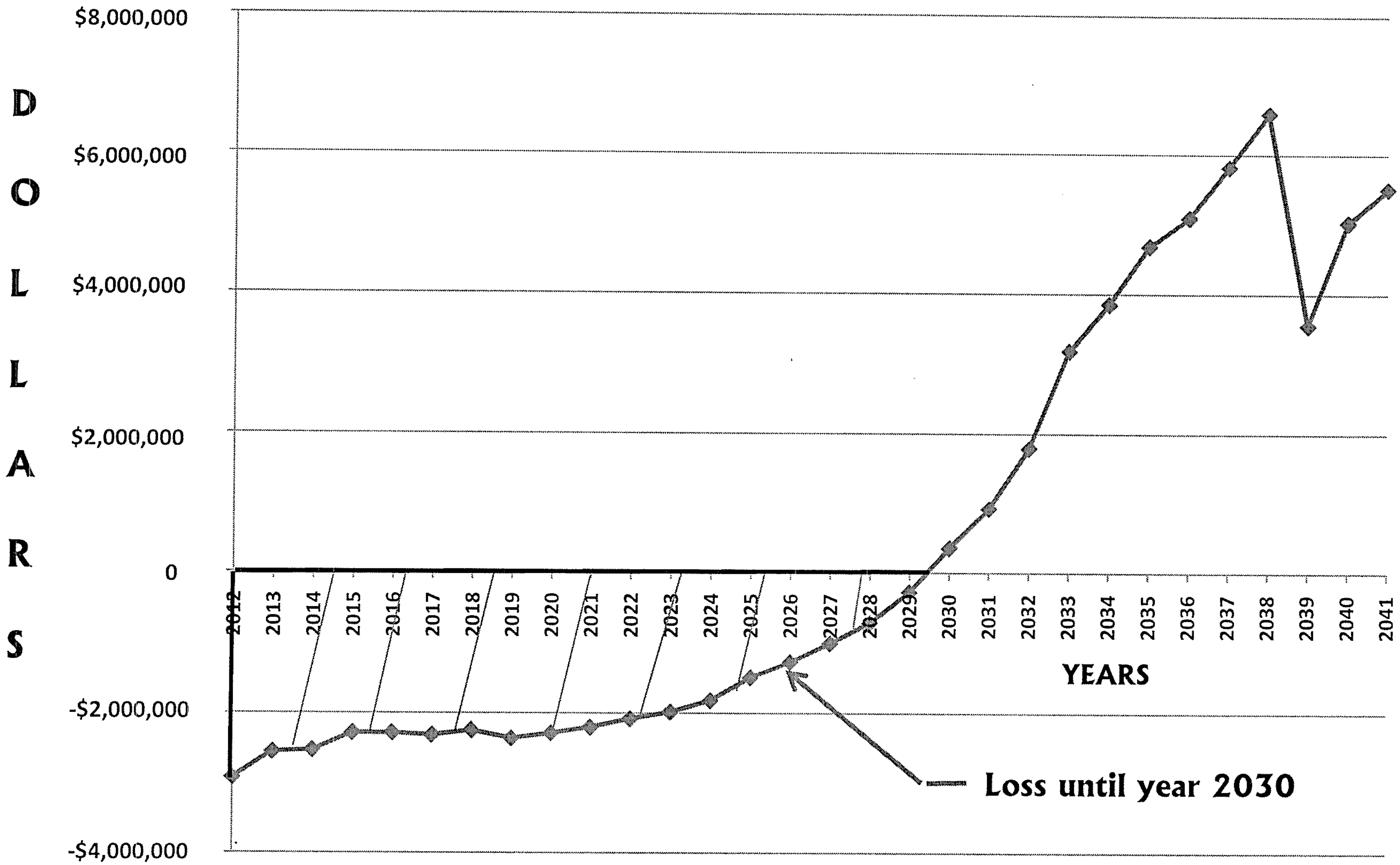


From Financial model Prepared by C. F. Downer

This chart shows total payments, principal + interest over the period 2012-2050. Total payments are reduced by $12 million when the original $220 million debt is paid off in year 2041

Exhibit #6

Earnings



From Financial Model Prepared by C. F. Downer

This chart shows that the taxable corporation operates under a loss for 18 years, thus deferring the need for added revenues those years. This contrives the claim by the consultants that revenues during the initial years under Nashua ownership always remain below Pennichuck ownership