

THE STATE OF NEW HAMPSHIRE



Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

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PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

August 21, 2007

DW 04-048
City of Nashua
RSA 38 Proceeding re Pennichuck Water Works
Nashua Motion for Leave to Substitute Witnesses

To the Parties:

On August 10, 2007, petitioner City of Nashua (City) filed a motion seeking to substitute Stephen Siegfried and Alyson Willans for two of its previously scheduled witnesses, David Ford and Robert Burton. Respondent Pennichuck Water Works (PWW) interposed an objection on August 13, 2007. The purpose of this letter is to memorialize the Commission's decision with respect to this dispute, which arises at the threshold of the upcoming hearings in this matter.

According to the City, Mr. Ford and Mr. Burton were at the time they submitted pre-filed direct testimony employed by Veolia Water North America (Veolia), the contractor the City intends to use to operate the system it seeks to acquire from PWW. The City reports that messrs. Ford and Burton have left employment with Veolia, Mr. Ford joining the Town of Wolfeboro and Mr. Burton working in another state. The motion recites that Mr. Siegfried and Ms. Willans have taken over for Mr. Ford and Mr. Burton at Veolia with respect to the potential PWW acquisition and that, according to established Commission practice, it is appropriate to substitute witnesses and have Mr. Siegfried and Ms. Willans simply adopt the pre-filed testimony of their predecessors.

PWW objects to this proposal on several grounds. According to PWW, Mr. Siegfried and Ms. Willans were involved on behalf of the City in the due diligence process that was part of the settlement discussions that took place during the recent six-month hiatus in the case. PWW contends that the City did not disclose, prior to such involvement by Mr. Siegfried and Ms. Willans, that the two Veolia employees might offer testimony. According to PWW, although Mr. Siegfried and Ms. Willans are precluded from disclosing confidential information they acquired via the due diligence by virtue of a nondisclosure agreement that covered the settlement discussions, because the two putative new witnesses are "[a]rmed with knowledge of the inner workings" of PWW, they "may now be able to anticipate questions or provide responses to lines of inquiry in a way that appears to be more beneficial to Nashua." PWW Objection at 3.

Further, PWW complains that it would be unfair to allow Mr. Siegfried and Ms. Willans to testify because the Company has not had the same opportunity to subject them to discovery that it had with messrs. Ford and Burton. According to PWW, even providing the Company with such an opportunity at this point would be “patently unfair” because it would present “the Hobson’s choice of engaging in such discovery versus focusing on the already monumental task of preparing the rest of the case for trial.” *Id.* at 6.

In light of the circumstances described above, the Commission directs the City to produce Mr. Ford and Mr. Burton as scheduled at hearing for the purpose of adopting their pre-filed testimony and subjecting themselves to cross examination. Assuming compliance with this directive, the Commission will also allow the City to include Mr. Siegfried and Ms. Willans as part of the panel covering the subjects discussed in the prefiled testimony of messrs. Ford and Burton.

The Commission further directs the City to make Mr. Siegfried and Ms. Willans available for deposition by PWW on or before August 31, 2007. Although, as PWW notes, this adds to the task of preparing to resume the impending hearings in this case, in the opinion of the Commission the situation is not as unfair. The scope of these witnesses’ testimony is limited, which likewise circumscribes the need for deposing them.

Finally, the Commission declines to make any ruling at this time with respect to any issues arising out of the participation of Mr. Siegfried and Ms. Willans in the due diligence aspects of the settlement discussions that took place during the stay period. Nothing in the City’s motion suggests that these witnesses plan to testify about information received through such participation. PWW’s expressed concerns are speculative. If PWW has concerns about specific evidence offered by the two new witnesses, it should make objection at hearing and the Commission will rule in due course.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra A. Howland".

Debra A. Howland
Executive Director and Secretary

EDMUND J BOUTIN
BOUTIN ASSOCIATES PLLC
ONE BUTTRICK RD
PO BOX 1107
LONDONDERRY NH 03053

MICHAEL S GIAIMO
BUSINESS & INDUSTRY ASSOC
122 N MAIN ST
CONCORD NH 03301

JOHN M MILLS
ANHEUSER-BUSCH INC
221 DANIEL WEBSTER HWY
MERRIMACK NH 30354

STEVEN V CAMERINO
MCLANE GRAF RAULERSON & MIDD
11 SOUTH MAIN ST STE 500
CONCORD NH 03301

BRYAN K GOULD
BROWN OLSON & GOULD PC
2 DELTA DR STE 301
CONCORD NH 03301

ROBERT A OLSON
BROWN OLSON & GOULD PC
2 DELTA DR STE 301
CONCORD NH 03301-7426

BRENDA CLOUTIER
TOWN OF MERRIMACK
PO BOX 940
MERRIMACK NH 03054

MEREDITH A HATFIELD
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

BARBARA PRESSLY
11 ORCHARD AVE
NASHUA NH 03060

DAVID R CONNELL
CITY OF NASHUA
229 MAIN ST
PO BOX 2019
NASHUA NH 03061-2019

JAY HODES
BOSSIE KELLY HODES BUCKLEY & W
440 HANOVER ST
MANCHESTER NH 03104

JOHN J RATIGAN
DONAHUE TUCKER & CIANDELLA
225 WATER ST
PO BOX 630
EXETER NH 03833-0630

DOM S D'AMBRUOSO
RANSMEIER & SPELLMAN PC
ONE CAPITOL ST
PO BOX 600
CONCORD NH 03302-0600

RORIE HOLLENBERG
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301-2429

JUSTIN C RICHARDSON
UPTON & HATFIELD
159 MIDDLE STREET
PORTSMOUTH NH 03801

TOM DONOVAN
MCLANE GRAF RAULERSON & MIDD
PO BOX 459
PORTSMOUTH NH 03802

STEPHEN J JUDGE
WADLEIGH STARR & PETERS PLLC
95 MARKET ST
MANCHESTER NH 03101

GUY SCAIFE
TOWN OF MILFORD
TOWN HALL
ONE UNION SQ
MILFORD NH 03055-4240

WILLIAM R DRESCHER
DRESCHER & DOKMO
21 EMERSON ROAD
PO BOX 7483
MILFORD NH 03055-7483

SARAH KNOWLTON
MCLANE GRAF RAULERSON & MIDD
100 MARKET ST STE 301
PORTSMOUTH NH 03801

LAURA A SPECTOR
MITCHELL & BATES PA
25 BEACON ST EAST
LACONIA NH 03246

HENRY FULLER
NORTH HAMPTON WATER COMMISSI
86 NORTH RD
NORTH HAMPTON NH 03862

CLAIRE MCHUGH
61 DUBLIN AVE
NASHUA NH 03063-2045

EUGENE F SULLIVAN III
SULLIVANE LAW OFFICE
11 SOUTH ST
CONCORD NH 03301-3719

Docket #: 04-048 Printed: August 21, 2007

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DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429

KEN E TRAUM
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301-2429

ROBERT UPTON II
UPTON & HATFIELD
23 SEAVEY ST
PO BOX 2242
NORTH CONWAY NH 03860

STEVE WILLIAMS
NASHUA REGIONAL PLANNING COMM
115 MAIN ST
PO BOX 847
NASHUA NH 03061

GERALD BERNIER
10 LAMB ROAD
NASHUA NH 03062

DONNA M REGIS
37 SEASONS LANE
LONDONDERRY NH 03053-2963

GREGG BOIKO
10 JEWELL LANE
EAST DERRY NH 03038

GEORGES ROY
16 PATRICIA ST
WINDHAM NH 03087

THOMAS M BOWEN
281 LINCOLN ST
MANCHESTER NH 03103-5093

GEORGE & CLAIRE SEETON
11 MAXWELL DR
DERRY NH 03038

MICHAEL P CHRISISS
78-11 ALLDS ST
NASHUA NH 03060

FRANK G SHEA
17 SANDPIPER LANE
MERRIMACK NH 03054

TIMOTHY FORREST
101 WEST HOLLIS STREET
#1
NASHUA NH 03060

MATTHEW H UPTON
10 CENTRE ST
PO BOX 1090
CONCORD NH 03302

CHARLIE J HUMPHRIES
7 HELEN DR
HOOKSETT NH 03106

EDWARD L YOURTEE
45 SHARON RD
WINDHAM NH 03087

PAUL JOHNSON
44 BROWNING AVE
NASHUA NH 03062

MARY ANNE MAKSALLA
62 PINE ST
HOOKSETT NH 03106

THOMAS MCGREEVY
20 BRINTON DR
NASHUA NH 03064

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INTERESTED PARTIES

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