

McLane

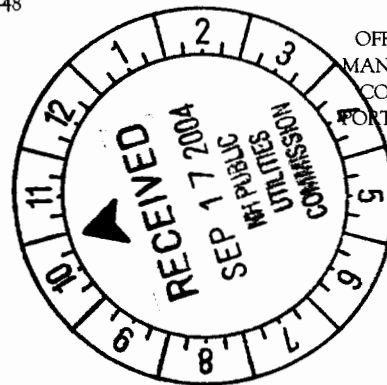
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September 17, 2004



OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

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

Re: DW 04-048; City of Nashua: Taking Of Pennichuck East Utility, Inc.,
Pittsfield Aqueduct Company, Inc. and Pennichuck Water Works, Inc.

Dear Ms. Howland:

I am writing on behalf of Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc. and Pennichuck Water Works, Inc. (the Pennichuck Utilities) in response to Attorney Robert Upton's letter dated September 14, 2004. In his letter, Attorney Upton states for the first time that the City of Nashua "does not believe that the [Pennichuck Utilities'] Motion to Dismiss is ripe for decision. He further claims for the first time that even though "[a]t the hearing before the Commission on July 28, 2004 arguments were made concerning the Motion to Dismiss," the "Motion was not properly before the Commission and neither party has had the opportunity to brief the issues for the Commission."

As the Commission is aware, the Pennichuck Utilities filed their Motion to Dismiss on April 6, 2004, five and a half months ago. The motion set forth in detail the legal basis for dismissing the City's eminent domain petition with regard to Pittsfield Aqueduct Company and Pennichuck East Utility and with regard to those assets of Pennichuck Water Works not necessary to provide service within the City of Nashua. The motion also set forth the basis for dismissing the City's entire case because of the City's unexcused failure to comply with the PUC's rules regarding the filing of testimony, including the City's failure to request or provide a basis for a waiver of applicable Commission rules. On or about April 15, the City filed its response to the Pennichuck Utilities' Motion to Dismiss, setting forth its position on the issues. The City did not file a separate memorandum of law at that time, nor did it request an opportunity to file one or indicate any desire or need to file a memorandum of law at a later date.

On June 10, Attorney Upton wrote to the Commission and requested that the Commission proceed with this case, and on June 22 the Commission issued an Order of Notice convening the parties to, among other things, present arguments to the Commission regarding "whether it is appropriate for the Commission to proceed to consider Nashua's Petition for Valuation." Order of Notice at 4. The City did not file a memorandum of law at that time, nor did it indicate any need or desire to file a memorandum of law at a later date.

On July 28, the Commission held the duly noticed hearing and the parties presented their arguments on the pending Motion to Dismiss. The transcript of the hearing unambiguously reflects that the parties were well aware that the Commission was taking arguments on the motion (although it is worth noting that there was no legal requirement for the Commission to hold a hearing on the issue). For example, Attorney Upton, in addressing the issues identified by the Commission stated:

As the Commission noted, the final question is whether it's appropriate for the Commission to proceed and to consider Nashua's petition. Since the Companies' motion asks you to dismiss or stay, I think the resolution of this question, the determination of whether or not to go forward, probably necessarily resolves in some way a resolution of the motion. So, I'm going to talk about the motion, in addition to--in addition to why we think you should go forward. Transcript at 26.

The record also reflects that the Pennichuck Utilities had an opportunity to argue the issues in the Motion to Dismiss and that, at the conclusion of that argument, counsel for the City had a further opportunity to respond. The City did not file a memorandum of law at that time either, and once again it did not indicate any need or desire to file a memorandum of law at a later date. Since the hearing, almost two months have passed, and now for the first time the City claims that it needs to file additional arguments before the Commission can decide issues that were first submitted five and a half months ago.

The City's eminent domain petition has now been pending against the three Pennichuck Utilities for six months, and the City still has not complied with the Commission's requirement for filing testimony and exhibits. It is apparent that the City's goal is to delay the resolution of this matter by indefinitely delaying the filing of a case that should have been submitted in March, and by attempting to delay any ruling on the Motion to Dismiss that was filed in April. The Pennichuck Utilities believe that the City's continued delay is designed to cause, and is in fact causing, significant harm to the utilities. That delay should not be allowed to continue. No

Debra A. Howland
September 17, 2004
Page 3

further legal arguments are needed to resolve the motion now before the Commission, and no further legal maneuvering or delays should be tolerated.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven V. Camerino". The signature is fluid and cursive, with a prominent initial "S" and a long horizontal stroke at the end.

Steven V. Camerino

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FILING INSTRUCTIONS:

WITH THE EXCEPTION OF DISCOVERY (SEE NEXT PAGE) FILE 1 ORIGINAL & COVER LETTER, PLUS 8 COPIES (INCLUDING COVER LETTER) TO:

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