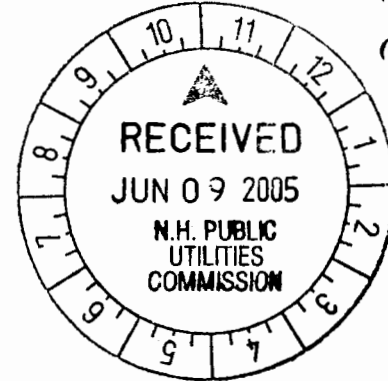


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June 7, 2005



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

Re: Petition to Determine the Fair Market Value of Pennichuck Water Works (PWW) by City of Nashua, New Hampshire; Docket ## DW 04-048

Dear Executive Director Howland and Members of the Commission:

In accordance with *Puc 202.07 (a)(1)*, enclosed please find an original and eight (8) copies of our *Objection to Pennichuck's Motion to Compel the Town of Amherst to Respond to Data Requests* which was filed by counsel for the Pennichuck Corporation.

Additionally, pursuant to *Puc 202.07 (a)(2)*, and *Puc 202.08 (a) & (b)*, please find a computer diskette containing the within documents which are being submitted electronically, all of which are provided in *MS Word* format.

I certify that a copy of the within as well as a copy of this letter have been mailed to all parties on the attached service list and the consumer advocate in accordance with *Puc 202.07 (a)(3) & (4)*, as well as by email to all parties on the attached service list.

Very truly yours,


William R. Drescher

WRD:bd
Enclosures

cc: Town of Amherst
Service List

gcnoff-77
a:\asnashua\pwwpuc.lr.wpd
June 7, 2005

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 04-048
City of Nashua
Taking of Pennichuck Water Works, Inc.

**TOWN OF AMHERST'S OBJECTION TO PENNICHUCK CORPORATION'S
MOTION TO COMPEL THE TOWN OF AMHERST TO ANSWER DATA REQUESTS**

NOW COMES the *Town of Amherst*, ("Town"), by and through its attorneys, Drescher & Dokmo, PA, and objects to the Data Requests propounded by Pennichuck Corporation ("Pennichuck") on the Town. In support of this Objection, the following is submitted:

1. The City of Nashua has filed a Petition for Valuation pursuant to RSA 38 for a determination of the fair market value of the plant and property of Pennichuck Water Works.
2. The Town has filed no similar Petition.
3. The Town moved to intervene on the basis that Pennichuck provided water to a number of Amherst citizens and, therefore, the Town had a real interest in the outcome of the matter.
4. Said request was granted.
5. A technical session was held at which the parties agreed to a schedule concerning the timing of various elements of the presentation of the case which included the agreement that supporting parties were required to file testimony on public interest by April 22, 2005. Order No. 24,457.
6. The Town filed no testimony and it was generally understood at the session that a decision to file no testimony on the appointed date, while precluding the presentation of evidentiary testimony, would, correspondingly relieve intervenors or others failing to avail themselves of the testimony filing date, of the necessity to be burdened by the formal discovery process.
7. The parties were authorized to file Data Requests on supporting parties, i.e. those parties who filed testimony on April 22, 2005.

8. Pennichuck has served Data Requests on supporting parties who filed testimony, but has also served Data Requests on the Town.
9. Pursuant to PUC 204.04(a), Data Requests are confined to evaluating a “petition, application or testimony.”
10. The Town has filed no petition, application, or testimony.
11. Upon information and belief, the longstanding practice before the Commission is that Data Requests are only served on a party who has filed a petition, application, or testimony as well as the manner understood to be the discovery format for the within proceedings as determined by the parties.
12. This understanding is supported by the objection of the Office of the Consumer Advocate, (OCA), which registered its opposition to Pennichuck’s motion by email dated June 2, 2005, when it indicated that ‘... *The OCA opposes the PWW Motion to compel answers to data requests that PWW submitted to parties not filing testimony on public interest. ...*’. (*Emphasis supplied*).
13. None of the authorities cited by Pennichuck in its motion to compel is contrary to the established practice before the Commission as noted above.
14. In reliance on PUC 204.04, the longstanding practice of the Commission, and the clear understanding of the parties that participated at the above referenced technical session to the effect that data requests would not be propounded to those that did not file testimony on the issue of public interest by the date indicated, the Town elected not to file testimony in this proceeding.
15. While the Town is mindful of the fact that any party with relevant information may be compelled to produce the same through the discovery process, the common and favored practice

would require a party seeking discovery from one who was outside the scope of the immediate adversaries in the proceeding to make a preliminary showing that the discovery was directed to the disclosure of relevant information that would be of assistance to the trier of fact, as opposed to simply conducting a 'fishing expedition' to discourage participation in the matter.


16. Indeed, the Commission itself has recognized that not **every** request for discovery is one which is permissible and that it is occasionally appropriate to consider such requests with a view toward determining '**... whether the information sought was relevant or material to the extent that it outweighed the burden imposed on the respondent, ...**'. weighed against the '**... burden imposed on the respondent ...**'. (*In Re Public Service Company of New Hampshire, 69 NHPUC 690, (1984)*).
17. We submit that given the nature of the questions and the Town's limited role in this proceeding, the likelihood of a response to the questions actually generating any relevant evidence is greatly outweighed by the corresponding burden on the Town of being compelled to respond to the requests.
18. Indeed, the questions presented appear, for the most part, to seek information well beyond the purview and control of the Town as well as being clearly available from other parties that have submitted testimony on the issue of the public interest.
19. As such, the Town submits that the motion to compel should be denied, at least until Pennichuck has presented some showing that there is some likelihood that pertinent or relevant evidence could be derived therefrom.
20. Alternatively, if it is determined that Pennichuck is authorized to file Data Requests on the Town, then the Town respectfully requests that the Commission amend the procedural schedule to allow the submission of testimony by the Town as a supporting party.

WHEREFORE, the Town respectfully requests that the Commission schedule a hearing on said motion, allowing the undersigned an opportunity to argue the within objection and, following the same:

- A. Deny the motion filed by Pennichuck asking for an order to compel the Town of Amherst to respond to data requests; or,
- B. Prior to considering granting the same, that the Commission require, at a minimum, that Pennichuck demonstrate the manner in which the information being sought is likely to give rise to any evidence that would be relevant or material to the Commission in these proceedings; or,
- C. Alternatively, if said motion is granted, to allow the Town of Amherst an opportunity to file testimony on the issue of public interest; and,
- D. For such other and further relief as the Commission deems just.

Respectfully submitted,
Town of Amherst
By and Through its Attorneys,
Drescher & Dokmo, PA

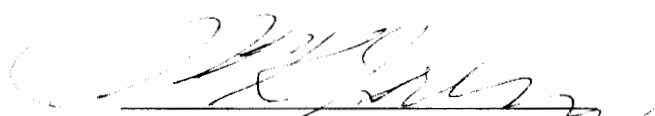
Dated: June 7, 2005

By: 
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CERTIFICATION

I hereby certify that a copy of the foregoing has been forwarded this day to all parties on the Commission's service list.

Date: June 7, 2005


William R. Drescher, Esq.

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June 7, 2005

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Docket #: 04-048-1 Printed: June 07, 2005

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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Docket #: 04-048-1

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