

McLane

McLane, Graf,
Raulerson &
Middleton

Professional Association

FIFTEEN NORTH MAIN STREET • CONCORD, NH 03301-4945
TELEPHONE (603) 226-0400 • FACSIMILE (603) 230-4448

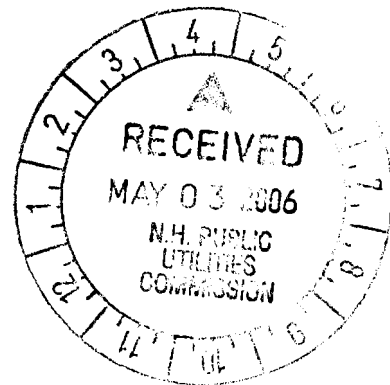
SARAH B. KNOWLTON
(603) 334-6928
sarah.knowlton@mcclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

May 3, 2006

By Hand Delivery

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



Re: DW 04-048; City of Nashua—Taking of Pennichuck Water Works, Inc.

Dear Ms. Howland:

Enclosed for filing with the Commission are an original and eight copies of Pennichuck Water Works, Inc. and Pennichuck Corporation's Objection to City of Nashua's Request for Issuance of Subpoenas. I have e-mailed electronic copies of the Objection to Ann Guinard, as well as served the parties this same day by e-mail and first class mail.

Thank you for your assistance with this matter. Please call me with any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Sarah B. Knowlton".

Sarah B. Knowlton

Enclosures

cc: Service List
Hannah McCarthy, CEO and President

NHPUC MAY03'06 PM 4:07

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

City of Nashua: Taking Of Pennichuck Water Works, Inc.

Docket No. DW 04-048

**PENNICHUCK WATER WORKS, INC. AND PENNICHUCK CORPORATION'S
OBJECTION TO CITY OF NASHUA'S REQUEST FOR ISSUANCE OF SUBPOENAS**

Pennichuck Water Works, Inc. and Pennichuck Corporation (collectively, "Pennichuck") object to the City of Nashua's ("Nashua") Request for Issuance of Subpoenas (the "Subpoena Request"). In support of this objection, Pennichuck states as follows:

1. In its Subpoena Request, Nashua asks that the Commission subpoena for deposition 14 individuals based on a process established by Commission Order 24,486 issued last July. In an inflammatory pleading, Nashua alleges that Pennichuck has acted unreasonably by refusing to produce these witnesses for deposition, when all Pennichuck seeks to do is to adhere to the schedule established by the Commission, and agreed to by Nashua, over a year ago. *See* Order No. 24,457 dated April 22, 2005, establishing procedural schedule. Nashua's Subpoena Request is yet one more effort to remake the procedural schedule in this case.

2. In order to understand the full import of Nashua's Subpoena Request, one must consider the history of the procedural schedule in this docket. On March 24, 2004, Nashua began this case by filing its Petition for Valuation Pursuant to RSA 38:9 without filing any testimony as required by N.H. Code of Admin. Rules Puc 202.11(a) and 204.01(b). Despite "... agree[ing] that Nashua has not filed testimony as required by Puc 202.11(a) and 204.01(b)" the Commission granted Nashua a reprieve and "require[d] Nashua to file testimony on its technical, financial and managerial capability to operate the public utilities as requested and how the public

interest would be served by the taking." Order 24,379 at 11. The Commission set a deadline of November 22, 2004 for Nashua to submit its case on those issues.

3. In April 2005, Nashua consented to a procedural schedule that mapped out in great detail the timing for making various discovery requests and filing certain pleadings with the Commission. *See* Order 24,457. This procedural schedule expressly provided for public interest depositions, which were to occur by August 29, 2005, and for valuation depositions by April 7, 2006. *Id.* Shortly after that schedule was agreed to by Nashua and approved by the Commission, the parties convened *again* to consider depositions – this time to consider how they would be conducted, as opposed to when (since that was already taken care of). Pennichuck drafted a Motion to Establish Procedure for Depositions which created the process for depositions, and Nashua consented to this Motion. The Commission approved the Motion in Order 24,486, which ironically is the Order upon which Nashua relies to support its Subpoena Request. Order 24,486 could not be more clear that the timing of depositions had already been resolved. It states on the very first page that:

The issue addressed in this order is the establishment of a procedure for the taking of depositions. Order No. 24,457 approving the procedural schedule for this docket provides that depositions on technical, financial, and managerial capabilities and public interest issues be completed by August 29, 2005, and depositions on valuation issues by completed by April 7, 2006.

Order 24,486 at p. 1 (emphasis added).¹

4. For Nashua to now raise this issue eight months after the date in question has passed is dilatory at best. Further, to claim that that the schedule contained a mistake or is being unfairly interpreted is not convincing, when one considers that over the past year, the schedule has been revisited at least five times. *See* June 24, 2005 Secretarial letter amending procedural

¹ This April 7, 2006 date for "depositions on valuation issues to be completed" was subsequently extended by agreement of the parties to July 6, 2006. *See* Secretarial Letter dated January 11, 2006.

schedule; September 20, 2005 Joint Motion to Extend Schedule; October 3, 2005 Secretarial Letter approving change to procedural schedule; December 15, 2005 Objection by Nashua to Extend Procedural Schedule, and; January 11, 2006 Secretarial Letter amending procedural schedule. Nashua has had more than enough chances to consider the schedule and whether it accommodated its needs for depositions. The Commission should not accommodate Nashua's late request.

5. Moreover, Nashua's argument that it could not have known that it would want to take the depositions of Pennichuck's then President (Donald Correll), Chief Engineer (Donald Ware), Chief Financial Officer (William Patterson), and its Rates and Regulatory Vice President (Bonalyne Hartley) is hardly credible. These individuals are well known to Nashua through this docket. In fact, on June 10, 2005, each of these individuals was a witness who answered some of Nashua's first set of data responses in this case. Why did Nashua wait nine months to ask for their depositions?

6. In a further attempt to do an end run around the schedule, Nashua's Subpoena Request classifies potential witnesses as valuation related in order to fall within the existing time parameters of the schedule (valuation depositions are not scheduled to be completed until July 6, 2006), when Nashua had previously designated these as public interest witnesses. For example, Nashua's Subpoena Request classifies William Patterson, Maurice Arel, and Chuck Staab as valuation witnesses, when on March 29, 2006, Nashua designated these individuals as public interest witnesses. *See* March 29, 2006 email from Robert Upton to Thomas Donovan, attached as Exhibit A. It was only after receiving Pennichuck counsel's April 7, 2006 letter pointing out that the time for public interest depositions had long expired did Nashua recharacterize the nature of their testimony.

7. Nashua would have the Commission believe that Pennichuck's refusal to grant these late depositions is nothing more than a game of "procedural gotcha" when in fact granting Nashua's request will result in real prejudice to Pennichuck. Presumably Nashua seeks these depositions to use in its May 22, 2006 reply testimony. However, even under the most cooperative circumstances, it would be virtually impossible to schedule and take 14 depositions within the next two weeks. Thus, if Nashua's request for depositions is granted, it is highly likely that Nashua will then seek a further extension of the procedural schedule. This case, which has been already been pending two years, must be concluded soon. To do otherwise would cause real harm to Pennichuck's employees, customers and shareholders, who have suffered under this threat of condemnation for too long.

8. Notwithstanding the fact the Nashua is not entitled to these depositions at this point, Pennichuck has attempted and will continue to attempt to contact Nashua and voluntarily allow Nashua to take certain of the depositions requested, even though they were originally designated as public interest depositions. However, Pennichuck will not assent to any further change to the procedural schedule.

9. For these reasons, the Commission should deny Nashua's Subpoena Request and should refuse any effort by Nashua to further change the procedural schedule in this docket.

WHEREFORE, Pennichuck respectfully requests that the Commission:

- A. Deny Nashua's Subpoena Request; and
- B. Grant such other and further relief as the Commission deems necessary and just.


Respectfully submitted,

Pennichuck Water Works, Inc.
Pennichuck Corporation

By Their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: May 3, 2006

By: 

Thomas J. Donovan
Steven V. Camerino
Sarah B. Knowlton
Bicentennial Square
Fifteen North Main Street
Concord, NH 03301
Telephone (603) 226-0400

Joe A. Conner, Esquire
Baker Donelson Bearman
Caldwell & Berkowitz, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450

Certificate of Service

I hereby certify that on this 3rd day of May, 2006, a copy of this Objection to Nashua's Request for Issuance of Subpoenas has been forwarded to the parties listed on the Commission's service list in this docket.



Sarah B. Knowlton

Exhibit A

-----Original Message-----

From: Rob Upton [mailto:rupton@Upton-Hatfield.com]

Sent: Wednesday, March 29, 2006 1:35 PM

To: DONOVAN TOM

Subject: Depositions

Tom

Attached is a list of the depositions I will most likely want to take. Because they are not from NH I suggest we start with the valuation and rate witnesses. I would like to do Reilly first in early May and follow with Walker and Reithmiller. Gustella apparently has more work to do and I would rather wait until he has completed everything. Everyone else is pretty local and we can fit them in along the way. Rob

DEPOSITIONS OF PWW WITNESSES

Valuation

Robert Reilly

Richard Reithmiller

Harold Walker

Revenue Requirements (Rates)

John Guastella

Public Interest

Bonnie Hartley

Don Ware

Union President

William Patterson

Steve Densberger

Moe Arel

Chuck Staub

John Joyner

R. Kelly Myers

Greg Clukey

Jack Heath

Eileen Pannetier

Doug Patch

Donald Correll