

**Please respond to the North Conway office**

March 17, 2005

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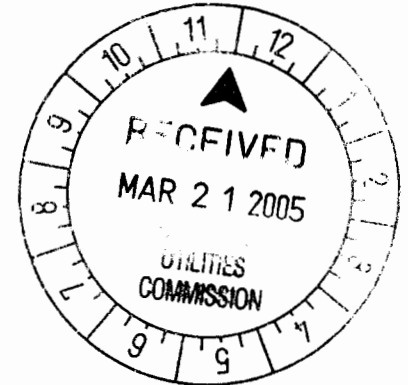
Re: Docket DW 04-048  
Petition of the City of Nashua

Dear Ms. Howland:

This letter is in response to the objection to the Memorandum of the City of Nashua regarding bifurcation and other procedural issues filed by Pennichuck Water Works Inc. (PWW).

PWW, as it is wont to do, in its pleadings and the various litigated matters between the parties and in its public pronouncements, accuses Nashua of having an “ulterior motive” to obtain a valuation determination from the Commission that has been “laid bare” by its request for bifurcation. The issue is not whether Nashua’s motives are “ulterior” or have been “laid bare” but whether the proposed bifurcation is consistent with the statutory scheme laid out by RSA 38. Nashua believes that its proposal is consistent with RSA 38 and will expedite resolution of the issues in this case. PWW’s arguments notwithstanding, the simplest approach to resolving this case is to value PWW’s assets as a whole. As set forth in Nashua’s Memorandum, determining value first will make the rate analysis necessary for the public interest determination more meaningful. If the Commission later determines that RSA 38 does not allow the taking of a portion of those assets, their value can be determined based upon the value of PWW’s property as a whole.

While PWW urges the Commission to “require a process that is consistent with New Hampshire’s general eminent domain statute, RSA 498-A”, it ignores the fact that the legislature could have done so but did not. In fact in RSA 498-A:3 it is clear that proceedings under RSA 498-A and RSA 38 are separate and distinct. Moreover, RSA 498-A proceedings bear little resemblance to RSA 38 and should not be applied in this case. For example RSA 498 proceedings do not



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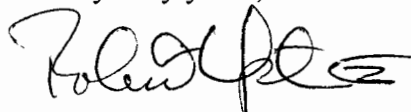
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involve issues related to rates or services, stranded customers or other matters the Commission may address and follow a determination of public interest by the condemner. PWW has made similar arguments in its Petition for Declaratory Judgment against the City, which have been rejected by the Superior Court in Pennichuck Corp., et al v. City of Nashua, Superior Court, Hillsborough South 04-E-0062, Order Denying Motion for Preliminary Injunction dated June 7, 2004 and Order granting the City's Motion for Summary Judgment dated August 31, 2004.

PWW repeatedly accuses Nashua of seeking to delay a determination of the public interest. This is far from the case. Nashua's Memorandum addressed only PWW's argument that it could not obtain discovery or file testimony supplementing its prefiled testimony, as is common practice in response to testimony filed by other parties. PWW's argument that it can file testimony on the public interest without any discovery or opportunity for rebuttal by Nashua is inconsistent with Commission practice and due process and should be rejected.

Given the positions taken by PWW in its filings with the Commission on the procedural schedule, Nashua believes that it is unlikely there can be agreement at the April 8, 2005 technical session that the Commission has scheduled. It concurs with PWW's request contained in its March 8, 2005 letter that the Commission notify the parties that it will be prepared to take oral arguments on April 8 concerning procedural issues and the procedural schedule.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Upton", with a stylized flourish at the end.

Robert Upton, II

RUII/dgg  
Enclosure

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**FILING INSTRUCTIONS:**

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