

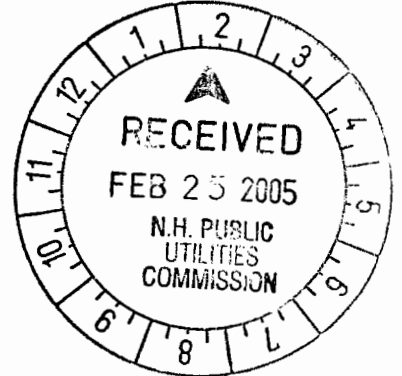
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February 24, 2005

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Executive Director and Secretary
Public Utilities Commission
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Re: Docket DW 04-048
City of Nashua – Pennichuck Water Works, Inc.

Of Counsel
Frederic K. Upton

Dear Ms. Howland:

I enclose for filing, herewith, an original and 8 copies, along with an electronic copy on a computer disk in word format, of Objection to Motion for Reconsideration by City of Nashua.

A copy of this letter and the above Objection to Motion for Reconsideration has been mailed to all persons on the attached service list.

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Very truly yours,

Robert Upton, II

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Docket #: 04-048-1 Printed: February 24, 2005

FILING INSTRUCTIONS:

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

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
DETERMINATION OF THE
FAIR MARKET VALUE OF
THE PLANT AND PROPERTY
OF PENNICHUCK WATER
WORKS, INC., PENNICHUCK
EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT
COMPANY, INC.

DOCKET NO. DW 04-048

OBJECTION TO MOTION FOR RECONSIDERATION BY CITY OF NASHUA

The City of Nashua objects to the Motion For Reconsideration and/or Rehearing of Order No. 24,425 filed by Pennichuck Water Works, Inc. ("PWW"). In support of its objection, Nashua says as follows:

1. The Motion presents no new arguments and is simply a rehash of PWW's Memorandum of Law on the scope of RSA Chapter 38 dated October 25, 2004.
2. The Motion ignores the plain language of RSA 38:6, which permits a municipality to "purchase all or such portion of the utility's plant and property located within such municipality that the governing body determines to be necessary for the municipal utility service, **and shall purchase that portion, if any, lying without the municipality, which the public interest may require . . .**" (emphasis supplied).

3. The Motion by PWW is a thinly disguised attempt to have the Commission rewrite the clear and unambiguous language of RSA 38:6, which mandates such a purchase when in the public interest.
4. The public interest standard delegated to the Commission by the Legislature and discussed at Nashua's Memorandum dated October 21, 2004 at pages 3-9, although not statutorily defined, has been applied by the Commission in numerous dockets and is not foreign to it. In Petition for Valuation of J. Brodie Smith Hydro Electric Station, DE-00-211, Order No. 24,086 (November 15, 2002), the Commission in applying the standard, concluded that acquisition of Smith station was in the interest of the City of Berlin and its residents and asked whether there was some larger public harm sufficient to rebut the RSA 38:3 presumption. The standard is also not foreign to PWW's attorneys, who on behalf of the Town of Ashland in a RSA 38 proceeding, argued that the public interest determination was the same "no net harm" standard the Commission uses in evaluating proposed utility mergers. Town of Ashland Petition for Valuation Pursuant to RSA 38, DE-03-155, Order No. 24,214 (September 25 2003).
5. Any suggestion by PWW that the language of RSA 38:6 is ambiguous and that the nature of the public interest determination is uncertain, are unsupported, conclusory allegations entitled to no consideration by the Commission.
6. PWW's Motion ignores the provisions of RSA 38:11, which permits the Commission to set conditions and issue orders to satisfy the public interest.

The Commission was granted broad authority to ensure that a municipal acquisition of utility property both, within and without the municipality would be fair to all of the competing interests. The Commission could conclude under RSA 38:11 that with conditions the public interest requires the acquisition of the unconnected water systems in Bedford, East Derry, Epping, Milford, New Market, Plaistow and Salem. Similarly, if it is not within the public interest for Nashua to acquire the unconnected water systems, the Commission, after proper notice and hearing, can make that determination. In either event the determination of whether it is in the public interest to allow Nashua to take any or all of PWW's assets is a factual determination for the Commission to make after a hearing.

7. Notwithstanding the fact that none of the municipalities in which PWW owns plant and property other than Nashua have voted to acquire such plant and property under RSA 38, Amherst and Bedford have joined the Regional Water District to which Nashua expects to convey the property it acquires; and Amherst, Milford, Hollis and Bedford all voted to enter into a joint agreement with other municipalities to establish the Regional Water District in anticipation of acquiring the assets of Pennichuck Corporation. The other municipalities with PWW plant and property have taken no position on the acquisition by Nashua.
8. Balke v. City of Manchester, 150 N.H. 69 (2003) cited by PWW is inapposite. Balke involved interpretation of the statutory scheme involving fluoridation of municipal water systems. The court concluded that that statutory scheme

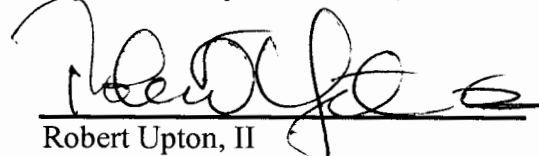
required all towns which were served by the water supply to be fluoridated to approve the action. The statutory scheme of RSA 38 is totally different and clearly and unambiguously calls upon the Commission to determine whether the public interest requires Nashua to purchase that portion of PWW's property lying outside Nashua.

WHEREFORE, the City of Nashua respectfully:

- a. Objects to the Motion for Reconsideration and urges the Commission to deny it; and
- b. Requests the Commission to grant such other and further relief as justice may require.

Respectfully submitted,

CITY OF NASHUA
Upton & Hatfield, LLP
By its attorneys:



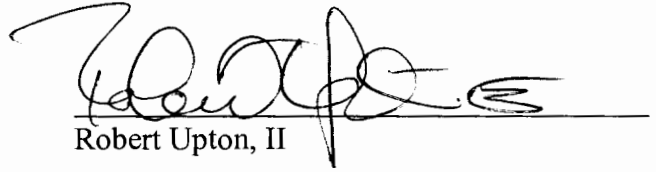
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Dated: February 22, 2005

David Connell, Esquire
Corporation Counsel
229 Main Street
Nashua, New Hampshire 03061-
2019

CERTIFICATION

I hereby certify that a copy of the foregoing Objection to Motion for Reconsideration and/or Rehearing of Order No. 24,425 was this day forwarded to all persons on the attached Service List.



Robert Upton, II