

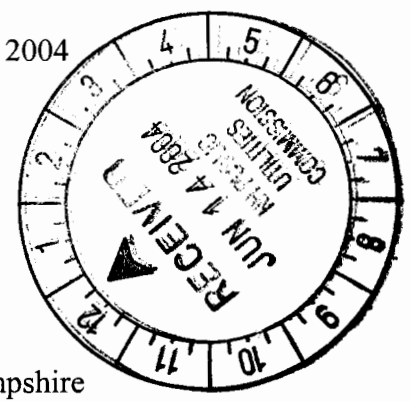


**Upton
& Hatfield** ^{LLP}
ATTORNEYS AT LAW

Concord Office
10 Centre Street
PO Box 1090
Concord, NH
03302-1090
603-224-7791
1-800-640-7790
Fax 603-224-0320

Please respond to the North Conway office

June 10, 2004



Attorneys At Law
Robert Upton, II
Gary B. Richardson
John F. Teague
Russell F. Hilliard
James F. Raymond
Barton L. Mayer
Charles W. Grau
Bridget C. Ferns
David P. Slawsky
Heather M. Burns
Lauren Simon Irwin
Joyce E. Smithey

Debra A. Howland
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

Re: DW 04-048 City of Nashua, New Hampshire
Petition To Determine The Fair Market Value Of
Pennichuck Water Works, et al

Of Counsel
Frederic K. Upton

Dear Ms. Howland:

Hillsborough Office
8 School Street
PO Box 13
Hillsborough, NH
03244
603-464-5578
1-800-640-7790
Fax 603-464-3269

By letter dated May 3, 2004 you advised, on behalf of the Commission, that it had determined to defer issuance of an Order of Notice to allow the Superior Court to act on the motion of Pennichuck Water Works, et al, to enjoin Nashua from pursuing its Petition For Valuation. I enclose a copy of June 7, 2004 Order of the Hillsborough County Superior Court denying the Motion For Preliminary Injunction. It is significant that on page 3 of the Order, the Court ruled that "The PUC has jurisdiction under RSA 38:9-I to determine the price of the assets sought to be taken, as well as whether the public interest requires the municipality to purchase assets lying outside the municipality". It is also significant that the Court found that "the PUC proceedings constitute an adequate alternate remedy". The clear intent of the Order is that the City's Petition to the Commission will proceed.

Attorneys At Law
Douglas S. Hatfield
Margaret-Ann Moran
Thomas T. Barry*
Matthew H. Upton
*Also Admitted In Virginia

North Conway Office
23 Seavey Street
PO Box 2242
North Conway, NH
03860
603-356-3332
Fax 603-356-3932

In light of the Order, the City respectfully requests the Commission to issue an Order of Notice and proceed with the opening of this docket.

Very truly yours,

Robert Upton, II

www.upton-hatfield.com
mail@upton-hatfield.com

RUII/dgg
Enclosure
Cc: Service List
F. Ann Ross, Esq.

PUC Service list

Debra A. Howland
Executive Director and Secretary
Public Utilities Commission
8 Old Suncook Road
Concord, New Hampshire 03301-7319

orig. & 8

F. Anne Ross, Esquire
Office of Consumer Advocate
117 Manchester Street
Concord, New Hampshire 03301

Steven V. Camerino, Esquire
McLane, Graf, Raulerson & Middleton
15 N Main Street
Concord, New Hampshire 03301

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

Katherine E. Chambers
Town of Milford
One Union Square
Milford, NH 03055

Marcia Thunberg
NH Public Utilities Commission
8 Old Suncook Rd.
Concord, NH 03301

Matthew H. Upton
Upton & Hatfield, LLP
10 Centre St
PO Box 1090
Concord, NH 03302

Robert Upton
Upton & Hatfield, LLP
23 Seavey Street
PO Box 2242
North Conway, NH 03860

William R. Drescher
Drescher & Dokmo
21 Emerson Road
PO Box 7483
Milford, NH 03055-7483

Librarian
NHPUC
8 Old Suncook Road
Concord, NH 03301-7319

Mark Naylor
NHPUC
8 Old Suncook Road
Concord, NH 03301-7319

Amanda Noonan
Consumer Affairs Director
NHPUC
8 Old Suncook Road
Concord, NH 03301-7319

**THE STATE OF NEW HAMPSHIRE
Southern District of Hillsborough County**

30 Spring Street
P. O. Box 2072
Nashua, NH 03061 2072
603 883-6461

NOTICE OF DECISION

DAVID R CONNELL ESQ
229 MAIN STREET
PO BOX 2019
NASHUA NH 03061

04-E-0062 Pennichuck Corporation, et al v. City of Nashua

Enclosed please find a copy of the Court's Order dated 6/07/2004 relative to:

Other

06/08/2004

Marshall A. Buttrick
Clerk of Court

cc: Thomas J Donovan Esq
Robert Upton II Esq

THE STATE OF NEW HAMPSHIRE**HILLSBOROUGH, SS.
SOUTHERN DISTRICT****SUPERIOR COURT
No. 04-E-0062**

Pennichuck Corporations, Pennichuck Water Works, Inc.,
Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc.

v.

City of Nashua

ORDER

This matter came before the Court for a hearing on petitioners' Motion for A Preliminary Injunction. For the reasons set forth herein, the Motion for Preliminary Injunction is DENIED.

Petitioners Pennichuck Corporations owns five subsidiaries, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc., Pennichuck Water Service Corporation, and The South wood Corporation. Pennichuck Water Works, Inc., Pennichuck East Utility, Inc. and Pittsfield Aqueduct Company, Inc. are public utilities and are regulated by the New Hampshire Public Utilities Commission (The PUC). The Pennichuck Corporation, through its regulated Public Utilities, provides water services directly to over 29,000 customers in Nashua, Amherst, Hollis, Merrimack, Milford, Bedford, Derry, Epping, Newmarket, Pittsfield, Plaistow, Salem, Atkinson, Hooksett, Litchfield, Londonderry, Pelham, Raymond, Sandborn and Windham. Pennichuck Water Works has provided water service to Nashua for over 150 years.

On April 29, 2002, Pennichuck entered into an agreement and Plan of Merger with Philadelphia Suburban Corporation, by which Pennichuck was to become a wholly owned

subsidiary of Philadelphia Suburban. On July 14, 2002, Pennichuck filed a Petition with the PUC seeking approval of the merger. Nashua intervened in the proceeding on July 12, 2002, objecting to the merger. On November 26, 2002, the Nashua Board of Aldermen adopted a restriction calling for a referendum to be held on January 14, 2003, to ascertain whether the voters would authorize the City to acquire all or a portion of the water works system then "serving the inhabitants of Nashua and others." The referendum passed by a vote of 6,525 to 1,870. The merger agreement between Philadelphia Suburban and Pennichuck was terminated on February 4, 2003.

On February 5, 2003, Nashua provided written notification to Pennichuck of the results of the referendum, and inquired whether each subsidiary was willing to sell to Nashua its assets used to provide water service to the inhabitants of Nashua and others. On March 25, 2003, Pennichuck informed Nashua that it declined to sell any assets to Nashua. Nashua immediately advised Pennichuck that it would proceed under RSA 38:10 to petition the PUC in order to complete the proposed acquisition. Occasional meetings were held between the parties, and Nashua made public its intent to purchase Pennichuck. On March 25, 2003, Nashua petitioned the PUC to initiate condemnation proceedings to acquire all assets of Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc.

Pennichuck seeks a preliminary injunction against the City of Nashua enjoining it from pursuing the PUC petition to take the assets of Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc. on the grounds that it


is seeking to take assets not necessary to provide water service within the City of Nashua, and therefore not permitted under RSA 38.

In order for a preliminary injunction to issue, the petitioner must establish that it will suffer irreparable harm, that it has no adequate remedy at law, and that it is probable that the petitioner will succeed on the merits. *Unifirst Corp. v. City of Nashua* 130 N.H. 11. The matter is presently before the Public Utilities Commission, an agency which is uniquely qualified to make such a determination. The PUC has jurisdiction under RSA 38:9-I to determine the price of the assets sought to be taken, as well as whether the public interest requires the municipality to purchase assets lying outside the municipality.

The court does not find that it is probable that the petitioner will prevail on the merits. It further finds that the PUC proceedings constitute an adequate alternate remedy. The Court also finds that the petitioner will not suffer irreparable harm if the preliminary injunction is not granted. Any delay in resolving this matter now that a petition has been filed with the PUC, and any repercussions that may possibly occur during the pendency of the proceedings, are merely a result of the normal delay encountered in the litigation of any matter. Such delays will be experienced as long as the parties continue to litigate this matter in any forum. It is not "irreparable harm" as will sustain a request for a preliminary injunction.

So ordered.

June 7, 2004


WILLIAM J. GROFF,
Presiding Justice

WJG/bjw

Pennichuck, et al v. Nashua / 04-E-0062



23 Seavey Street, P.O.Box 2242
North Conway, New Hampshire 03860

Tel: 603.356.3332 - Fax: 603.356.3932

mail@upton-hatfield.com - www.upton-hatfield.com

FAX TRANSMISSION

Please respond to the North Conway office

DATE: June 10, 2004

TO: Russell Hilliard, Esq

TELECOPIER NUMBER: 224-0320

FROM: Rob Upton, Esq.

TELECOPIER NUMBER: (603) 356-3932

RE:

TOTAL NUMBER OF PAGES (including cover sheet): 6

COMMENTS OR SPECIAL INSTRUCTIONS:

Original of the transmitted document will be sent by:

First Class Mail Overnight Mail Hand Delivery

This transmission will be the only form of delivery of this document.

The information contained in this fax message is privileged and confidential and intended for the addressee only. If this fax has been sent to you in error, please notify us promptly by collect call to the following number: (603) 356-3332. Thank you.