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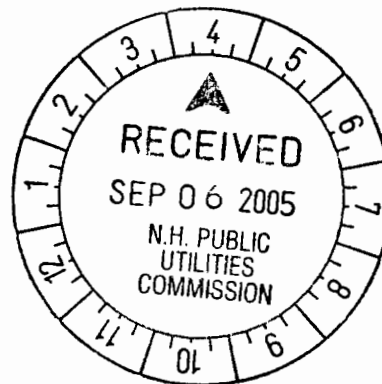
STEVEN V. CAMERINO  
Internet: steven.camerino@mcclane.com

September 6, 2005

OFFICES IN:  
MANCHESTER  
CONCORD  
PORTSMOUTH

***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.'s Motion for Summary Judgment. I have e-mailed an electronic copy of the Objection to Ann Guinard, as well as served the parties this same day by e-mail and first class mail. Because this is a dispositive motion, we have not sought the concurrence of the parties prior to this filing. However, to the extent such an effort is required, Pennichuck requests a waiver of Puc 203.04(e) given the nature of the enclosed motion. Finally, Pennichuck Water Works, Inc. requests oral argument on this Motion.

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

Very truly yours,

  
Steven V. Camerino

Enclosures

cc: Service List  
Donald L. Correll, CEO and President

**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.'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Pennichuck Water Works, Inc. ("Pennichuck" or "PWW") and moves the Commission for summary judgment on the City of Nashua's ("Nashua" or the "City") petition.

In support of its motion, Pennichuck states as follows:

**The Standard For Summary Judgment**

1. The Commission has authority to grant summary judgment when there is no genuine issue of material fact requiring a formal hearing. Re Exeter and Hampton Electric Company, 74 NH PUC 458 (November 29, 1989)(granting Commission staff's motion for summary judgment and dismissing utilities' petition for waiver from winter termination rules). As the Commission acknowledged in Re Exeter and Hampton Electric Company, "[t]he purpose of summary judgment is to separate 'what is formal or pretended in denial or averment from what is genuine or substantial so that only the latter may be subject a ...[party]...to the burden of a ...[hearing]...'” Id., citing Nashua Trust Company v. Sardonis, 101 N.H. 166, 168-169 (1957).

2. In this case, there is no genuine dispute of material fact that Nashua does not have the managerial and technical capability to operate a water utility, and therefore, Pennichuck is entitled to judgment as a matter of law.

**Nashua's Burden Of Proof In This Case**

3. The City of Nashua commenced this proceeding on or about March 24, 2004 by filing its Petition for Valuation Pursuant to RSA 38:9, seeking to take all of the assets of PWW

and its two affiliated utilities, Pittsfield Aqueduct Company, Inc. and Pennichuck East Utility, Inc. Within two weeks, PWW filed a motion seeking dismissal of Nashua's petition on a number of grounds, including the City's failure to comply with N.H. Code of Admin. Rules Puc 202.11(a) and 204.01(b)<sup>1</sup> because Nashua did not include any testimony in support of its petition.

4. After hearing oral arguments from the parties, the Commission issued its Order No. 24,379, in which it stated "we agree that Nashua has not filed testimony as required by Puc 202.11(a) and 204.01(b)." Order 24,379 at 11. However, rather than dismiss Nashua's petition at that time, the Commission "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." *Id.* The Commission set a deadline of November 22, 2004 for Nashua to submit its case on those issues. Subsequently, in its Order No. 24,425, the Commission dismissed Nashua's case against Pittsfield Aqueduct Company and Pennichuck East Utility, leaving only PWW subject to a potential taking.

5. Consistent with the Commission's Order No. 24,379, and the requirements of RSA 374:26 governing the issuance of franchises to provide public utility service<sup>2</sup>, Nashua must prove, among other things, that it has the financial, managerial and technical capability to operate the water system it seeks to take from PWW. See also *Hampstead Area Water Company, Inc.*, Order No. 24,501 at 3-4 (August 19, 2005)("[i]n determining whether a franchise is in the public good, the Commission assesses the managerial, technical, financial and legal expertise of the petitioner.").

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<sup>1</sup> Puc 202.22(a) provides that "[a]ll petitions shall be accompanied by prefiled testimony and exhibits." Puc 204.01(b) provides that "[w]ith the exception of petitions to intervene, petitions shall be accompanied by written testimony sworn to by the witness."

<sup>2</sup> Prior to providing any utility service outside of the City, Nashua must first obtain a franchise from the Commission, pursuant to RSA 374:26.

There Is No Genuine Dispute Of Material Fact That Nashua Does Not Have The Managerial And Technical Capability To Run A Water Utility

6. On or about November 22, 2004, Nashua filed its case on public interest, consisting of the written testimony of four witnesses--Brian McCarthy (President of the Nashua Board of Aldermen), Steven Adams (a municipal bond witness), Philip Munck (a consultant engaged to assist the City with this proceeding) and Steven Paul (a tax attorney). The testimony, which was intended to address the issues identified in Commission Order No. 24,379, set forth the City's public interest case, including its financial, managerial, and technical capability to operate the public utilities. See Commission Order 24,447 at 7 (“...Nashua filed, on November 22, 2004, direct testimony on its technical, financial and managerial capability to operate PWW and how taking PWW would serve the public interest.”).

7. The only two witnesses who presented testimony on Nashua’s managerial and technical capability to operate the utility – Mr. McCarthy and Mr. Munck - have failed to demonstrate that the City has the capabilities required by law. In response to a question regarding whether Nashua has "the managerial capacity of owning and operating a water utility," Alderman McCarthy's testimony stated:

Yes. A water utility is a good example of a function in which skilled operating companies are available to physically operate the system while the City retains ownership and the financial benefits that come from municipal ownership. It is Nashua's intent in the management of the water system to employ contractors to perform the day-to-day operation and maintenance of the system and to exercise management oversight.

Prefiled testimony of Brian McCarthy at 10. Similarly, when asked whether “the City of Nashua ha[s] the managerial capability to own and operate a water utility”, Mr. Munck testified that:

Yes it does.

Ownership and operation of a water utility is a common municipal function. Local governments as large as New York City and Los Angeles and as small as Epping, New Hampshire, successfully own and operate water utilities. Nashua is the only city in New

Hampshire that presently does not own its water utility. As with all other municipal functions, there are levels of management responsibility. It falls to the elected leadership of the City to establish broad policy and to exert financial control by adopting budgets and setting rates. It exerts detailed control by engaging competent professional management to run the system according to City policy.

Nashua has determined that it will contract out the operation and maintenance and management oversight of the water system it acquires to skilled operating and management companies.

Prefiled testimony of Philip Munck at 2.

8. Based on the City's public interest case, which was premised entirely on its decision to contract out the operation of the water system, the Commission ruled in its Order No. 24,488 that data requests from PWW to Nashua regarding the City's ability to manage utility or similar services were not designed to obtain information that could be relevant to this proceeding "in that Nashua has stated that no city department will operate the water system." Order at 7.

The Commission expressly relied on the recommendation of its hearing examiner, who stated:

...questions relating to Nashua's operation of wastewater and solid waste facilities are not relevant if Nashua does not in fact intend to operate the water system. Mr. Munck testifies that Nashua intends to contract out the "operation and maintenance of the water utility except for the treasury and cash management functions."

Memorandum from Hearing Examiner to Commissioners, dated July 15, 2005, at 2.

9. Through the discovery process it has now become even more apparent that Nashua's case is indisputably dependent on the capability of two unknown third party contractors—one to operate the water utility and the other to oversee the first.<sup>3</sup> Yet Nashua's direct case on file with the Commission is completely devoid of any information regarding the identity, experience, capabilities, cost, integrity, local presence or other qualifications of these unknown third parties, despite the fact that Nashua knew from the day it filed its petition that it

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<sup>3</sup> Mr. Munck testified at his deposition that he was not aware of any other city that has a two-contractor operation of its water district. Thus, to Mr. Munck's knowledge, Nashua would be the first city to hire an oversight contractor to oversee the work of the operation and maintenance contractor. See Exhibit 1 at 150.

would contract out the operation of the water system. Nashua's failure to provide any information regarding these third parties, given its stated intention not to operate the water system itself, and given the evidence obtained through depositions that the City lacks the personnel to conduct such operations, make it impossible for Nashua to meet its burden of proof in this case.

10. Even if the Commission were to give Nashua the benefit of the doubt and consider the City's own capability to own and operate a water utility<sup>4</sup>, something which would be inconsistent with Commission Order 24,488, information during discovery highlights the lack of substance to Nashua's claimed ability. Mr. Munck, the City's only expert witness on the issue of its managerial and technical capability, testified:

Q. What investigation did you do, if any, in order to determine the managerial and technical competency of the City of Nashua to own and operate a water utility?

A. I determined that they were a city of about that size [40,000 – 50,000].

Q. What else?

A. That's all I needed.

Q. Okay. So the only investigation you made was to find out how many people were within the City's limits, correct?

A. No. I knew that they were legitimate municipal corporation in New Hampshire.

\* \* \* \* \*

Q. But again, the only thing you rely upon for that portion of your testimony is the fact that it's a city of 40 to 50,000 people?

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<sup>4</sup> Nashua continues to re-state its intention to contract out the operation of any water system it acquires and has disavowed its previously filed testimony about any of its internal capabilities. In its August 19, 2005 Objection to Pennichuck's Motion for Reconsideration of PUC Order 24,488, Nashua stated that "it does not intend to operate its water system as a City department, and is fully willing to accept a condition to that effect. Furthermore, consistent with the Commission's Order, Nashua is willing to strike those portions of its testimony relating to its experience operating other Departments in order to address the central issue in this proceeding: whether its Petition for Valuation of PWW's assets is in the public interest under RSA 38." Objection at 2.

A. Yes.<sup>5</sup>

Exhibit 1, August 31, 2005 Deposition of Philip Munck at 146-147.

11. The Mayor demonstrated a similarly cavalier attitude towards the wide ranging responsibilities of owning a water utility covering many communities, when during his recent deposition he stated that "I'm not concerned with Epping or Newmarket," despite the fact that these are communities to which Nashua seeks to provide utility service. See Exhibit 2, July 26, 2005 deposition of Bernard Street at 46. When the City's Director of Community Development was asked "is it good policy for Nashua to be operating water systems far flung from its core," she responded that "It is not. It doesn't make a whole lot of sense for Nashua to be operating it." See Exhibit 3, July 21, 2005 deposition of Katherine E. Hersh at 131. Yet Nashua continues to lay claim to those assets.

12. Based on the procedural schedule, to which Nashua agreed, Nashua's public interest case is complete. Discovery on Nashua's public interest case has concluded, and Nashua has no right to file any supplemental testimony on public interest, with the exception of so-called "capstone" testimony, which was plainly intended to couple Nashua's existing public interest testimony with its valuation testimony scheduled to be filed on October 14, 2005 (for example, to provide a rate analysis based on the valuation in the October 14 testimony). While Pennichuck has yet to file its public interest testimony in this case, that testimony is not necessary to determine Nashua's capability to operate a water utility.

13. While Nashua may claim some right to rebut Pennichuck's public interest filing in its reply testimony which is due February 21, 2006, Nashua cannot at that late date for the first time present its capability, or that of a third party contractor, to operate a water utility. The plain

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<sup>5</sup> Unbelievably, Nashua's expert did not even get the size of the City right. According to the United States Census Bureau, as of April 2004, the City of Nashua has a population of 87,411. See [www.census.gov](http://www.census.gov).

fact is that a year and a half after Nashua filed its case, and nearly a year after it was ordered by the Commission to present its 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, Nashua is still trying to develop its initial public interest case. The Commission should not allow Nashua to abuse the process in this way, particularly when all of the facts about Nashua's technical and managerial capability are within its own control.

14. Nashua may also claim that the rebuttable presumption in RSA 38:3 provides it with some shelter from the requirement of proving its capability to operate a water utility. But that is not the case. RSA 38:3 provides a rebuttable presumption that the taking of the system in Nashua is in the public interest, not a rebuttable presumption that a franchise should be granted to the municipality to provide utility service to Merrimack, Amherst, and other surrounding towns.

15. The issue of Nashua's technical and managerial capability to operate a water utility that serves over 24,000 customers throughout Southern New Hampshire is far more than a mere technicality. It goes to the heart of Nashua's case. It is the critical element that Nashua must prove to meet its burden of proof. Nashua has failed to make that proof since it first filed its petition. Despite the Commission's directive in its Order No. 24,379 that Nashua file testimony to meet this burden of proof, the City has failed to provide the Commission with any evidence that could provide a basis for finding that the City has the capability of operating Pennichuck's water system.

16. Thus, based on Nashua's public interest testimony, and the attached testimony obtained through discovery, there is no genuine issue of material fact that Nashua does not have



the technical and managerial capability to operate a water utility. For this reason, and those stated above, Pennichuck is entitled to judgment as a matter of law.

WHEREFORE, Pennichuck respectfully requests that the Commission:

- A. Grant summary judgment for PWW;
- B. Dismiss Nashua's petition in its entirety; and
- C. Grant such other and further relief as the Commission deems just and

reasonable.

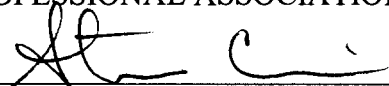
Respectfully submitted,

Pennichuck Water Works, Inc.

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

Date: September 6, 2005

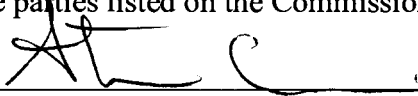
By:  \_\_\_\_\_

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Certificate of Service

I hereby certify that on this 6th day of September, 2005, a copy of this Motion for Summary Judgment has been forwarded to the parties listed on the Commission's service list in this docket.

 \_\_\_\_\_

Steven V. Camerino

CITY OF NASHUA v. PENNICHUCK WATER  
Deposition of Philip L. Munck

STATE OF NEW HAMPSHIRE  
PETITION FOR VALUATION PURSUANT TO RSA 38:9

CITY OF NASHUA

Docket No. DW-04-048

DEPOSITION of PHILIP L. MUNCK

Taken by Notice at the law offices of  
UPTON & HATFIELD, LLP, 10 Centre Street, Concord,  
New Hampshire, on Wednesday, August 31, 2005,  
commencing at 9:50 in the forenoon.

Court Reporter: Marcia G. Patrisso,  
Certified Shorthand Reporter  
NH CSR No. 83 (RSA 331-B)  
Registered Professional Reporter  
Certified Realtime Reporter



CITY OF NASHUA v. PENNICHUCK WATER  
Deposition of Philip L. Munck

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1 Q. In order to prepare your testimony,  
2 which I believe was -- when was this filed?  
3 MS. KNOWLTON: November 22, 2004.  
4 MR. CONNER: November 22, 2004.  
5 Q. What investigation did you do, if any,  
6 in order to determine the managerial and technical  
7 competency of the City of Nashua to own and operate  
8 a water utility?  
9 A. I determined that they were a city of  
10 about that size.  
11 Q. What else?  
12 A. That's all I needed.  
13 Q. Okay. So the only investigation you  
14 made was to find out how many people were within the  
15 city limits, correct?  
16 A. No. I knew that they were a  
17 legitimate municipal corporation in New Hampshire.  
18 Q. And you would have -- what, did you  
19 check any public records to determine if they were a  
20 legitimate municipal corporation?  
21 A. I knew that they were.  
22 Q. So you knew that going into it?  
23 A. Yes.

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1 Q. But again, the only thing you rely  
2 upon for that portion of your testimony is the fact  
3 that it's a city of 40 to 50,000 people?  
4 A. Yes.  
5 Q. Now, the second part of -- or the  
6 second purpose that you identify is to discuss the  
7 financial advantages of public ownership of the  
8 water utility. Is it your position that it is  
9 always appropriate and advantageous for a public  
10 entity such as a town or a city to own the water  
11 utility within its jurisdiction?  
12 A. Almost always. I would never say  
13 never or always to anything, but I would be  
14 hard-pressed to imagine a circumstance where it  
15 would not be advantageous for a municipality to own  
16 and operate its own water utility.  
17 Q. And you had that opinion before you  
18 were ever engaged -- or before Sansoucy was ever  
19 engaged by the City of Nashua, correct?  
20 A. Correct.  
21 Q. And you had that opinion with respect  
22 to the city's desire to acquire the water system  
23 before you made any type of investigation concerning

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1 the particular aspects of the operation of the  
2 investor-owned utility by Pennichuck, correct?  
3 A. Correct.  
4 Q. You make a statement on page 3 where  
5 the question is: "What are the advantages of the  
6 public private relationship?" And by "public  
7 private relationship," you mean a public ownership  
8 with a private O&M operator?  
9 A. Yes.  
10 Q. Now, would you prefer that  
11 relationship over publicly owned and publicly  
12 operated?  
13 A. No.  
14 Q. In your view is it better and more  
15 advantageous to have a publicly owned and publicly  
16 operated water department?  
17 A. No; I think they're about equally  
18 balanced in terms of desirability.  
19 Q. Well, if you want to totally take out  
20 the payment of income taxes out of the equation and  
21 go to a -- what you would view, I think, is a least  
22 cost to the city, then that would be a publicly  
23 owned and publicly operated water utility, correct?

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1 A. Not necessarily.  
2 Q. Why would it not?  
3 A. There are some functions which  
4 historically can almost always be more economically  
5 operated by a private operator than a public  
6 operator. In the case of -- in the case of a  
7 municipal utility, probably a private operator would  
8 be less expensive, not necessarily --  
9 Q. Why do you say that?  
10 A. Because a private operator would be  
11 more intensely focused on the operation, and in the  
12 case of public private partnerships as they're done  
13 today, bring more resources to the table than  
14 probably all but the very largest communities can.  
15 On the other hand, there are synergies for having an  
16 internal operation that can be of overall benefit to  
17 the city. So you trade off one against the other.  
18 Q. But you didn't make the decision for  
19 the city to, quote, contract the O&M out in this  
20 instance, did you?  
21 A. No, I did not.  
22 Q. You didn't have any input in that  
23 decision, did you?

CITY OF NASHUA v. PENNICHUCK WATER  
Deposition of Philip L. Munck

Page 150

1 A. No.  
2 Q. Did Mr. Sansoucy?  
3 A. No.  
4 Q. So I take it, then, that neither you  
5 nor Mr. Sansoucy had any input into whether or not  
6 there should be a two-contractor setup: One for O&M  
7 and one for oversight either, did you?  
8 A. No. We recommended that there be two  
9 contractors.  
10 Q. What city are you aware of that has a  
11 two-contractor operation of its water district?  
12 A. I'm not aware of any.  
13 Q. So this will be the first?  
14 A. Yes.  
15 Q. So you -- you do not have any  
16 experience, then, as to how that coordination  
17 between a private overseer and a private O&M  
18 operator will work, do you?  
19 A. No.  
20 Q. And that is the relationship, though,  
21 that you're referring to in your testimony when you  
22 refer to "public private relationship," correct?  
23 You're referring to an oversight contractor and a

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1 private O&M contractor, correct?  
2 A. Correct.  
3 Q. Now, it's your understanding that --  
4 well, in your answer to that question, what are some  
5 of the advantages of public private relationship,  
6 the last sentence you state, "Because the  
7 municipality retains ownership, it also is able to  
8 direct the future of the utility in areas such as  
9 conservation in which a privately owned utility has  
10 no inherent interest."  
11 Now, Mr. Munck, what in the world do  
12 you base that statement on?  
13 MR. UPTON: I object to the form of  
14 the question.  
15 You can go ahead and answer it.  
16 A. From a simple understanding that the  
17 primary responsibility of an investor-owned utility  
18 is to return the maximum value it can to its  
19 stockholders. And conservation really doesn't play  
20 much of a role in that.  
21 Q. How do you know?  
22 A. It seems -- it seems obvious.  
23 Q. From what?

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1 A. From an examination of the issue.  
2 Q. What examination did you do to reach  
3 this conclusion?  
4 A. I thought about it.  
5 Q. You just thought about it?  
6 A. Yes.  
7 Q. Okay. Did you go and inspect records  
8 of any investor-owned utility in regard to efforts  
9 at conservation or conservation records?  
10 A. No.  
11 Q. Did you even go to the extent of  
12 reviewing the conservation record of Pennichuck  
13 Water Works in reaching this conclusion?  
14 A. Yes.  
15 Q. Well, I thought you just thought about  
16 it.  
17 A. Well, to the extent that I -- to the  
18 extent that I'm aware of what Pennichuck has done in  
19 the past and what it is doing at the moment, and  
20 following the water industry or the water utility  
21 industry in New Hampshire over the years, it appears  
22 to me that Pennichuck is only moving towards any  
23 sort of conservation with the greatest reluctance

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1 and only because the source of supply seems to be  
2 limited. And I certainly was impressed by  
3 Philadelphia Suburban as they explain how they were  
4 able to sell off all of their watershed -- excess  
5 watershed lands during the taking -- during the  
6 acquisition -- the acquisition case certainly  
7 reinforced my opinions.  
8 Q. Well, was the Sansoucy Company  
9 retained in order to kill the Philly Suburban deal?  
10 MR. UPTON: Objection to the form of  
11 the question.  
12 You can answer it.  
13 A. I don't think so.  
14 Q. Why not?  
15 A. Why don't I think so?  
16 Q. Yes.  
17 A. I wasn't involved in the process of  
18 how we were -- of us getting engaged very much, very  
19 deeply, so I have no fact basis; and I didn't really  
20 care.  
21 Q. Did Mr. Sansoucy ever tell you that  
22 was the purpose of his involvement or the company's  
23 involvement; that that was their objective?

CITY OF NASHUA PETITION FOR VALUATION  
Deposition of Bernard A. Streeter

STATE OF NEW HAMPSHIRE  
PETITION FOR VALUATION PURSUANT TO RSA 38:9

CITY OF NASHUA

Docket No. DW-04-048

DEPOSITION of BERNARD A. STREETER

Taken by Notice at the offices of the Nashua City  
Hall, 229 Main Street, Nashua, New Hampshire, on  
Tuesday, July 26, 2005, commencing at 2:31 in the  
afternoon.

Court Reporter: Marcia G. Patrisso,  
Certified Shorthand Reporter  
NH CSR No. 83 (RSA 331-B)  
Registered Professional Reporter  
Certified Realtime Reporter

CITY OF NASHUA PETITION FOR VALUATION  
Deposition of Bernard A. Streeter

Page 2

1 APPEARANCES:  
2  
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7 By: Robert Upton II, Esq.  
8  
9 For the Respondent, Pennichuck Water Works:  
10 McLANE, GRAF, RAULERSON & MIDDLETON, P.A.  
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12 Manchester, New Hampshire 03105  
13 By: Thomas J. Donovan, Esq.  
14 Steven V. Camerino, Esq.  
15  
16 For the NH Public Utilities Commission:  
17 Marcia A.B. Thunberg, Esq.  
18 Mr. Mark A. Naylor  
19  
20 In Attendance: Mr. Donald L. Correll  
21 STIPULATIONS  
22 It is agreed that the deposition shall be taken  
23 in the first instance in stenotype and when  
transcribed may be used for all purposes for which  
depositions are competent under New Hampshire  
practice.  
Notice, filing, caption and all other formalities  
are waived. All objections except as to form are  
reserved and may be taken in court at the time of  
trial.  
It is further agreed that if the deposition is  
not signed within thirty (30) days after submission  
to counsel, the signature of the deponent is waived.

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Page 4

1 BERNARD A. STREETER,  
2 having been duly sworn, was examined and  
3 testified as follows:  
4 EXAMINATION  
5 BY MR. DONOVAN:  
6 Q. Could you give us your name and  
7 address.  
8 A. Bernard A. Streeter, 26 Indiana Drive,  
9 Nashua, New Hampshire.  
10 Q. And have you ever given testimony in a  
11 deposition before, sir?  
12 A. Not that I can recall.  
13 Q. Have you ever given testimony at a  
14 trial before?  
15 A. Yes.  
16 Q. Okay. When was that?  
17 A. Back in the '60s.  
18 Q. What kind of a case was that?  
19 A. Automobile accident.  
20 Q. What did you do to prepare yourself  
21 for the deposition here today?  
22 A. Consulted with my attorney.  
23 Q. Anything else?

Page 5

1 A. No.  
2 Q. No? Did you talk to any other people  
3 other than your attorney?  
4 A. Do you mean relative to the --  
5 Q. Your deposition here today.  
6 A. Relative to today's deposition?  
7 Q. Yes.  
8 A. No.  
9 (Mr. Correll joins the proceedings.)  
10 Q. Did you look at any documents?  
11 A. No.  
12 Q. No?  
13 A. No.  
14 Q. Now, I know you have a lengthy resume,  
15 and so I'm going to try to just do the Reader's  
16 Digest version of it. As I understand, Mayor,  
17 you're serving in your second term of office as  
18 mayor?  
19 A. Yes.  
20 Q. And that term extends from when to  
21 when?  
22 A. It extends two and a half more years.  
23 Q. Is it basically --

CITY OF NASHUA PETITION FOR VALUATION  
Deposition of Bernard A. Streeter

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1 systems outside of the Nashua system?  
2 A. Outside of the Nashua system?  
3 Q. Correct.  
4 A. No.  
5 Q. So you may or may not be aware that  
6 Pennichuck, for instance, has owned systems as far  
7 flung as Epping or Newmarket?  
8 A. I've heard that. I've heard that.  
9 I'm not concerned with Epping or Newmarket. I am  
10 concerned, though, with the history of this company  
11 and the lack of protection of the watershed property  
12 that they owned at one point.  
13 Q. You mean the Pennichuck watershed  
14 property?  
15 A. The Pennichuck watershed, which was  
16 over a period of time sold off for private  
17 development purposes. I'm very concerned about  
18 that.  
19 Q. And you're concerned about it because?  
20 A. Because the company was not good  
21 stewards of their properties. In this day and age  
22 water companies are buying watershed property, land  
23 surrounding it, not selling it off, nor are they

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1 developing these properties.  
2 Q. You're aware that the Public Utilities  
3 Commission approved those sales?  
4 A. In my opinion, it was an ill-advised  
5 decision.  
6 Q. Right. And whatever development took  
7 place subsequent took place under the aegis of  
8 Nashua land use regulations, zoning and planning;  
9 isn't that right?  
10 A. Since I wasn't involved in city  
11 government at that time, I am under the assumption  
12 that the answer is yes.  
13 Q. Do you have --  
14 A. That doesn't necessarily make it  
15 right. That was an editorial comment.  
16 Q. What is the most that Nashua would pay  
17 for the Pennichuck Water Works' assets?  
18 A. I have no idea.  
19 Q. How would you go about figuring it  
20 out?  
21 A. That's why we have consultants who  
22 have, and will continue to appraise properties.  
23 Ultimately it's up to the Public Utilities

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1 Commission to set a price.  
2 Q. And presumably there is some price at  
3 which -- above which Nashua would say, "That's  
4 crazy, we wouldn't buy it at that price."  
5 A. Presumably there is, although I don't  
6 know it. Presumably there would be.  
7 Q. And under that circumstance Nashua  
8 would not proceed to acquire the Pennichuck assets,  
9 right?  
10 A. Well, if it was an outrageous figure.  
11 You have to remember now, the City of Nashua made a  
12 legitimate offer to Pennichuck for \$121 million.  
13 That was a legitimate offer. That offer was  
14 discarded like yesterday's wash, and they in turn  
15 came back and said, Well, we'll consider (redacted  
16 testimony - confidential attorneys' eyes only under  
17 separate cover). And that was laughable.  
18 Q. You're aware that had the Philadelphia  
19 Suburban deal gone through, that the stockholders  
20 today would have \$65 million more in equity than  
21 they would have had at the time of that transaction?  
22 A. I don't profess to know anything about  
23 the stock market. I don't dabble in it. I'm not a

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1 prognosticator of stock.  
2 Q. Well, that's not prognostication,  
3 that's just the market price.  
4 MR. UPTON: He said he didn't know.  
5 Q. Would Nashua purchase the Pennichuck  
6 Water Works' assets if Pennichuck -- strike that.  
7 Would Nashua purchase the Pennichuck  
8 Water Works' assets if the PUC set a price that  
9 would result in rate-payers paying a higher rate  
10 than they would under Pennichuck ownership?  
11 A. I'm not going to guess what the PUC  
12 would do. I would find it questionable if they  
13 did -- if they recommended a price where the cost of  
14 water would be more expensive than rate-payers are  
15 paying now. I do know this: 85 percent of  
16 municipalities in this country own their own water  
17 companies, and their water rates are much lower.  
18 And one thing I have done since this process started  
19 was let the people of our community know that  
20 Manchester's water rates are approximately  
21 45 percent lower than Nashua's. Manchester's is  
22 municipally owned, and they provide excellent  
23 service and excellent water.



CITY OF NASHUA PETITION FOR VALUATION  
Deposition of Katherine E. Hersh

STATE OF NEW HAMPSHIRE  
PETITION FOR VALUATION PURSUANT TO RSA 38:9

CITY OF NASHUA

Docket No. DW-04-048

DEPOSITION of KATHERINE E. HERSH

Taken by Notice at the offices of the Nashua City  
Hall, 229 Main Street, Nashua, New Hampshire, on  
  
Thursday, July 21, 2005, commencing at 10:50 in the  
  
forenoon.

Court Reporter: Marcia G. Patrisso,  
Certified Shorthand Reporter  
NH CSR No. 83 (RSA 331-B)  
Registered Professional Reporter  
Certified Realtime Reporter

CITY OF NASHUA PETITION FOR VALUATION  
Deposition of Katherine E. Hersh

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1                   **APPEARANCES:**  
2 For the Petitioner, City of Nashua:  
3     **UPTON & HATFIELD, LLP**  
4     23 Seavey Street - P.O. Box 2242  
5     North Conway, New Hampshire 03860-2242  
6     By: Robert Upton II, Esq.  
7  
8 For the Respondent, Pennichuck Water Works:  
9     **McLANE, GRAF, RAULERSON & MIDDLETON, P.A.**  
10    900 Elm Street - P.O. Box 326  
11    Manchester, New Hampshire 03105  
12    By: Thomas J. Donovan, Esq.  
13       Sarah B. Knowlton, Esq.

14                   **STIPULATIONS**

15     It is agreed that the deposition shall be taken  
16     in the first instance in stenotype and when  
17     transcribed may be used for all purposes for which  
18     depositions are competent under New Hampshire  
19     practice.  
20     Notice, filing, caption and all other formalities  
21     are waived. All objections except as to form are  
22     reserved and may be taken in court at the time of  
23     trial.  
24     It is further agreed that if the deposition is  
25     not signed within thirty (30) days after submission  
26     to counsel, the signature of the deponent is waived.

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1                   **KATHERINE E. HERSH,**  
2     having been duly sworn, was examined and  
3     testified as follows:  
4                   **EXAMINATION**  
5     **BY MR. DONOVAN:**  
6       Q.    Could you give us your name and  
7            address for the record, please.  
8       A.    Sure. It's Katherine Hersh, and my  
9            address is 13 Berkeley Street, Nashua, New  
10            Hampshire.  
11       Q.    And by whom are you employed?  
12       A.    I'm employed by the City of Nashua.  
13       Q.    And what's your job title?  
14       A.    Community development director.  
15       Q.    And how long have you served in that  
16            position?  
17       A.    Almost four years.  
18       Q.    So that would mean you began --  
19            A.    August 2001.  
20       Q.    Were you employed prior to that?  
21       A.    I was employed prior to that. Not by  
22            the city.  
23       Q.    What was your employment before that?

CITY OF NASHUA PETITION FOR VALUATION  
Deposition of Katherine E. Hersh

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1 A. So the question was whether or not I  
2 would support taking a -- some part of Pennichuck  
3 Water Works' assets as opposed to the whole of  
4 Pennichuck Water Works' assets?  
5 Q. (BY MR. DONOVAN) If the PUC said all  
6 you could take is some, would you still take the  
7 some?  
8 A. Would I still support taking the  
9 "some"? Yes.  
10 Q. In your role as community development  
11 director?  
12 A. In my role as community development  
13 director, yes.  
14 Q. If for some reason Nashua -- it turned  
15 out that Nashua would not be able to convey assets  
16 located outside of its core system to the regional  
17 water district, would Nashua still be in favor of  
18 taking and holding all of those assets?  
19 A. Would I as community director? Yes.  
20 Q. Yes.  
21 A. Yes. Yes.  
22 Q. And you're aware that Pennichuck Water  
23 Works has assets as far away as Newmarket and

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1 Epping, correct?  
2 A. Yes, I'm aware.  
3 Q. Excuse me?  
4 A. Yes, I'm aware.  
5 Q. And assuming that Nashua were unable  
6 to convey those assets to the district, what would  
7 your recommendation be as community development  
8 director as to what should happen to those assets?  
9 A. At this point, I don't have a  
10 recommendation.  
11 Q. Do you think it's the business of  
12 Nashua to be operating water systems not connected  
13 to its core?  
14 A. Do I think it's the business of  
15 Nashua? No, it's not the primary business of  
16 Nashua. No.  
17 Q. Well, is it good policy for Nashua to  
18 be operating water systems far flung from its core?  
19 A. It is not. It doesn't make a whole  
20 lot of sense for Nashua to be operating it.  
21 Q. That's why it's a good idea for the  
22 district to handle that?  
23 A. That is correct.

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1 Q. And similarly, it wouldn't make sense  
2 for Nashua to acquire troubled systems far flung  
3 from Nashua, troubled private or small municipal  
4 systems; is that right? That's because that's not  
5 what Nashua is in the business of doing.  
6 A. That's generally correct.  
7 Q. What about the district? Would it be  
8 in the district's interest to acquire additional  
9 small systems?  
10 A. That is not really a question for me;  
11 that's a question for some other member of the  
12 district.  
13 Q. Well, you attend all of the meetings,  
14 and Nashua's a member of the district; in fact, it  
15 has the majority votes in the district, right? So  
16 it certainly is something important to you.  
17 A. And I think it depends on a particular  
18 situation, you know, whether or not there are  
19 members of the district and whether or not there  
20 should be members of the district and...  
21 Q. In other words, if --  
22 A. It's not something I can answer at  
23 this point.

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1 Q. So in other words, a factor in your  
2 thinking would be that the town in which this small  
3 system were to be located was a member of the  
4 district?  
5 A. I think the regional water district  
6 may take that into consideration.  
7 Q. The way the charter is set up, if the  
8 district does get the assets of Pennichuck Water  
9 Works, it would be willing to pay in lieu of taxes,  
10 amounts to those towns only who are members of the  
11 district, correct?  
12 A. I think that is the way it's currently  
13 set up.  
14 Q. And that creates an incentive for  
15 towns to belong to the district, correct?  
16 A. My recollection is that was the  
17 discussion.  
18 Q. Okay. At this point, fewer than half  
19 of the towns eligible to join the district have  
20 joined; is that right?  
21 A. I don't know the exact numbers, but I  
22 think that's about correct.  
23 Q. And included in the district are towns