

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

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

Docket No. DW 04-048

**MOTION TO COMPEL THE MERRIMACK REGIONAL WATER DISTRICT TO
RESPOND TO PENNICHUCK WATER WORKS, INC.'S DATA REQUESTS**

Pennichuck Water Works, Inc. ("Pennichuck") respectfully requests that the Commission compel the Merrimack Regional Water District ("the District") respond to Pennichuck's Data Requests in the above-captioned proceeding. In support of its Motion, Pennichuck states as follows:

1. The District moved to intervene in the above captioned matter before the Commission in which the City of Nashua filed a Petition for Valuation pursuant to RSA 38 for a determination of the fair market value of Pennichuck's plant and property. The Commission granted the District's intervention request over Pennichuck's objection based on the District's vigorous argument that its interests would be affected by this proceeding.

2. N.H. Code of Admin. Rules Puc. 204.04(a) provides: "The staff or any party shall serve upon any other party or the staff, data requests, which may consist of a written interrogatory or request for production of documents, as necessary to evaluate a petition, application or testimony." (Emphasis added.) In its Objection to Data Requests Propounded By Pennichuck Corporation on the Merrimack Regional Water District ("Objection"), attached as Exhibit A, the District alleges that Pennichuck improperly propounded data requests on it because the District did not file testimony and because, the District claims, it is a longstanding

practice that data requests are only served on a party that has itself filed a petition, application or testimony.

3. Contrary to the District's position, Puc. 204.04(a), governing discovery, does not limit data requests to be served only on parties that file testimony. The plain language of the rule instructs that "any party shall serve upon any other party... data requests... as necessary to evaluate a petition, application or testimony." The rule does not provide that data requests may only be served to a party "to evaluate a petition, application or testimony" *of the party*.

4. Furthermore, the scope of discovery in Commission proceedings is broad, and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Re Investigation into Whether Certain Calls are Local*, 86 NH PUC 167 (2001). The Commission will deny discovery requests only when it "can perceive of no circumstance in which the requested data will be relevant." *Petition for Authority to Modify Schiller Station Order on Pre-Hearing Motions*, 2004 N.H. PUC LEXIS 38, *7, DE 03-166, Order No. 24,310 (2004); *Re Public Service Company of New Hampshire*, 86 NH PUC 730, 730 (2001); *Lower Bartlett Water Precinct*, 85 N.H. PUC 371 (2000). As the New Hampshire Supreme Court has held, a party in a legal proceeding in New Hampshire is entitled to "be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponents and whether the evidence is in the possession of his opponent or someone else." *Scotsas v. Citizens Insurance Co.*, 109 N.H. 386 (1969). Thus, there is no legal basis to limit discovery to those parties in a proceeding that proffer affirmative evidence of their own, if they have information that may be relevant to a proceeding or that may lead to the discovery of relevant evidence. The Commission recognized "the liberality of the applicable discovery rule" in granting a motion to compel data request

responses propounded concerning the public interest issue in the Brodie Smith dam condemnation proceeding. *Re Public Service of New Hampshire*, 86 NH PUC 730 (2001).

5. Pennichuck propounded its data requests on the District to evaluate Nashua's Petition for Valuation and the testimony submitted by Nashua and the Town of Bedford, whose witness is the Chairman of the District. That testimony extensively discusses the involvement of the District and its interest in taking Pennichuck's water systems. The District moved to intervene in this matter and the Commission granted that motion because it found the District had sufficient interest in the proceedings. If the District, a party to this proceeding, has relevant information regarding these proceedings, it is required to produce that information. Indeed, if the District were not a party, but had relevant information, the Commission could subpoena the town to obtain evidence. The information sought by Pennichuck is necessary and appropriate to allow Pennichuck to fully and fairly present its case to the Commission. The fact that the District *chose* not to offer testimony does not protect it from disclosing relevant evidence.

6. Furthermore, if the District has specific objections to Pennichuck's data requests, it should have raised them in its Objection. The Commission set forth the time frame for objecting to data requests and the District was therefore required to submit all of its objections, not just one of them, during that timeframe. If the District objects to specific data requests, it has no authority to reserve the right to object at a later date as suggested in paragraph 12 of its Objection.

7. Finally, the District waived its right to file testimony supporting Nashua's public interest testimony in this proceeding. The Commission ordered that all such testimony be filed by April 22, 2005. The District chose not to file any testimony and cannot later change its mind

because it improperly concluded or assumed that it would not be required to respond to data requests if it had not submitted testimony.

8. Accordingly, the Commission should grant this Motion to Compel the Merrimack Valley Regional Water District to Respond to Pennichuck Water Works, Inc.'s Data Requests.

9. Pennichuck has sought the assent of the other parties to this proceeding, and has heard from only a few of them. It has received the assent of Mr. Teeboom. The Towns of Pittsfield, Raymond and Milford and the Staff of the Commission take no position. The City of Nashua, the Town of Amherst, and the Office of Consumer Advocate do not support the motion.

WHEREFORE, Pennichuck respectfully requests that the Commission:

A. Grant this Motion to Compel the Merrimack Valley Regional Water District to Respond to Pennichuck Water Work's Data Requests; and

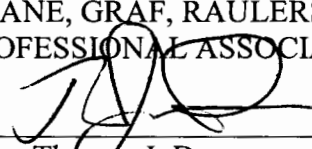
B. Grant Pennichuck such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

Pennichuck Water Works, Inc.

By Its Attorneys,
McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: June 2, 2005

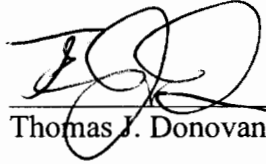
By: 

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Certificate of Service

I hereby certify that a copy of this Motion has been forwarded to the parties listed on the Commission's service list in this docket.

Dated: June 2, 2005



Thomas J. Donovan

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 04-048

City of Nashua
Taking of Pennichuck Water Works, Inc.

**OBJECTION TO DATA REQUESTS PROPOUNDED
BY PENNICHUCK CORPORATION
ON THE MERRIMACK VALLEY REGIONAL WATER DISTRICT**

NOW COMES the Merrimack Valley Regional Water District (“District”), by and through its attorneys, Wadleigh, Starr & Peters, P.L.L.C., and objects to the Data Requests propounded by Pennichuck Corporation (“Pennichuck”) on the District. In support of this Objection, the following is submitted:

1. The City of Nashua has filed a Petition for Valuation pursuant to RSA 38 for a determination of the fair market value of the plant and property of Pennichuck Water Works.
2. The District has filed no Petition.
3. The District moved to intervene and Pennichuck objected alleging among other things that no substantial interest of the District will be effected by the proceeding.
4. Supporting parties were required to file testimony on public interest by April 22, 2005. Order No. 24,457.
5. The District filed no testimony.
6. The parties were authorized to file Data Requests on supporting parties, i.e. those parties who filed testimony on April 22, 2005.

7. Pennichuck has served Data Requests on supporting parties who filed testimony, but has also served Data Requests on the District.

8. Pursuant to PUC 204.04(a), Data Requests are confined to evaluating a “petition, application or testimony.”

9. The District has filed no petition, application, or testimony.

10. Upon information and belief, the longstanding practice before the Commission is that Data Requests are only served on a party who has filed a petition, application, or testimony.

11. In reliance on PUC 204.04 and the longstanding practice of the Commission, the District decided not to file testimony in this proceeding.

12. The District reserves the right to object to specific Data Requests, but the Data Requests served on the District are largely duplicative of Data Requests served on Bedford, which did file testimony as a supporting party.

13. If it is determined that Pennichuck is authorized to file Data Requests on the District, then the District will request the opportunity to file testimony as a supporting party.

WHEREFORE, the District will not respond to the Data Requests unless ordered to do so by the Commission.

Respectfully submitted,

Merrimack Valley Regional Water District
By and Through its Attorneys,
Wadleigh, Starr & Peters, P.L.L.C.

Dated: May 13, 2005

By: _____

Stephen J. Judge, Esq.
95 Market Street
Manchester, NH 03101
(603) 669-4140

CERTIFICATION

I hereby certify that a copy of the foregoing has been forwarded this day electronically to all parties on the discovery service list.

Stephen J. Judge, Esq.