

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

City of Nashua – Taking of Pennichuck Water Works, Inc.

DW 04-048

**PENNICHUCK’S OBJECTION TO NASHUA’S MOTION IN LIMINE TO EXCLUDE
LIMITED UPDATE TESTIMONY OF DONALD WARE AND JOHN GUASTELLA**

NOW COME Pennichuck Water Works, Inc. (“PWW”), Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc., Pennichuck Water Service Corporation and Pennichuck Corporation (collectively “Pennichuck”) by and through their attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, and hereby object to the City of Nashua's Motion in Limine to Exclude Update Testimony of Donald Ware and John Guastella (the “Motion”). In support of this Objection, Pennichuck states as follows:

1. In its Motion, Nashua seeks to exclude evidence that the parties expressly agreed would be part of the limited financial update testimony. The Commission should deny Nashua’s Motion and allow the admission of Messieurs Ware and Guastella’s November 14, 2006 testimony.

2. On September 11, 2006, Nashua and Pennichuck filed a Joint Motion to Eliminate Filing of Capstone Testimony and to Make Related Adjustments to Procedural Schedule (the “Joint Motion”). In an effort to streamline this proceeding, the parties requested that the Commission allow the filing of limited update testimony in lieu of capstone and capstone rebuttal. The Joint Motion provided as follows:

To address the need for updates, the parties propose that they submit on or before November 14, 2006 limited update testimony related to: (a) preexisting expert opinions of value and rates (including financial information relied upon to generate those opinions); and (b) post-deposition analysis of opposing experts' opinions of values and rates.

Limited update testimony may only be submitted by witnesses who have already supplied testimony in this case.

3. The Commission authorized the parties to file this testimony in a September 14, 2006 Secretarial Letter.

4. On November 14, 2006, Pennichuck submitted the limited update testimony of its experts, Robert Reilly and John Guastella, as well as the limited update testimony of Donald Ware, Pennichuck's President. All three witnesses had previously supplied testimony in this case.

5. Nashua has moved *in limine* to exclude the limited update testimony of witnesses Donald Ware and John Guastella, contending that the testimony exceeds the scope of the limited update testimony contemplated by the Joint Motion. Nashua's motion should be denied because it is based upon an overly narrow and fundamentally flawed interpretation of the language of the Joint Motion and the parties' agreement regarding the nature of such testimony.

6. Nashua contends that update testimony must be limited only to testimony based upon information that was not available to the witnesses on May 22, 2006, or that became apparent only after analyzing the deposition of Nashua's expert witness, George E. Sancoucy. Nothing in the language of the Joint Motion limits the scope of permissible update testimony in this way. Rather, the terms of the Joint Motion permit update testimony related to "preexisting expert opinions of value and rates (including financial information relied upon to generate those opinions)" and "post-deposition analysis of opposing experts' opinions of value and rates," as long as that testimony is submitted by witnesses who already had supplied testimony in this case.

7. Nashua contends that Mr. Ware's limited update testimony should be excluded because it represents a "more thorough" and "refined" analysis of Nashua's failure to accurately identify and project all of the costs associated with the operation of PWW's assets. Mr. Ware's

updated testimony is plainly related to "preexisting expert opinions of value and rates" and a "post-deposition analysis of opposing experts' opinions of value and rates," as he addresses both his own pre-existing expert opinions, as well as those offered by Mr. Sancoucy. Moreover, when negotiating the terms of the Joint Motion, Pennichuck's counsel expressly informed Nashua's counsel that Mr. Ware would be updating schedules to his prior testimony. Nashua never indicated any objection to that, and it was Pennichuck's understanding and reasonable expectation that such an update could occur and was contemplated by the parties' Joint Motion.

8. Further, as Mr. Ware's testimony indicates, the updated information in his testimony "was derived as a result of information obtained through discovery in this case and was based on fiscal year 2005 and first half 2006 data, which were not available when I originally submitted testimony." November 14, 2006 Testimony of Donald Ware, p. 2. Nashua's claim that Mr. Ware could have performed this updated analysis prior to his May 22, 2006 testimony is incorrect. The depositions of many of Nashua's witnesses (including Mr. Sansoucy and some of the Veolia witnesses) had not been taken by May 22 and Nashua was still responding to data requests through the summer of 2006. Thus, there is no basis in fact to exclude Mr. Ware's testimony.

9. Nashua next contends that the limited update testimony of John Guastella should be excluded because its updated "adjustments and corrections" to Mr. Sancoucy's revenue and rate increase analysis are based upon Mr. Ware's updated analyses, discussed above. As Mr. Ware's updated testimony is well within the scope of the Joint Motion, Nashua's argument must fail. Moreover, Mr. Guastella's testimony is plainly related to "preexisting expert opinions of value and rates" and a "post-deposition analysis of opposing experts' opinions of value and rates," as he addresses the *pre-existing* expert opinions of both Mr. Ware and Mr. Sancoucy. Mr.

Guastella's updated testimony is well within the scope of the Joint Motion and should not be excluded.

10. For the foregoing reasons, Nashua's Motion in Limine to Exclude Update Testimony of Donald Ware and John Guastella should be denied.

Respectfully Submitted,

Pennichuck Water Works, Inc.
Pennichuck East Utility, Inc.
Pittsfield Aqueduct Company, Inc.
Pennichuck Water Service Corporation Pennichuck Corporation

By Their Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2006, a copy of Pennichuck's Objection to Nashua's Motion in Limine has been forwarded by electronic mail to the parties listed on the Commission's service list in this docket.


Thomas J. Donovan