

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

*City of Nashua: Petition for Valuation Pursuant to RSA 38:9*  
Docket No. DW 04-048

*Pennichuck Water Works, Inc., et al: Verified Petition for Waiver of Requirements of  
Section 610.01(e)(15) of the Uniform System of Accounts for Water Utilities*  
Docket No. DW05-179

**PETITION TO INTERVENE AND MOTION TO CONSOLIDATE**

NOW COMES the City of Nashua (“Nashua”) and petitions the Public Utilities Commission (the “Commission”) to: (a) grant intervention in the *Verified Petition for Waiver of Requirements of Section 610.01(e)(15) of the Uniform System of Accounts for Water Utilities* (the “Petition for Waiver”) filed by Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., and Pittsfield Aqueduct Company, Inc. (“Pennichuck”) in Docket No. DW 05-179; and (b) consolidate the Petition for Waiver with Nashua’s *Petition for Valuation Pursuant to RSA 38:9* in Docket No. DW 04-048. In support of this request, Nashua states as follows:

**I. PETITION TO INTERVENE IN DW 05-179**

**A. Background**

1. Pennichuck’s *Petition for Waiver* in Docket No. DW 05-179 arises directly out of data requests submitted by Nashua in furtherance of its *Petition for Valuation* in Docket No. DW 04-048. In data requests first submitted to Pennichuck on May 3, 2005, and again on July 8, 2005, Nashua sought to obtain the Continuing Property Records maintained by Pennichuck pursuant to the Commission’s *Uniform*

*System of Accounts for Water Utilities*, Rule Puc 610.<sup>1</sup> Nashua's Data Requests 1-21, 2-2 and 2-3 with accompanying responses thereto are attached as Exhibit A.

2. In correspondence between August 8, 2005 to August 29, 2005, Nashua requested clarification of the Continuing Property Records provided in Exhibit A, including the functional breakdown of Pennichuck's Continuing Property Records using the four digit account matrix required by the *Uniform System of Accounts*.<sup>2</sup>

Pennichuck asserted that "there are no fourth digit sub-accounts" and that it was "not familiar with ... the requirement to maintain the continuing property records with a fourth [functional] decimal point designation."<sup>3</sup>

3. By letter dated September 10, 2005, based on Pennichuck's statement that it was not familiar with the requirement that it maintain a functional breakdown and that such a breakdown did not exist, Nashua provided a detailed explanation of the provisions of the *Uniform System of Accounts* which requires that all utilities maintain a fourth digit functional breakdown of its utility plant in its Continuing Property Records.<sup>4</sup> As shown in Exhibit C, Nashua further provided Pennichuck with copies of the Form F-8 from Pennichuck's Annual Report filed with the Commission which uses the four digit breakdown required by Puc 610.01 (e)(15).

4. On September 27, 2005, in response to the detailed explanation that Pennichuck is required to maintain a functional breakdown of its Continuing Property Records,

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<sup>1</sup> The *Uniform System of Accounts for Water Utilities* was formerly contained within Rule Puc 610. However, in 1994, RSA 374:8 was amended to exempt the *Uniform System of Accounts* from the rulemaking procedures under RSA 541-A. In 1997, the Commission adopted a new Puc Rule 610, but did not repeal or reassign the *Uniform System of Accounts*. As a result, references herein to the Commission's Puc 610 regulations refer to the *Uniform System of Accounts*, but not the published Puc 610 rule bearing the same number.

<sup>2</sup> Exhibit B.

<sup>3</sup> Exhibit B, Email from Attorney Sarah Knowlton to Attorney Justin Richardson dated August 29, 2005.

<sup>4</sup> Exhibit C.

Pennichuck responded simply that it does not maintain the functional breakdown sought by Nashua.

5. By letter dated October 19, 2005, Nashua provided a detailed account to the Commission's staff, and sought staff's concurrence to compel disclosure. Staff requested the opportunity to conduct its own investigation into the matter and, on November 3, 2005 confirmed that the company does not maintain its books in accordance with the *Uniform System of Accounts*.
6. On November 10, 2005, presumably as a result of staff's finding that Pennichuck has not maintained its continuing property records in accordance with Puc 610.01(e)(15), the company filed its petition for a waiver in this proceeding.

**B. Petition for Intervention**

7. RSA 541-A:32 provides for intervention upon demonstration that the "petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding" and that "the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention."
8. Nashua's substantial interests will be directly affected by this proceeding. The functional breakdown for which Pennichuck seeks a waiver is critical to the valuation of the property to be acquired by Nashua in its *Petition for Valuation Pursuant to RSA 38:9* in Docket No. DW 04-048. It is regularly used in the cost approach to determine the trended cost of the company's utility plant, as well as its depreciation and life expectancy.
9. For example, the *Handy Whitman Index of Public Utility Construction Costs* published by Whitman, Requardt and Associates (2005) provides detailed analysis

of regional cost trends used to value utility property based on the original cost reported in each functional sub-account recorded under the *Uniform System of Accounts*.

10. Despite Pennichuck's assertion that it was not aware of the requirement that it maintain a functional breakdown, it has regularly submitted a breakdown of its utility plant in service in its annual Form F-8. As shown in Exhibit C, Pennichuck's annual Form F-8 contains the following statement:

Note A: Class A and Class B utilities as defined in USOA for Water Utilities are required to subdivide the plant accounts into functional operations. The subaccounts are designated by adding a suffix of one decimal place to the three digit account number.

11. In addition, in an August 9, 1996 depreciation study prepared by AUS Consultants, Pennichuck presented a detailed functional breakdown of its utility plant based on this information.<sup>5</sup> As is apparent from the AUS Consultants study, it "categorizes Pennichuck Water Works' property into the five areas identified in the sub-accounts"<sup>6</sup> i.e. exactly the breakdown required by 610.01 (e)(15).
12. As a result of the foregoing, Nashua believes that Pennichuck is clearly capable of producing a functional breakdown when it perceives a benefit to doing so. Pennichuck has argued that "the use of an additional decimal point after account numbers in the [AUS] study bears no correlation to the sub-account designations specified in the [*Uniform System of Accounts*]."<sup>7</sup> However, this argument does not properly reflect the information in the AUS study. Each of the tables in the AUS study contains *both* a breakdown into the five functional categories required

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<sup>5</sup> Exhibit D.

<sup>6</sup> Exhibit E.

<sup>7</sup> Exhibit E.

by 610.01 (e)(15)(B), as well as an *additional breakdown* represented by the two digits following the account number. See, e.g., Exhibit D, Table 1. The fact that the two digits following the account number do not follow the *Uniform System of Accounts*, does not change the fact that Table 1 is also divided according to the functional categories required by the *Uniform System of Accounts*.

13. Pennichuck states that it does not have a copy of the categorization created for AUS study.<sup>8</sup> In effect, on one hand Nashua and its customers are paying for Pennichuck to recreate the information required by the *Uniform System of Accounts*, but on the other hand when that information is requested, Pennichuck responds that the information does not exist in its Continuing Property Records.
14. Nashua and its customers have paid Pennichuck's rates which presumably include the cost for compliance with the Commission's regulations and the *Uniform System of Accounts*. If Pennichuck does not maintain the required functional breakdown of its Continuing Property Records, this raises important questions concerning (a) the sources for and validity of Pennichuck's Form F-8 data filed with the Commission; (b) whether Nashua and its customers are paying for Pennichuck to recreate from scratch the information contained in its annual Form F-8 and in its depreciation studies; and (c) whether the service provided in violation of the *Uniform System of Accounts* is lawful and reasonable.
15. As a result of the foregoing, Pennichuck's request for a waiver directly affects Nashua's substantial interest in the valuation and acquisition of the company's assets as well as denying it access to information it has presumably paid Pennichuck to maintain as a customer of the utility. Intervention by Nashua will

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<sup>8</sup> Exhibit E.

not delay the orderly conduct of this proceeding. No Orders of Notice have been issued, no hearings held and no procedural schedule set.

**C. Statement of Position**

16. Nashua submits that the Pennichuck has not demonstrated grounds for waiver under Rule Puc 201.05, which requires that the Commission's rules be waived only when the petitioner demonstrates that it is in the public interest to do so.

17. In the case of *Optimum Global Communications, Inc.*, DT 00-123, Order No. 23,545 (September 5, 2000), the Commission considered the public interest requirement for waiver of a rules under Puc 201.05 and stated that:

Commission rules are promulgated in compliance with our statutory mandate to balance the interests of regulated public utilities and the interests of consumers. RSA 363:17-a. We waive requirements established by rule only upon a determination that it is in the public interest to do so. Puc 201.05(a)(1). We require that requests for rules waivers "specify the basis for the waiver and proposed alternative, if any." Puc 201.05(d). In determining whether granting a rules waiver would be in the public interest, we consider whether "[c]ompliance with the rule would be onerous given the circumstances" and whether "[t]he purpose of the rule shall be satisfied by an alternative method proposed." Puc 201.05(e).

18. In this case, Pennichuck has failed to demonstrate that "compliance with the rule would be onerous" and that "the purpose of the rule [will] be satisfied by an alternative method of compliance." The only justification for waiver asserted by Pennichuck is that it never has complied with the rule, and that compliance would not assist the Commission in its regulation of the company.

19. These assertions fail to explain the fact that Pennichuck has repeatedly provided a breakdown by sub-accounts when it served its interest to do so. If Pennichuck is able to report its utility property by sub-accounts in its annual Form F-8 and in its depreciation studies, it can hardly be onerous for the company to classify its

utility plant by the required sub-accounts under 610.01 (e)(15) of the *Uniform System of Accounts*.

20. In addition, waiver of Puc 610.01 (e)(15) will likely undermine the Commission's ability to review the depreciation, useful life and other aspects of the company in determining whether its rates are just and reasonable, the value of the company's assets under RSA 38, or for other regulatory purposes.
21. The ability to perform such inquiry into Pennichuck's accounts is critical. In an October 28, 2004 audit report, Staff concluded that "[d]ue to the above lack of detailed information contained on the work orders it appears that the automated system is not being efficiently or effectively used for the purpose intended."<sup>9</sup> Staff concluded that Pennichuck's use of its accounting software "needs improvement."<sup>10</sup>
22. Staff further found that, in the case of 257 utility plant assets recorded in the company's Continuing Property Records, the "accumulated depreciation exceeded original cost by a combined amount of \$557,722" and that there is a "current possibility that the Company's actual booked depreciation reserve may substantially exceed its theoretical depreciation reserve."<sup>11</sup>
23. Nashua submits that Pennichuck's petition for a waiver will not serve the public interest and should be denied. The company is capable of providing a breakdown of its utility plant by sub-account in its annual Form F-8, and in its depreciation studies such as the AUS study shown in Exhibits C & D. As a result, it cannot

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<sup>9</sup> *Final Report, Pennichuck Water Works, Inc.*, DW04-056 (October 28, 2004), Page 6.

<sup>10</sup> *Final Report*, Page 45.

<sup>11</sup> *Direct Testimony of Jason P. Laflamme* (January 10, 2005), Pages 5-6.

meet its burden of showing that compliance with 610.01 (e)(15) of the *Uniform System of Accounts* is onerous under Puc 201.05.

24. Furthermore, waiver would not serve the purpose underlying the *Uniform System of Accounts* of ensuring that the rates charged by the company are lawful, just and reasonable and other regulatory purposes. Recent Staff Audits and testimony have confirmed that the company's books do not comply with the *Uniform System of Accounts* and that significant errors such as the recording of over \$557,000 in unauthorized depreciation expenses has occurred. Waiver of the Commission's rules would undermine the Commission's ability to oversee a system that "needs improvement."<sup>12</sup>

## **II. MOTION TO CONSOLIDATE DW 04-048 AND DW 05-179**

25. Puc 203.08 provides for consolidation of proceedings before the Commission where one or more proceedings pray for similar relief and consolidation will promote the orderly and efficient conduct of proceedings.
26. As noted above, Pennichuck's request for a waiver from the requirements of the Rule 610.01(e)(15) of the *Uniform System of Accounts* in DW 05-179 is a direct result of data requests submitted by Nashua pursuant to its Petition for Valuation in DW 04-048.
27. The relief sought by Pennichuck in each proceeding is substantially similar. Presumably, Pennichuck seeks a waiver not only from the *Uniform System of Accounts*, but from any sanctions the Commission might impose in DW 04-048 due to its failure to provide the required information to Nashua.

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<sup>12</sup> *Final Report*, Page 45.



28. However, as apparent from the company's annual Form F-8 and the AUS study, the company clearly is capable of providing a functional breakdown of its utility plant when it desires to do so. As a result, the relief Pennichuck seeks in this proceeding (waiver) necessarily involves the same factual and legal questions and is similar to the relief it ultimately desires in DW 04-048, i.e. a determination that it has provided all that it should be required to provide without sanctions.
29. Absent consolidation, Nashua will likely be required to present evidence as part of its valuation case in DW 04-048 concerning the impact of company's failure to comply with the *Uniform System of Accounts*. By submitting its request for a waiver in a completely separate docket, Pennichuck is essentially requiring that Nashua present evidence concerning the need for information to value the company's assets, an issue to be decided in DW 04-048, in a completely separate proceeding outside of the record in which its valuation testimony is to be submitted.
30. Consolidation of the proceedings will ensure that the Commission's record on valuation is complete and promote the efficient use of Commission resources. As a result, consolidation of these proceedings is appropriate under Puc 203.08.

WHEREFORE, Nashua respectfully requests that the Commission:

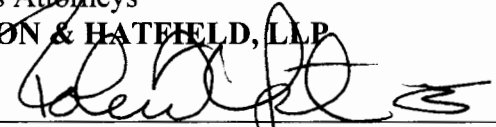
- A. Grant Nashua's petition to intervene in DW 05-179;
- B. Consolidate consideration of Pennichuck's request for a waiver in DW 05-179 with Nashua's Petition for Valuation in DW 04-048 pursuant to Puc 203.08;
- C. Deny Pennichuck's request for a waiver pursuant to Puc 201.05;

- D. Order Pennichuck to produce the functional breakdown of its utility plant in accordance with Rule Puc 610.01(e)(15);
- E. Grant such other and further relief as justice may require.

Respectfully submitted,

**CITY OF NASHUA**  
By Its Attorneys  
**UPTON & HATEFIELD, LLP**

Date: December 7, 2005

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**CERTIFICATION**

I hereby certify that a copy of the foregoing *Petition to Intervene and Motion to Consolidate* was this day forwarded to all persons on the Commission's official service list in the above proceedings.

  
Justin C. Richardson, Esquire