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April 14, 2004

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

Re: Docket No. DW 04-048 City of Nashua's Objection to
Respondents' Motion to Dismiss

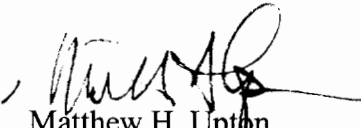


Dear Sir/Madam:

Enclosed for filing please find eight copies of the City of Nashua's Objection to Respondents' Motion to Dismiss in Full or in Part or, Alternatively, to Stay Proceeding in the above matter, together with a disk.

Copies of this letter and Objection have been mailed by first class mail, postage prepaid, to all persons listed on the attached Service List.

Very truly yours,


Matthew H. Upton

MHU/bgb
Enclosure(s)

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

**IN THE MATTER OF THE
DETERMINATION OF THE
FAIR MARKET VALUE OF
THE PLANT AND PROPERTY
OF PENNICHUCK WATER
WORKS, INC., PENNICHUCK
EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT
COMPANY, INC.**

DOCKET NO. DW 04-048

**CITY OF NASHUA'S OBJECTION TO RESPONDENTS'
MOTION TO DISMISS IN FULL OR IN PART OR,
ALTERNATIVELY, TO STAY PROCEEDING**

NOW COMES the City of Nashua, by and through its attorneys, Upton & Hatfield, LLP, and in support of this Objection, states as follows:

1. On March 25, 2004, the City of Nashua filed a Petition for Valuation Pursuant to RSA 38:9. This Petition was filed in furtherance of the City's efforts to take, by eminent domain, Pennichuck East Utility, Inc. ("PEU"), Pittsfield Aqueduct Company, Inc. ("PAC") and Pennichuck Water Works, Inc. ("PWW").

2. On April 5, 2004, PEU, PAC and PWW filed a Motion to Dismiss in Full or in Part or, Alternatively, to Stay Proceedings. In this Motion to Dismiss, the Respondents have set forth four separate theories which are taken in turn.

I. The City's Petition Should Be Taken as One Eminent Domain Proceeding.

3. The statutory scheme of RSA 38, and in particular RSA 38:2, 6, 9, 10, 11 and 14, permit Nashua to acquire assets outside its limits if the Commission finds the acquisition to be in the public interest.

4. RSA 38:6 provides, in pertinent part,

“The municipality notifying any utility in such manner may purchase all or such portion of the utility’s plant and property located within such municipality that the governing body determines to be necessary for the municipality utility service, and shall purchase that portion, if any, *lying without the municipality* which the public interest may require, pursuant to RSA 38:11 as determined by the commission.”

5. RSA 38:9 states, in pertinent part:

“If the municipality and the utility fail to agree upon a price, or if it cannot be agreed as to how much, if any, of the plant and the property lying within *or without* the municipality the public interest requires the municipality to purchase, or if the schedules of the property submitted in accordance with RSA 38:7 are not satisfactory, either the municipality or the utility may petition the commission for determination of these questions.”

6. RSA 38:14 provides, in pertinent part,

“The operation by a municipality *outside its own limits* shall be subject to the jurisdiction of the commission except as provided in RSA 362.”

7. There is nothing in RSA 38 which limits an acquisition to plant and property within a municipality or to plant and property without the municipality necessary for operation of the property within it. The only limitation on acquiring property outside the municipality is a determination by the Commission that the acquisition is in the public interest.

8. Nashua asserts that acquiring the assets of PWW, PEU and PAC, including those assets outside Nashua, is in the public interest because it will eliminate any claim for severance losses by any of the Pennichuck companies; it will prevent likely rate increases for that portion of the

system which is not acquired by Nashua due to the need to generate additional revenues to offset proportionately higher operating expenses; it will protect the level of service to be received by PEU and PAC consumers; and it will mitigate harm to the PEU and PAC shareholders resulting from operating smaller, less efficient and less profitable enterprises.

9. The Public Utilities Commission is perfectly capable of dealing with the legal and factual issues associated with the City's Petition and to separate this case into three distinct matters will result in judicial inefficiency and excessive expense to both the utility and the City of Nashua. Moreover, separating the acquisition of PWW, PEU and PAC into three separate dockets will defeat the statutory discretion of the Commission to set conditions and make orders that will globally protect and promote the public interest under RSA 38: 9 and 11.

10. To the degree the Town of Pittsfield wishes to acquire PAC, the City of Nashua, upon Pittsfield's filing a Petition pursuant to RSA Chapter 38, will withdraw its request to acquire PAC.

II. The City of Nashua has Complied with the Requirements of New Hampshire Court of Administrative Rules PUC 202.11 and 204.01.

11. Although the City of Nashua is aware of the provisions of PUC 202.11 and 204.01, it believed and continues to believe, that filing any prefiled testimony in support of this Petition was unnecessary and would be of no benefit to the Commission. The Petition was filed pursuant to RSA 38:9 which provides that when a municipality and a utility cannot agree on the property to be purchased and/or its price those determinations will be made by the Commission. Unlike a rate petition or merger petition, the Petitioner (City) is not in possession of all the evidence necessary to resolve the outstanding issues. While the City has engaged consultants who have developed certain opinions based on the information available, considerable additional discovery

and testimony, from both parties, will be necessary for the Commission to decide the issues raised in the Petition.

12. Pursuant to PUC 202.11(b), “the Commission shall establish the procedural order deadline for prefiling direct and responsive testimony, exhibits for parties and commission staff.” To the extent the Commission believes that there are matters concerning which testimony, as opposed to argument, would be helpful, the City of Nashua is fully prepared to provide it and expects that the issue will be discussed at the initial prehearing conference.

13. The City of Nashua asserts that dismissal of a petition for failure to submit what, at this time, would, at best, be incomplete testimony with no significant benefit to the Commission, would be inequitable. If the Commission believes such testimony would be helpful, despite the fact that discovery has yet to be completed, the City of Nashua can be ordered to file the testimony by a date certain and it will comply.

14. The allegations set forth by PWW, PEU and PAC regarding the City’s motivations and not filing prefiled testimony and exhibits, are without any basis in fact and are the product of speculation.

15. The allegations made by PWW, PEU and PAC that the City of Nashua’s Petition is “grossly premature and/or merely intended to buy time”, are at best disingenuous and at worse made in bad faith. The City of Nashua has been sued in Hillsborough County Superior Court, Docket No. 04-E-0062, by Pennichuck Corporation, PWW, PEU and PAC (hereinafter referred to collectively as “Pennichuck”) alleging, in part, that its failure to timely initiate a Petition pursuant to RSA 38:6 has put Pennichuck in a state of “suspended animation” under which the company has been unable to pursue opportunities for either the purchase of new regulated water systems or to contract for the operations of existing systems in New Hampshire. Further,

Pennichuck has claimed that the lack of taking action before the PUC has resulted in wild swings in stock valuation and has forced it to incur substantial expenses associated with a threatened taking. The irony of now arguing that its Petition is premature is not lost on Nashua.

III. The City's Petition Should Not be Dismissed Because the Regional Water District is Yet to be Established.

16. House Bill 361, which provides for the creation of regional water districts with bonding powers under RSA Chapter 33-B, became effective July 18, 2003.

17. Since the enactment of House Bill 361, Nashua and a number of other municipalities within the PWW, PEU & PAC franchises have been moving diligently to establish a regional water district that it is anticipated will in turn acquire the assets Nashua seeks to acquire through its Petition. Notwithstanding, RSA Chapter 38 does not require the establishment of a regional water district as a prerequisite to the proposed taking.

18. The Respondents' allegations regarding the viability of the regional water district that is being formed are without merit and based on pure speculation.

19. Whether or not a regional water district is established, the Commission can still make the required findings as to public interest.

IV. The Commission Should Not Stay Proceedings.

20. Once again, the allegations contained under Section IV of the Respondents' Motion to Dismiss are in stark contrast to their allegations contained within the action filed in Hillsborough County Superior Court, Southern District, Docket No. 04-E-0062 ("Superior Court action"). In the Superior Court action, Pennichuck alleges that the lack of any action taken on the anticipated taking has cost it lost business opportunity and financial harm. A stay is completely inconsistent with that position.

21. Although the Superior Court litigation does challenge the constitutionality of RSA Chapter 38, the arguments have little merit and a stay will unnecessarily delay the City of Nashua's actions in securing attractive financing at current prevailing market rates. If the Commission were to grant the relief requested by the Respondents, the Superior Court litigation could take over two years to resolve, including all associated appeals. By such time, the City of Nashua's opportunity to obtain attractive financing rates could be substantially compromised.

22. The Respondents have been aware of the City's intention to file the instant action and it was their choice to file the Superior Court action and to assume the expense of litigating both matters at the same time. The City of Nashua and its residents should not be subjected to additional delays and the potential of increased bond costs due to the voluntary choices of the Respondents from which they now seek protection.

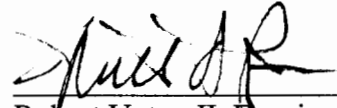
WHEREFORE the City of Nashua respectfully requests that the Honorable Commission:

- A. Deny the Respondents' request to sever the City of Nashua's Petition in three separate matters;
- B. Deny the Respondents' request to dismiss the City of Nashua's Petition;
- C. Deny the request to stay proceedings pending final resolution of the Superior Court action; and
- D. Grant such other and further relief as justice may require.

Respectfully submitted,

CITY OF NASHUA

By its attorneys
Upton & Hatfield, LLP



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Dated: April 14, 2004

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