

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

CITY OF NASHUA'S PETITION FOR VALUATION PURSUANT TO RSA 38:9

Docket No. DW04-048

DIRECT TESTIMONY OF BRIAN S. McCARTHY

Q: PLEASE STATE YOUR NAME AND POSITION WITH THE CITY OF NASHUA?

A: My name is Brian S. McCarthy and I am an Alderman-At-Large and President of the Board of Alderman for the City of Nashua having served in that capacity since January, 2004. Prior to that I was Alderman from Ward 5 from 1994 through 2003. I have been Chairman of the Aldermanic Pennichuck Special Water Committee since it was formed on November 13, 2002.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A: I am testifying in support of the City's Petition for Valuation under RSA 38:9. I hope to provide the commission with background concerning the City's desire to acquire the assets of Pennichuck Water Works, Inc., (PWW), Pennichuck East Utility, Inc., (PEU), and Pittsfield Aqueduct, Inc., (PAC). It is also my intent to establish how important the ownership and control of these assets is to the City and region. Finally, although it is my understanding that the City's acquisition of these assets is already presumed to be in the public interest because a majority of the City's voters voted in favor of acquiring them, the purpose of my testimony is to provide further support for the presumption of public interest.

Q: WHEN DID THE CITY FIRST BECOME INTERESTED IN THE OPERATIONS OF THE PENNICHUCK COMPANIES, WHICH ULTIMATELY LED TO THE CITY'S PETITION?

A: Pennichuck has operated in Nashua in one form or another since the 1800's. In recent years there has been concern about its growing real estate operations and what some believe is its failure to protect the watershed through those real estate operations. On June 14, 2002 Pennichuck Corporation, the parent of PWW, PEU and PAC, announced that it had petitioned the Commission to approve the indirect acquisition of the subsidiaries by Philadelphia Suburban Corporation (PSC) to be accomplished through the merger of Pennichuck into a wholly owned subsidiary of PSC. Initially Nashua was not opposed to the merger, although there was considerable public concern about an out-of-state company owning and operating the City's water system. That concern was exacerbated by the fact that one of PSC's largest shareholders was a foreign company. Following its intervention in the docket established by the PUC regarding the merger, the City engaged consultants to advise it concerning the merger and to conduct a comprehensive review of the Pennichuck system. Simultaneously, the City participated in discussions with its citizens and representatives of other municipalities relating to the formation of a regional water district.

Q: WHAT WERE THE CONCLUSIONS OF YOUR CONSULTANTS?

A: The consultants presented a number of options to the City including the following:

- a. Recommend the merger not be approved.

- b. Recommend that the merger be approved with conditions.
- c. Take PWW.
- d. Create a regional water district and take the assets of PWW and PEU.

The consultants further concluded that public ownership in general is financially beneficial to customers due to the fact that public entities do not pay taxes or dividends and can raise capital at much lower rates than investor owned utilities. In addition, public ownership has the opportunity to build equity in the utility over time as the debt is paid down.

Q: WHAT DID THE BOARD OF ALDERMAN DO UPON RECEIPT OF THE CONSULTANTS RECOMMENDATIONS?

A: The recommendations were made on November 1, 2002. As I said earlier, an Aldermanic Pennichuck Special Water Committee was formed on November 13, 2002. Thereafter, on November 26, 2002 by a vote of 14 – 1, the Board of Alderman pursuant to RSA 38:3 determined that it was expedient for the City to establish a water works system and to acquire all or a portion of the water works system currently serving the inhabitants of the City and others. Because it was the intent of the Board to acquire the assets, not only of PWW but also PEU and PAC, the board authorized the mayor to support, along with other municipalities proposed legislation to establish regional water districts and in particular to support the formation of a regional water district including the City.

Q: WAS THAT RESOLUTION OF THE BOARD OF ALDERMAN CONFIRMED BY THE VOTERS OF THE CITY?

A: Yes. At the November 26, 2002 meeting the Board authorized a special meeting of the voters of the City to be held as a special election for the purpose of confirming the vote of the Board of Alderman, that it was expedient for the City to establish water works system. Thereafter, a very public campaign was conducted by the City to make sure the voters understood what it proposed to do. Pennichuck made clear its opposition. A number of public hearings were held to discuss the acquisition. The public discussion was well covered by the Nashua Telegraph and copies of the articles that appeared in the newspaper are attached as Exhibits A to G. The City was clear throughout this period that it intended to acquire assets located outside Nashua and that it intended to participate in a regional water district. On January 14, 2003, with a turnout of approximately 20% of the registered voters of the City, the resolution of the Alderman was confirmed by a margin of 6,525 to 1,867, or a 78% majority.

Q: FOLLOWING THE CONFIRMATORY VOTE, WHAT DID THE CITY DO?

A: On January 28, 2003, pursuant to RSA 38:6, the Board of Alderman determined that all of the property of PWW, PEU and PAC was necessary for its municipal water service (Exhibit H) and on February 5, 2003 gave notice to PWW, PEU and PAC of the vote and made inquiry whether they would sell the property it had identified. Copies of the notices are attached to Nashua's Petition as Exhibits B, C and D. On March 25, 2003, PWW, PEU and PAC responded to the City's notice, pursuant to RSA 38:7, in the negative. After the Pennichuck companies responded in the negative to the City's inquiry, under RSA 38:6, the City decided it would be in all parties interest to continue to pursue a possible agreement on the

basis of President and CEO, Maurice Arel's, earlier press statement of November 28, 2002 (copy attached as Exhibit I), which indicated that Pennichuck would only accept a superior offer from the City compared to PFC's offer worth \$106 million. He listed items totaling approximately \$13 million. On April 2, 2003, Mr. Arel stepped down and the interim CEO, John Kreick, told city representatives on April 10, 2003 that Pennichuck would entertain an offer for the entire company including the two non-regulated subsidiaries, Southwood Development Corporation and Pennichuck Services Company. Mr. Kreick also advised that negotiations would need to await appointment of a new permanent President and CEO.

Q: FOLLOWING THESE DISCUSSIONS WITH REPRESENTATIVES OF THE PENNICHUCK COMPANIES, WHAT DID THE CITY DO?

A: The City had already obtained a comprehensive report on the Pennichuck companies; the history of its operations; the status of its supply, treatment and distribution system; and the issues of public versus private ownership and control. The City also obtained a preliminary appraisal of the value of the five Pennichuck companies as of December 31, 2002 prepared by George E. Sansoucy, PE, LLC. For purposes of negotiation with Pennichuck, the City hired the law firm of Devine, Millimet & Branch, PA, it also had as its advisors, its long time bond counsel, Palmer & Dodge of Boston, Massachusetts and its long time financial advisors, First Southwest Company, a major investment banking firm in public finance which has in-house expertise on municipal acquisition and operation of water companies. During July 2003, counsel for the City and Pennichuck met and

discussed, inter alia, taxation issues, a possible management contract and financing alternatives. Because the City had been advised by members of its legal staff that it did not have the power to purchase the stock of private companies or the assets of non-utility private businesses (Southwood Corporation and Pennichuck Services Company), the City sought and found a third party willing to buy those companies at a certain price if the City could reach agreement on a overall price with Pennichuck. For the purpose of avoiding prolonged time, expense and litigation, the City ultimately decided to offer a sum for the assets of all five Pennichuck companies that would include a reasonable premium over the appraised value the City had in hand, designed to offset the estimated tax impact of the sale on the Corporation. The offer was for \$121 million dollars and was made on November 20, 2003.

Q: DID PENNICHUCK ACCEPT THE OFFER?

A: No. The offer was rejected on December 15, 2003. The parties met again on January 7, 2004 in an attempt to bridge their differences. On January 27, 2004 Pennichuck indicated that it declined to negotiate further and on February 4, 2004 filed its first lawsuit.

Q: DO YOU BELIEVE PENNICHUCK EVER INTENDED TO SELL ITS ASSETS TO THE CITY?

A: No. I now believe that Pennichuck negotiated with the City throughout this period to allow time for its public relations campaign to turn public opinion against the City's acquisition and the regional effort and in hopes that the November 2003 election results would change the City's policy on the

acquisition. Meetings were difficult to arrange and then typically scheduled weeks in the future.

Q: FOLLOWING PENNICHUCK'S TERMINATION OF NEGOTIATIONS AND THE FILING OF ITS FIRST LAWSUIT, WHAT DID THE CITY DO?

A: The City moved as quickly as possible in February and March 2004 to appropriate funds for consultants and legal counsel to plan for and pursue eminent domain under RSA 38.

Q: WHY DIDN'T THE CITY FILE A PETITION UNDER RSA 38 EARLIER?

A: The City and its advisors believed that voluntary negotiations were more likely to be successful in the absence of such a petition.

Q: WHAT HAPPENED TO THE EFFORT TO FORM A REGIONAL WATER DISTRICT?

A: During the summer and fall of 2003 a regional water district committee drafted a proposed regional district charter and submitted it to the governing bodies of the various municipalities. It has since been approved by the City of Nashua and seven towns, which now comprise the Merrimack Valley Regional Water District.

Q: WHY DO YOU BELIEVE IT IS IN THE PUBLIC INTEREST FOR NASHUA TO ACQUIRE THE ASSETS OF PWW, PEU AND PAC?

A: Water is a crucial community resource, which should be locally owned and controlled. Pennichuck Corporation has been clear that it (including PWW, PEU and PAC) is for sale and the most likely acquirers are foreign. The City will not accept control of water decisions which are made by a company so removed as to

be unaware and unconcerned with long term effects on the community, nor decisions on long term supply of water or protection of a water source which are based on short term revenue interests rather than sound planning for the future. Moreover, the Board of Alderman has found that the maintenance of an adequate supply of clean, affordable drinking water is essential to the viability of any community; that the maintenance of an adequate supply of water for the protection of life and property is essential to the viability of any community and that the maintenance of an adequate supply of clean, affordable water to be used for commercial purposes within the City is essential to the economic viability and orderly growth of the community. It further found that the maintenance of a water system, which performs these purposes, was best served by the formation of a regional water district representing the several towns and cities impacted by it. Nashua seeks to acquire all of the assets of the three Pennichuck regulated utilities because the City believes it would promote the interest of all customers/rate payers, the general public, the employees of Pennichuck and the owners of Pennichuck. Specifically, Nashua asserts that acquiring the assets of PWW, PEU and PAC, including those outside of 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 revenue to offset proportionally higher operating expenses; it will protect the level of service to be received by PEU and PAC customers; and it will mitigate harm to Pennichuck and Pennichuck shareholders by eliminating the need to operate a

small or less efficient and less profitable portion of the system. The will of Nashua voters would be implemented; the goals of the Merrimack Regional Water District, organized under Laws 2003, Chapter 281 would be promoted; rates would be lower over time; service would remain adequate; water supplies would come under long range public control; continued employment of Pennichuck operation and maintenance personnel would be reasonably accommodated; and Pennichuck owners would receive fair value for their assets without the disadvantages of retaining ownership of smaller systems only.

Q: DOES THE CITY INTEND TO CONVEY ANY ASSETS IT ACQUIRES TO THE MERRIMACK VALLEY REGIONAL WATER DISTRICT?

A: If the City is successful in its acquisition of the assets of PWW, PEU and PAC it is the intent of the City to convey those assets to the regional water district. The City's support for and participation in the regional water district is based upon the City's determination that regional control over the water supply and distribution is in the best interest of Nashua as well as the surrounding areas. The City is not, however, a "stalking horse" for the regional water district as has been suggested by the Pennichuck companies. Rather, the City takes the position that its acquisition of the Pennichuck assets outside of Nashua is in the public interest whether or not the regional water district ultimately owns and controls them.

Q: DOES THE CITY HAVE THE TECHNICAL CAPABILITY OF OWNING AND OPERATING A WATER UTILITY?

A: Yes. Nashua is the second largest City in NH and interestingly the only City in the State which does not own its water system. It provides all the municipal services of a large, urban municipality, including but not limited to wastewater

collection and treatment, storm water collection, streets and highways, solid waste disposal and police and fire departments. Moreover, Nashua owns and manages a large and complex physical plant, including but not limited to, a city hall, schools, a public works building, a police station, fire stations and a wastewater treatment plant. This physical plant has a value of approximately \$300 million (as compared to the \$85 million of value of the Pennichuck assets the City seeks to acquire). Nashua provides all of these services and performs all of these functions through a capable and professional staff. The City is also in a better position than an investor owned utility to implement a water conservation program. Water conservation is an important priority for the City. Finally, as I will discuss in greater detail below, the City intends to contract out the day- to- day operation of the system and management oversight to skilled operating companies.

Q: DOES THE CITY HAVE THE MANAGERIAL CAPACITY OF OWNING AND OPERATING A WATER UTILITY?

A: 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 certain management oversight. The City has sought expressions of interest in these contract operations and has received eleven (11) positive responses, including one from Pennichuck Service Company, Inc. The City is reviewing

drafts of solicitations for proposals in this regard. The first is for direct operation and maintenance of the assets and the second is for the management oversight function. The City intends to have contracts in place when ownership transfers. The City will also provide the legal framework for the operation of the water system by adopting a Water Ordinance, a draft of which is presently being reviewed. It is intended, and probably required in order to comply with covenants that are likely to be incorporated into bonds that will finance the acquisition, that the City Finance Director and her staff will perform all treasury functions. In addition to the operating and oversight contractors, the City has its own Public Works Department which presently operates its wastewater collection and treatment facilities in close conjunction with the operations of PWW.

Q: DOES THE CITY HAVE THE FINANCIAL CAPABILITY TO OWN AND OPERATE A WATER UTILITY?

A: Yes. RSA 33-B permits the City to issue bonds for the acquisition of revenue producing facilities such as a water works system. These bonds are referred to as revenue bonds and are secured by the revenues from the water works system as opposed to government obligation bonds which are secured by a pledge of the faith and credit of the municipality, or in other words, by the ability of the municipality to raise taxes. Because Nashua will be able to roll its expenses of acquisition into the revenue bonds used to pay for the acquisition, Nashua taxpayers will not ultimately bear any cost of the acquisition or purchase. Nashua can also borrow through the issuance of revenue bonds, funds necessary for extraordinary capital improvements. Nashua intends such borrowing

simultaneous with its acquisition borrowing for capital improvements to the water treatment plant. The operations and maintenance of the water works system, including repayment of the revenue bonds, will be funded by rates. Because of the City's lower cost of money and operation, it believes ratepayers in the short-term will experience rates no worse than those charged by the Pennichuck Companies. Over time, the City expects to charge rates lower than what ratepayers could expect if the Pennichuck Companies returned ownership. Because the City will make a payment in lieu of taxes (PILOT) for any property it acquires, its ownership will not impose any burden of the taxpayers of any municipality in which the property is located.

Q: WOULD THE TECHNICAL MANAGERIAL AND FINANCIAL CAPABILITIES YOU HAVE DESCRIBED BE IMPACTED IF THE COMMISSION PRECLUDED NASHUA'S ACQUISITION OF ANYTHING OTHER THAN THE CORE SYSTEM OF PWW?

A: No. Such a ruling by the PUC would reduce the size of the system Nashua could acquire but only minimally. Our consultants have advised the City that the so-called core system represents most of the value of PWW and includes the water treatment plant and all the reservoirs as well as the distribution system

hydraulically connected to the treatment plant. Nashua does not believe PEU or PAC would be entitled to severance damages if the acquisition was limited to the core system or that PWW would be entitled to any premiums because of any claimed benefit its assets provided to PEU or PAC. If severance damages were, however, ordered by the Commission the impact is believed to be marginal on

subsequent rates. Nashua has always expressed the preference to purchase assets rather than pay severance in an effort to avoid any impact on rates. If Nashua was limited to the core system, its technical, managerial and financial capabilities would not be impacted except perhaps improved to the extent it was required to pay less for the assets and had lower costs of operation. Nashua's capabilities would not otherwise be affected.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes.

EXHIBIT A



The Telegraph **ONLINE**

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE

Sessions set for questions on acquisition

Monday, January 06, 2003

By ANDREW NELSON Telegraph Staff, nelsona@telegraph-nh.com

NASHUA – Residents at a series of meetings this week will be able to put their questions to civic leaders about the push for the city to acquire Pennichuck Corp.

Discussions are scheduled around the city every day through Friday.

The sessions conclude Friday night, when representatives from both the city and Pennichuck have been invited to state their case to the public at City Hall.

Ward 5 Alderman Brian McCarthy, who leads the aldermanic Pennichuck Water Special Committee, said the management of any city-owned water company and the finances to buy it are key issues that people want to understand.

"I think there are a lot of people who have unanswered questions," he said.

The reports compiled by the city's consultants, along with the reasoning behind the Board of Aldermen's vote to pursue the acquisition of Pennichuck, will be explained at each of the meetings, he said.

Residents will decide at the ballot box on Jan. 14 whether the aldermen should take further steps to purchase the local water company.

The vote stems from the springtime announcement that Pennichuck would be acquired by Philadelphia Suburban Corp., the second-largest water utility in the country. The stock-for-stock transaction is estimated to be worth about \$95 million. The agreement is before state Public Utilities Commission regulators, who are scheduled to make a decision on the merger by Feb. 28.

Restrictions on city officials spending tax dollars and acting as advocates on the issue will limit the roles of some city staff. McCarthy said the restriction could prevent him from printing and distributing a list of frequently asked questions prepared by his committee.

Ward meetings will be held in neighborhood schools today through Thursday – tonight at Elm Street Junior High School, Tuesday at New Searles Elementary School, Wednesday at Nashua High School North, and Thursday at Charlotte Avenue Elementary School. Residents may go to any of the four ward meetings, no matter where they live.

INFORMATION MEETINGS

Slated Four informational ward meetings on the city's proposed acquisition of Pennichuck Corp. are scheduled for this week.

- Today: 7 p.m., Elm Street Junior High School cafeteria, Wards 4, 6 and 7.

- Tuesday: 7 p.m., New Searles Elementary School cafeteria, Wards 5, 8 and 9.

- Wednesday: 6:30 p.m., Nashua High School North, Ward 1.

- Thursday: 7 p.m., Charlotte Avenue Elementary School cafeteria, Wards 2 and 3.

On Friday, a citywide forum on the Pennichuck acquisition will be held at 6:30 p.m. in the City Hall auditorium.

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The citywide forum on Friday is being sponsored by the Democratic and Republican city committees. Pennichuck Corp.

Rep. Jane Clemons, chair of the Democratic City Committee, said it is important for residents to be educated on the issue, and hear the points of view of both city representatives and Pennichuck leaders.

"This is a very big decision," Clemons said. "I don't want to see a knee-jerk reaction (when people vote). I think it's important to the city that we are all well informed."

The vote next week is one of the steps in the state's eminent domain requirements. The first step occurred in November, when the aldermen voted 14-1 to put the question to a citywide vote.

If the majority of voters approve the ballot question, the aldermen would begin negotiations with Pennichuck. The final step would be for the aldermen to agree to borrow money in the form of a revenue bond, paid for by ratepayers, to buy the company, with the eventual goal of transferring control to a regional water district. At least two-thirds of the aldermen must agree to issue bonds.

If voters reject the acquisition proposal next week, the issue cannot be reconsidered for at least two years.

Andrew Nelson can be reached at 594-6415.

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EXHIBIT B



The Telegraph **ONLINE**

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE



Photo by Kathy Seward MacKay

Ward 5 Alderman Brian McCarthy disputes a newspaper ad by Pennichuck Water Works that appeared in Monday's Telegraph.

2 marketing campaigns under way

Tuesday, January 07, 2003

By ANDREW NELSON, Telegraph Staff, nelsona@telegraph-nh.com

NASHUA – On the same day Pennichuck Corp. began its marketing campaign in opposition to the upcoming referendum, city leaders began their own marketing campaign as residents consider whether it makes sense for the city to buy Pennichuck Water Works.

Questions ranging from employee retirement benefits and concerns about the water utility becoming a political football to "socialism" replacing free-market capitalism were bandied around at the first in a series of ward meetings, leading up to the city-wide vote next week.

A skeptical Tom Potter, of 20 Kennedy Drive, had heard all the good things to come out of months of study, but wanted to go deeper.

"I know there has to be some cons," said Potter, his loud voice carrying across the lunchroom, as he read a list of pointed questions from a small slip of paper.

Ward 5 Alderman Brian McCarthy, who also leads the ad hoc aldermanic committee overseeing the Pennichuck-acquisition issue, answered the questions, often talking in generalities.

On the issue of personnel cost, McCarthy said the city's consultants based a city-run water company expenses on the same expenses Pennichuck currently has.

And the income from the operation of the company, plus the savings from operating Pennichuck as a public water company, would allow the company to continue to supply water and the ratepayers would be its owners, he said.

The financial picture is not based on solid figures, McCarthy said, but "based on some guesses that are fairly close."

It would be locally owned, locally managed, and serve the "best interest of the ratepayer, not the shareholder," he said during the discussion.

Even with his questions, Potter said he still believed having the water company based here, instead of a division of Philadelphia Suburban Corp, which is proposing to buy Pennichuck, would be the best.

"I'd would like to see us retain control," he said, before sitting down.

Nearly 50 people filled half the lunchroom at the Elm Street Junior High.

A signal of the high interest in the topic was clear with close to half of the city's 15 aldermen attended. The meeting was recorded and will be aired on local municipal TV Channel 16 on Thursday at 7 p.m. and repeated Sunday at noon.

Other information sessions are scheduled today through Friday.

A week from today, city voters will go to the polls to decide whether City Hall leaders should begin negotiating with Pennichuck Corp. executives to purchase the water company.

McCarthy and Mayor Bernie Streeter took aim at a Pennichuck advertisement that ran in Monday's Telegraph.

The half-page ad questioned the priority of the city and whether schools, roads and other more typical municipal concerns would be ignored if the city took over the water company.

"There is not one dollar that can be spent on roads and schools that will be spent on the water company," McCarthy said, holding up a clipping of the advertisement.

Streeter called the ad "absolutely false."

He repeated his position that the public ownership of the company is a good step for the city and "savings will automatically accrue."

Both said the borrowed money would be repaid with revenue from ratepayers, not property taxes of city residents.

During the question-and-answer session, critics argued the private sector would be more efficient than government in running the water company.

James Miller, of 5 Columbine Drive, hit on some local controversies, such as the conflict between the new Nashua High School North and nearby neighborhoods, as he raised questions of unintended consequences of a city-run waterworks.

"They don't run our city half-decently," Miller complained.

Zach Janowski, of 16 Eldorado Circle, said water governance would become "complex political" problems, instead of business problems.

"They are doomed to be problematic," he said.

Maurice Arel, president of Pennichuck, sat in the back, scribbling notes on a yellow legal pad.

"I was very impressed by the questions that were asked tonight that were not answered," said Arel, who added many of the issues surrounding a city takeover remain unknown.

Andrew Nelson can be reached at 594-6415.

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EXHIBIT C



The Telegraph **ONLINE**

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE

Dozens turn out for Pennichuck ward meeting

Wednesday, January 08, 2003
By TOM WEST, Telegraph Correspondent

NASHUA – City officials continued to pitch their proposal to buy Pennichuck Water Works during an informational meeting attended by about 60 people at New Searles Elementary School on Tuesday night.

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As they did at a session at Elm Street Junior High School on Monday, officials reiterated their theme that the city's purchase of the water system would be financed through revenue bonds and wouldn't add to the local tax rate.

Ward 5 Alderman Brian McCarthy, who chairs an aldermanic committee on the proposed purchase, and Mayor Bernie Streeter also continued to slam an advertisement Pennichuck has run in The Telegraph, claiming the city's schools and infrastructure will suffer if voters approve the purchase.

Residents will go to the polls Tuesday to decide whether the city should pursue the purchase of the utility and the eventual establishment of a regional water district that would be governed by an elected group of water commissioners.

Informational meetings on the issue are scheduled throughout the city this week.

In its advertisement, Pennichuck says government should stay out of the water business and can't afford to spend about \$100 million to buy a company that it lacks the expertise to run efficiently.

In addressing the crowd Tuesday, Streeter and other officials said the utility's ad was "blatantly false."

"It's deceitful," the mayor said. "I'm sure you're concerned about adding to the city's debt limit, but that will not occur if Pennichuck is purchased."

The impetus for the city's campaign is the proposed purchase of Pennichuck by Philadelphia Suburban Corp., the nation's second-largest water company. Philadelphia Suburban wants to buy the utility in a stock-for-stock deal estimated to be worth about \$95 million.

McCarthy and other officials say the public purchase of the company would benefit ratepayers because they would, in effect, become the owners of Pennichuck and could borrow money at lower interest rates than a private entity for the purchase and long-term capital improvements.

A measure that would authorize the water district to issue revenue bonds will be introduced in the Legislature this month and has already drawn the support of most area lawmakers, said Streeter and Alderman-at-Large Fred Britton.

Most at Tuesday's session seemed supportive of the proposed purchase, but there were skeptics at the meeting who said they haven't been provided enough information by the city to vote "yes" on the measure next week.

Frank Henry of Greenwood Drive said officials don't even know what Pennichuck is worth and "if we turn you lose with a 'yes' vote we're buying a used car essentially. We could be buying a pig in a poke without really knowing what we're buying."

McCarthy acknowledged that some questions about the utility's valuation remain unanswered. A consultant is studying the issue for the city, but the answers won't come before Tuesday's election, he said.

McCarthy said if voters reject the proposal next week, the city will drop its plans to try to buy the utility. But officials will still push for improvements to the system as the state Public Utilities Commission considers Pennichuck's merger with Philadelphia Suburban, he said.

The PUC is expected to rule on the merger proposal by Feb. 28.

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EXHIBIT D



The Telegraph ONLINE

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE

Utility's cost depends on many issues

Friday, January 10, 2003

By BRAD LEIGHTON, Telegraph Staff, leightonb@telegraph-nh.com

NASHUA – Typically, when someone considers buying something, the first question is: "What will it cost?"

The same is true for the proposed city acquisition of Pennichuck Corp., the local water company.

Since Philadelphia Suburban Corp.'s stock-for-stock offer is between \$95 million and \$106 million, then \$100 million might seem like a reasonable number.

But a municipal purchase would be an outright buyout and that carries additional costs, said Maurice Arel, the company's president and chief executive officer.

To accept any city offer, Pennichuck would first have to dissolve its agreement with Philadelphia Suburban, which carries a \$2.5 million fee written into that agreement. Pennichuck would ask that the fee be included in the price for a municipal takeover, Arel said.

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Pennichuck would also ask that its shareholders be reimbursed for capital gains taxes, he said. Since the Philadelphia Suburban offer is a stock-for-stock trade, Pennichuck shareholders would not be subject to a capital gains tax in that deal.

In a public purchase, however, the stock would be bought and dissolved. That, in effect, would force a capital gains tax on shareholders.

Pennichuck would have to reimburse its financial adviser, SG Barr Devlin, some \$1.5 million based on the finance company's contract with the utility. Company officials would ask that cost be passed onto the city, Arel said.

The company could also ask that its stockholders be compensated for future earnings on the Pennichuck stock, since those earnings would not be realized because of the eminent domain taking of their property, said Stephen Densberger, the company's executive vice president.

Ward 5 Alderman Brian McCarthy, who chairs the aldermanic committee on the proposed purchase, said the city would dispute these costs. If the purchase goes to eminent domain and the state Public Utilities Commission decides it is in the public interest, then the PUC would determine the purchase price and whether these additional costs are included.

A quick survey of some other public takeovers of private water companies show that the final settlement price is often between two to four times the "net book value" of the company. The book value in this case is the shareholders' investment in the company -- the equity -- plus the debt.

For example, an individual's home mortgage includes the amount paid off -- the equity -- and the amount still owed the bank in principal. Add them together and it gives you what was paid for the house. It's different than "market value," which is the price the property would fetch if it was put

<http://www.nashuatelegraph.com/print.asp?ArticleID=71390&SectionID=25&SubSectionID=1> 1/10/2003

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on the market today.

Looking at previous sales of water utilities gives an idea of how much Pennichuck might sell for in a municipal takeover.

For example:

n Last year, the city of Indianapolis bought its water utility from the Indiana-based energy company NiSource for \$522.5 million, or about three times the book value recorded in federal Securities and Exchange Commission filings.

n Last year, Fernandina Beach, Fla., bought its water system from the Florida Public Utilities Co. for \$24.6 million, or 4½ times book value.

n In 2001, Salisbury, Mass., bought its utility from the American Water Works Co. for \$11.5 million, a little less than twice the book value, said Jerry Klima, a retired lawyer who sat on the town's water committee.

n In 1986, the Massachusetts towns of Dedham and Westwood bought their utility for \$8.5 million, which was a little less than twice the book value, said Nan Crossland, executive director of the Dedham-Westwood Water District.

Pennichuck's book value is about \$58 million – \$27 million in debt and \$31 million in equity. So, using the book value rule of thumb, the utility could cost anywhere between \$116 million to \$232 million.

Klima said the ratio of book value to final purchase price can vary greatly from utility to utility and from state to state.

"I'd caution against directly comparing book value versus purchase price," he said. "All you are trying to get at is a fair market value for the utility. What the final purchase price is often determined by state laws on the public purchase of a utility as well as previous cases that have gone before the state's PUC."

The New Hampshire Public Utilities Commission already has indicated that it wouldn't necessarily include any damages to Philadelphia Suburban. There is little legal precedent in New Hampshire that would guide the PUC as to what is a reimbursable expense and what isn't, said Gary Epler, the PUC's general counsel.

"The commission would need to hear arguments on both sides and then make a ruling," he said.

It is impossible to say now what the PUC would or wouldn't consider legitimate compensation to Pennichuck stockholders in a public taking of the company, said Mark Naylor, director of the commission's gas and water divisions.

"In my 12 years with the commission, we really haven't had any eminent domain takings of utilities. We have one right now with the city of Berlin taking the hydroelectric plant there," he said.

"Hudson did file a Chapter 38 (eminent domain taking) when they were taking their water utility from Consumers New Hampshire. But then Pennichuck stepped in and they worked out a deal that worked for all three. It never got to the point of us determining a price or what costs would be included."

Hudson bought its water utility from Consumers Water Co. for \$34.5 million in 1996 and then sold off the non-Hudson assets to Pennichuck for \$7.5 million.

EXHIBIT E



The Telegraph **ONLINE**

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE



Photo by Kathy Seward Mackay

Nashua resident Bill Hatch asks a question during the citywide forum on the sale of Pennichuck Corp. on Friday night.

City, utility debate future at forum

Saturday, January 11, 2003

By ANDREW NELSON, Telegraph Staff

NASHUA – While city leaders want residents to consider the future when they stand in the polling booth Tuesday, Pennichuck Corp. executives asked residents to judge them on their past record.

Maurice Arel, president of the company, said the company has “150 years of excellent service” in the community and it would remain that way if Philadelphia Suburban Corp. successfully merges with the local water company.

“It is in their best interest that Pennichuck operates in the same prudent manner,” said Arel, a former mayor.

However, Brian McCarthy, the chairman of the ad hoc aldermanic committee studying the city acquisition of Pennichuck, argued the future is better in the long run if the company is owned by the people.

“Rates will go up, make no mistake about it. We can reduce that by bring (Pennichuck) into public ownership,” said McCarthy.

Arel and McCarthy sat just a few feet from each other, sipping bottled water from paper cups as nearly 100 people locked on in the City Hall auditorium Friday night. The forum concluded a week of meetings across the city before residents vote on Tuesday. The city Democratic and Republican committees sponsored the event.

Voters will consider Tuesday whether the city should continue studying the possible acquisition of Pennichuck, an investor-owned company, and make it a public utility.

The company is in the midst of a merger with Philadelphia Suburban, one of the largest water companies in the country. The stock-for-stock offer is valued between \$95 million and \$106 million.

Peter Leishman, a former Milford selectman and state representative, moderated the forum, fielding questions from the audience and reading written questions.

Learn More
[An archive of the Telegraph's coverage regarding the sale of Pennichuck Corp.](#)

EXHIBIT H

LEGISLATIVE YEAR 2003

RESOLUTION: R-2003-160

PURPOSE: Providing, pursuant to RSA 38:6, for determination of the plant and property necessary for municipal water utility service and authorizing the mayor to give required written notice to the utility

SPONSOR(S): Mayor Bernard A. Streeter
David Rootovich, President, Board of Aldermen
Alderman-at-Large Frederick Britton
Alderman Brian S. McCarthy, Ward 5
Alderman-at-Large James R. Tollner
Alderman-at-Large David W. Deane
Alderman-at-Large Paula Johnson
Alderman Timothy Nickerson, Ward 2
Alderman Robert A. Dion, Ward 6
Alderman Marc W. Plamondon, Ward 4
Alderman Lori Cardin, Ward 7

COMMITTEE
ASSIGNMENT:

ANALYSIS

Pursuant to RSA 38:6, within 30 days of the January 14, 2003 confirming vote to acquire the water supply system, the Board of Aldermen must determine what plant and property is necessary and in the public interest to acquire and give written notice of this determination as well as the confirming vote.

This resolution provides for determination of the plant and property necessary for municipal water utility service and authorizes the Mayor to give required written notice to the utility.

Approved as to form: Office of Corporation Counsel

By: David Rootovich

Date: 1-24-03

EXHIBIT I

Arel: 'Superior offer' needed

Thursday, November 25, 2002

By BRAD LEIGHTON, Telegraph Staff, leightonb@telegraph-nh.com

Maurice Arel, Pennichuck Corp.'s president and chief executive officer, said the company would only accept a "superior offer" from the city over Philadelphia Suburban's current offer.

"By superior, I don't mean \$106 million plus one dollar," he said. If the city acquired Pennichuck, the corporation would "effectively be dissolved," Arel said.

That would subject the company's dissolved assets to federal income tax, Arel said. The book value of the assets is about \$50 million, but debt of \$27 million would be subtracted from the equation. That means the city would have to pay about 40 percent of \$23 million, or \$9.2 million in addition to the purchase price.

The city would also have to pay a \$2.5 million fee to Philadelphia Suburban Corp. because the Pennsylvania-based corporation has that fee written into the merger agreement should Pennichuck accept another offer.

Pennichuck would also have to reimburse its financial adviser, SG Barr Devlin, some \$1.5 million and that cost would have to be included in the city's offer, Arel said.

Because the city would buy the company for cash, as opposed to the tax-free stock for stock offering of Philadelphia Suburban, Pennichuck shareholders would be exposed to capital gains taxes.

Arel said his board of directors would likely ask the city for additional money to offset those taxes.

The city might try to take Pennichuck's assets through eminent domain, but those costs should be included in any fair eminent domain taking as well, Arel said.

The city's pursuit of Pennichuck could potentially kill the merger agreement that the company has already reached with Philadelphia Suburban. If that happens and then the city balks at the Pennichuck price tag and backs away from acquiring the company, "then they could open up themselves to a lawsuit," Arel said.

"That's something our board of directors would have to consider," he said.

Residents asked about finances, possible water rate increase and governance. Applause broke out twice when residents asked pointed questions of Arel, such as why the company didn't offer the city the option to buy the company.

"I don't think anybody thought the city would be interested," said Arel.

Bill Hatch of 20 Cathedral Circle asked if "something so egregious" occurred to justify overturning years of tradition with an investor-owned utility.

In reply, McCarthy said the merger means "control getting further and further away from the people who consume it," along with the cost savings that benefit public utilities and the stewardship of the watershed.

Arel said the finances are "debatable" and added his private company has done a better job protecting the watershed than the regulatory boards in City Hall, with hundreds of feet of buffer between development and the water.

"The city would be a heck of a lot better" if it had adopted and enforced Pennichuck-like buffers years ago, he said.

Proponents of a yes vote said a favorable vote on Tuesday is not the final decision, but allows the city to continue its investigation of Pennichuck.

Gene Porter of 77 Concord St. wants people to support the referendum.

"It seem to me we are in the middle of the fact-finding," Porter said.

George Ginsburg, of 6 Dover St., said he wants the study of the company to continue and include the finances and the water quality. "I want the next step to be give me the facts," he said.

The meeting is scheduled to be broadcast on WYCN, Channel 13, at 5 p.m. and 8 p.m. Saturday and Sunday.

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EXHIBIT F

PRINT



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The Telegraph **ONLINE**

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE

Questions & Answers About Tuesday's Vote

Sunday, January 12, 2003

By Brad Leighton and Andrew Nelson

Why do the mayor and Board of Aldermen want Pennichuck Corp. to become a public utility?

City leaders believe a publicly owned water utility will result in lower rates in the long term and will allow residents to have a greater say in the decisions and management of the drinking water.

How will the tax rate be affected?

The city plans to buy the company with so-called revenue bonds, not the typical general obligation bonds. Revenue bonds would be paid with the revenue from Pennichuck customers.

In short, when people pay their water bill, they will be paying back the borrowed money.

What about water rates?

Rates are expected to increase in the future whether under public ownership or as an investor-owned company.

City consultants determined that rate increases would likely be less under public ownership.

However, company officials contest the consultant's numbers. They argue that since the city would have to pay back the initial purchase price and they are proposing some \$20 million more in capital expenditures than the company, those costs will be passed on to the ratepayers.

What are the advantages of Philadelphia Suburban Corp. acquiring Pennichuck?

Company officials say Philadelphia Suburban is larger, so it can buy water utility supplies such as mains, meters and hydrants in bulk, lowering the per-unit cost.

They say overhead costs, such as water-testing laboratories, would also be spread across a larger customer base. In addition, since the company must satisfy investors, it drives them to greater efficiency. For example, there tend to be fewer employees per customers in privately owned utilities.

Ballot question

This is the text of the ballot question voters will consider in a special election on Tuesday:

What happens if the question passes?

State law details how municipalities acquire an existing water system and its assets. The law governing the process is RSA 38.

Shall the resolution of the Board of Aldermen adopted on November 26, 2002 determining that it is

If the voters approve, the mayor must notify the utility in writing

within 30 days and identify the property the city intends to acquire.

Pennichuck will have 60 days from the receipt of the city's letter to reply.

If Pennichuck says it is not interested or does not respond in time, the city may proceed to acquire with the company after the Public Utilities Commission fixes a price.

If Pennichuck responds favorably, it must provide the city with the price, terms it is willing to accept and a schedule.

The city and Pennichuck may then negotiate a price acceptable to both parties.

If the city and Pennichuck fail to reach an agreement, either of the two parties can petition the PUC to determine if the acquisition is in the public interest, and to determine the price, terms and extent of property to be acquired by the city.

Within 90 days of the PUC decision, the Board of Aldermen must vote whether to accept the PUC decision.

How about if the question fails?

The state law governing the eminent domain process mandates that if voters reject the ballot question, the city must wait two years before asking for voter approval again.

What about the Pennichuck and Philadelphia Suburban merger?

The process continues at the PUC, as the state regulators consider the merits of the proposed merger.

Documents submitted by the city detail a list of restrictions it wants to see imposed if the merger goes through.

The restrictions include halting land sales, a 10-year guaranteed rate for customers, banning the construction of any water-bottling plant and eliminating the city's \$1.68 million annual hydrant rental fee.

Will the city operate the water utility? What about the regional water district?

Aldermen and the mayor have indicated a preference for a regional authority to oversee the company.

State law allows municipalities to enter into a joint operating agreement, but it does not allow a regional authority to borrow money.

Local state legislators plan to introduce a bill to change that.

The city, along with a dozen or more communities served by Pennichuck, will negotiate the makeup of the regional authority in the upcoming months.

expedient for the City to establish a water works system and, in order to establish such water works system, to acquire all or a portion of the water works system currently serving the inhabitants of the City and others be confirmed?

A YES vote means that the City may continue to pursue acquisition of the Pennichuck water system under the procedures outlined in RSA 38.

A NO vote means that the City may not acquire the water system now, and the issue may not be submitted to the voters again for at least two years.

In the interim, city leaders have said the city would hire the employees of Pennichuck to run the plant, under the auspices of the Board of Aldermen.

What is the breakdown of communities served by the system, i.e., how many towns are there and how many customers in each?

Learn More
[An archive of the Telegraph's coverage regarding the sale of Pennichuck Corp.](#)

Pennichuck Water Works, a subsidiary of Pennichuck Corp., provides service to Nashua, Amherst, Merrimack, Milford, Hollis, Bedford, Derry, Plaistow, Epping, Salem, Newmarket and Tyngsborough, Mass.

Pittsfield Aqueduct Co., a subsidiary of Pennichuck Corp., serves Pittsfield.

Pennichuck East Utility, a subsidiary of Pennichuck Corp., provides services to Litchfield, Londonderry, Windham, Pelham, Atkinson, Sandown, Raymond, Derry, Plaistow and Hooksett.

Nashua residents make 88.4 percent of Pennichuck connections, followed by Amherst (3.3 percent), Derry (3.3 percent) and Bedford (1.9 percent). The remaining communities make up less than 1 percent of the connections.

How will rates be set under Philadelphia Suburban ownership? How will they be set under municipal ownership?

Philadelphia Suburban would be required to petition the PUC for a rate increase, just like Pennichuck does now. A publicly owned water utility is exempt from PUC oversight, except if it charges different rates to customers in different communities.

The board that oversees the water utility, either the regional authority or the Board of Aldermen, would set the water rates.

If Philadelphia Suburban wants to buy Pennichuck for about \$95 million to \$100 million, why does the city need to bond \$167 million?

In short, it doesn't. The \$167 million figure comes from a recommended bond amount proposed by the city's consultants. It assumes a \$100 million acquisition cost, some \$37 million for capital expenditures, \$16.6 million to pay the first two years' interest on the bond, \$1.5 million in working capital, about \$2.4 million in bookkeeping and transaction costs and \$10 million in a stabilization fund.

The \$167 million figure could change. The acquisition cost could change, or the city may decide not to bond some of the other costs such as the \$16.6 million for the first two years' interest.

Will the result of Tuesday's vote have any bearing on the purchase issue before the PUC?

No.

If Tuesday's vote is successful but the PUC still approves the Philadelphia Suburban merger in February, can the city continue to negotiate with them, or initiate eminent domain proceedings? If the city had to buy or take the water company from Philadelphia Suburban, will it cost more?

The city can continue its bid to take the utility if the voters say so, regardless of whether the PUC approves the Philadelphia Suburban bid.

City officials seem to believe it would be more expensive to buy the system from Philadelphia Suburban, but PUC officials say this is not necessarily true.

How would Pennichuck stockholders be affected?

It's hard to say at this point. If the city's bid for the utility proceeds to an eminent domain taking, then the PUC would determine what price would fairly compensate the utility's shareholders.

How would Pennichuck executives and board members benefit financially if Philadelphia Suburban took over the system as opposed to the city taking over the system?

Aside from Pennichuck President Maurice Arel getting a place on the Philadelphia Suburban board, neither Pennichuck executives nor board members would benefit from a Philadelphia Suburban takeover as executives or board members. However, as shareholders in the company they would benefit the same as the other shareholders.

Some Pennichuck executives were given retention bonuses to keep them with the company while it is sold to Philadelphia Suburban, but those bonuses would remain no matter who eventually owns the system.

Would whoever owns the system be subject to the same federal water standards?

Yes. Federal law mandates that water quality adhere to the same safety standards whether under private ownership or public ownership.

What happened to the land holdings of Pennichuck? How much remains?

Pennichuck owned 1,990 acres of land at one time in the watershed, according to the consultants.

In 1983, the firm transferred 1,088 acres to Southwood, the real estate arm of the company. The company sold some 796 acres between 1984 and 2001. Of that land some 430 acres have been developed, company officials say. Other land was sold as conservation easements or to the city.

City leaders believe the remaining watershed in Nashua has been so developed that the city has to acquire land from Pennichuck Corp. to protect the drinking water.

Company officials say there are only 36 acres of Pennichuck land remaining in Nashua that could be developed, but there are 270 acres of developable land in Merrimack.

A few years ago the city negotiated with Pennichuck and its land development partner to acquire 250 acres in the northwest section of the city for \$2 million.

The city is pursuing the acquisition of an additional 101 acres at this time, and will continue to pursue acquisition of watershed land, city officials say.

WHERE TO VOTE

Here is a list of polling places for Tuesday's election. Polls will be open from 6 a.m.-8 p.m.

Ward 1: Broad Street School, 390 Broad St.

Ward 2: Charlotte Avenue School, 48 Charlotte Ave.

Ward 3: Amherst Street School, 71 Amherst St.

Ward 4: Ledge Street School, 139 Ledge St.

Ward 5: Main Dunstable Elementary School, 20 Whitford Road.

Ward 6: Fairgrounds Junior High School, 27 Cleveland St.

Ward 7: Dr. Norman W. Crisp School, 50 Arlington St.

Ward 8: Bicentennial Elementary School, 296 E. Dunstable Road.

Ward 9: New Searles Road School, 39 Shady Lane.

Company officials say there are 500 acres of "critical" watershed land in the company's hands, but that land is under conservation easements and will never be developed.

How would municipal ownership affect the system's relationship with Hudson, which owns its water utility but contracts with Pennichuck to run it?

City leaders are reviewing whether one of the assets of Pennichuck to be acquired is the service contract department.

What assets the city must acquire may eventually be determined by the PUC.

Would approving the ballot question on Tuesday compel the city to buy the water system?

It does not require the city to acquire the water system. It requires the mayor and the Board of Aldermen to proceed with the negotiations with Pennichuck executives or petition for the taking of the assets.

If I vote Yes on Tuesday, but later decide that the city is paying too much to acquire the system, what recourse do I have?

The final decision will rest with the Board of Aldermen after the negotiations are complete.

A resident can lobby the aldermen with phone calls, letters, speaking at aldermanic meetings and urging aldermen to vote against the bonding resolution.

Like all resolutions approving borrowing money, a public hearing by the Board of Aldermen would be required. It would take a two-thirds majority of the board to borrow money to pay for the company.

- Compiled by Telegraph staff reporters Brad Leighton and Andrew Nelson.

EXHIBIT G



The Telegraph **ONLINE**

SERVING NASHUA AND SOUTHERN NEW HAMPSHIRE

City board OKs water district plan

Tuesday, January 14, 2003

By TOM WEST, Telegraph Correspondent

NASHUA - The Board of Aldermen on Monday endorsed legislation that would allow the city to join a regional water district with neighboring towns if voters back the proposed municipal purchase of Pennichuck Corp. in today's special election.

Learn More

[An archive of the Telegraph's coverage regarding the sale of Pennichuck Corp.](#)

The board approved the measure on a voice vote after only a few minutes of discussion.

Ward 5 Alderman Brian McCarthy, chairman of a city committee on the proposed purchase, said the measure places the city in a good position to move forward on the establishment of a regional district if voters back the plan to try to buy the utility.

The memorandum of understanding endorsed Monday allows local officials "to work toward a mutually beneficial regional water district . . . and to guide discussions and negotiations to that end."

Last week, the city held a series of informational sessions on the proposed purchase, saying the municipal acquisition makes sense because cities and towns can borrow money at cheaper rates, do not have to pay income taxes and don't have to pay dividends to shareholders.

Officials in the city and neighboring towns say the city's proposed purchase of Pennichuck and the eventual formation of a regional district is the best way to maintain local control over the area's water supply.

The purchase would be financed through revenue bonds that wouldn't affect local tax rates, McCarthy said.

"Tomorrow's election day and all that is left to decide is for the voters to vote," Mayor Bernie Streeter said at the start of the meeting Monday. "I'm confident the city's position will prevail tomorrow."

McCarthy said the memorandum of understanding "reflects a good basis for the formation of a regional water authority. With the passage of this, I think we're in a good position to move forward."

Philadelphia Suburban Corp., the nation's second-largest water company, also wants to acquire Pennichuck in a proposed stock-for-stock transaction estimated to be worth between \$95 million and \$106 million.

The proposed merger is before the state Public Utilities Commission, which is expected to rule on the matter by Feb. 28.

Pennichuck took out a full-page advertisement in Monday's edition of The Telegraph, saying

Philadelphia Suburban would run the utility better than regional officials and urging voters to oppose the municipal purchase of the company.

During the informational sessions last week, Alderman-at-Large Fred Britton said the district would be overseen by an elected or appointed water commission made up of representatives from the city and surrounding communities.

Those representatives would elect a board of directors who would control how the utility would operate.

Overall, 23 communities throughout the state have some involvement with Pennichuck. Ten towns have already agreed to join the district and another 10 are expected to sign on soon, according to Britton.

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