

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

Docket No. DW 10-091

**PENNICHUCK WATER WORKS, INC.'S OBJECTION TO
THE OFFICE OF CONSUMER ADVOCATE'S MOTION TO LIMIT
SCOPE OF PROCEEDING**

Pennichuck Water Works, Inc. ("PWW" or the "Company") hereby objects to the motion of the Office of Consumer Advocate (the "OCA") to limit the scope of the above captioned docket to exclude consideration of the Company's recovery of costs related to its defense of the City of Nashua's (the "City") eminent domain action. In support of this objection, the Company states as follows:

1. On October 5, 2010, long after the Commission approved the procedural schedule in this case which included consideration of the Company's defense costs associated with DW 04-048, the OCA filed a Motion to Limit the Scope of Proceeding (the "OCA Motion"). In its Motion, the OCA requests that the Commission put off until another day the Company's request to recover the expense it incurred in defending against the City of Nashua's eminent domain effort. For the reasons set forth below, the Company requests that the Commission deny the OCA Motion.

2. On May 7, 2010, the Company filed its schedules and testimony in support of its request for a rate increase in this docket. Part of that filing included the approximately \$5.3 million in defense against the City's eminent domain proceeding in DW 04-048 (the "Defense Costs"). The Company included the Defense Costs in this case because on April 7, 2010, the Commission's Order in DW 04-048 approving the taking was final when the New Hampshire Supreme Court issued its mandate.

3. On July 14, 2010, the Commission held a prehearing conference in this docket during which it inquired about the Company's request to recover its Defense Costs in this proceeding. After the prehearing conference, the parties (including the OCA) convened in a technical session during which a proposed procedural schedule was developed. That procedural schedule included a November 8, 2010 filing date for additional testimony and schedules by the Company in support of its Defense Costs. The Commission, with no objection from any party, approved that procedural schedule on July 20, 2010.

4. The OCA now seeks to have consideration of the Defense Costs removed from this docket on the basis that DW 04-048 remains open and because the Company and the City have sought and received an extension of time to file the requested briefs in DW 04-048 and the Veolia contracts until November 30, 2010.

5. The Company objects to the OCA Motion on the basis that it is premature. The Commission will not rule on the recovery of the Defense Costs until the final hearing in this docket, which is not scheduled until April 2011.¹ Between now and then, there is no question that the Staff and parties to this docket will engage in discovery relating to the Defense Costs, including a Staff audit of the costs. Neither of those steps guarantee recovery of the Defense Costs, but rather expose the Defense Costs to review and scrutiny as the Commission had anticipated in DW 04-056. *See* Order 24,465 at 13. To preclude the Company's ability to begin that review process as part of this case is unnecessary and would result in prejudice to the Company. The Commission can determine at the time of the hearing on permanent rates in this docket whether the time is ripe for their recovery having had the benefit of a fully developed factual record relating to those costs.

¹ The Company is aware that the Commission may reschedule the hearing to early May 2011.

6. Further, delaying the Commission's consideration of the Defense Costs based on the status of potential discussions between the Company and the City will prejudice the Company because the outcome of that process is not known at this time. Whether a settlement agreement will be reached, whether the City will ratify the agreement, and the time frame for achieving these milestones remain uncertain. There is simply no way to assess conclusively whether and when these events will occur. Given these contingencies, the Company should not be foreclosed from exercising its right to recover the Defense Costs, where the Supreme Court has rendered its condemnation judgment and the Company is continuing to suffer hardship from having incurred the Defense Costs over the past six years.

7. Accordingly, the Company respectfully requests that the Commission deny the OCA's Motion and allow this docket to proceed subject to the existing procedural schedule.

WHEREFORE, the Company respectfully requests that the Commission:

- A. Deny the OCA's motion to limit the scope of this docket; and
- B. Order such other and further relief as is just and equitable.

Respectfully submitted,

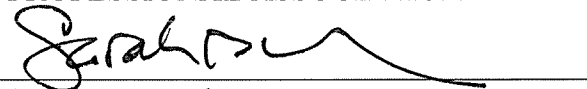
PENNICHUCK WATER WORKS, INC.

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: October 14, 2010

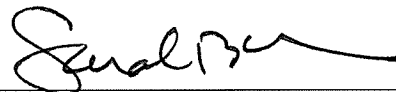
By:



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Certificate of Service

I hereby certify that a copy of this Objection to the Office of Consumer Advocate's Motion to Limit Scope of Proceeding has been forwarded to the parties on the Commission's service list in this docket by electronic mail on October 14, 2010.

A handwritten signature in black ink, appearing to read "Sarah B. Knowlton", written over a horizontal line.

Sarah B. Knowlton