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Please respond to the Portsmouth office

August 27, 2007

Via Hand Delivery and Electronic Mail

Debra A. Howland, Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

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

Dear Ms. Howland:

Enclosed for filing please find an original and six (6) copies of Nashua's *Response to Motion to Allow Donald Ware to Adopt Testimony*, as well as an electronic copy on diskette. A copy of the foregoing is being sent this day by electronic mail to all persons on the Commission's official service list in these proceedings, and to Claire McHugh via U.S. Mail.

If you have any questions concerning this matter, please contact me.

Very truly yours,

Justin C. Richardson

jrichardson@upton-hatfield.com

JCR/sem

Enclosure

cc: Official Service List DW-04-048 (via electronic mail)(w/ enclosure)
Claire McHugh (via U.S.Mail)(w/ enclosure)

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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

**RESPONSE TO MOTION TO ALLOW
DONALD WARE TO ADOPT TESTIMONY**

NOW COMES the City of Nashua (“Nashua”) and responds to the Pennichuck Water Works, Inc.’s (“Pennichuck”) *Motion to Allow Donald Ware to Adopt A Portion of the Pre-filed Direct Testimony of Donald Correll* (“Motion to Allow”) and states as follows:

1. On August 15, 2007, Pennichuck filed its *Motion to Allow* requesting that Donald Ware be allowed to adopt Mr. Correll’s testimony criticizing Veolia Water North America (“Veolia”), the water services company that has entered into contingent contracts to operate the system to be acquired as a result of this proceeding.
2. Nashua fundamentally disagrees with Mr. Correll’s testimony, which essentially amounts to a collection of press clippings assembled with little effort to ascertain their inaccuracy. See Exhibit 1013, *Reply Testimony of Philip Ashcroft et al.*, (May 22, 2006), Pages 2-9. Neither Mr. Correll nor Mr. Ware appear to have any first hand knowledge concerning allegations contained in Mr. Correll’s testimony. Both Nashua and Veolia are prepared to respond to each criticism contained in the testimony, whether it is adopted by Mr. Correll or Mr. Ware. Nashua therefore has no objection to Mr. Ware adopting the testimony in question, should he elect to do so.

3. However, in one important respect, Pennichuck's *Motion to Allow* misleads the Commission. Pennichuck states that "[j]ust prior to the commencement of hearings in this proceeding on January 10, 2007, Veolia undertook direct efforts to attempt to cause Mr. Correll to withdraw his testimony regarding Veolia" by filing a complaint with the Water Partnership Council, a trade organization in which both Veolia and Mr. Correll's company, American Water, are members.
4. Pennichuck fails to inform the Commission that it was Mr. Correll's company, American Water, that first filed a complaint with the Water Partnership Council against Veolia for a statement in its January 12, 2006 *Testimony of Philip Ashcroft et al.* See *Response to Pennichuck Data Request 3-51* (attached).
5. American Water's complaint against Veolia is not a mere coincidence. In addition to Mr. Correll's connection to both companies, Joe Conner, Pennichuck's *pro hac vice* legal counsel in this proceeding, has represented American Water in several cases. Thus, Pennichuck or its agents were likely aware of, or even coordinated, American Water's complaint against Veolia that caused it to disavow the statement noted in response to Data Request 3-51.
6. Nashua does not deny that Veolia filed a complaint relative to Mr. Correll's testimony. In fact, counsel for Nashua suggested that a complaint may be appropriate in light of American Water's complaint and Pennichuck's Data Request 3-51. It is perfectly appropriate that Mr. Correll should be held to the same standard that his company sought to apply to Veolia.
7. Nowhere does Pennichuck's *Motion to Allow* state that Mr. Correll in fact withdraws his testimony criticizing Veolia. Pennichuck simply states that Mr.

Correll has determined that he should “not sponsor” testimony critical of Veolia, leaving the Commission free to speculate that he continues to believe in its substance. Nashua questions whether that testimony is submitted for its merits, or simply to raise as many sensational but unsubstantiated articles as possible in order to force Nashua to disprove the allegations contained therein.

8. Nashua and Veolia invite the Commission, to the extent it has any concerns related to this testimony, to direct those concerns to the Veolia witnesses. Veolia Water depends on the success of its performance providing service to the public to promote its business, and strongly disagrees with the allegations and conclusions contained in the testimony.

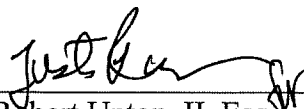
WHEREFORE, Nashua respectfully requests that the Commission:

- A. Grant Pennichuck’s *Motion to Allow*;
- B. Grant such other relief as justice may require.

Respectfully submitted,

CITY OF NASHUA
By Its Attorneys
UPTON & HATFIELD, LLP

Date: August 27, 2007

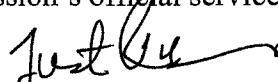
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent this day by e-mail and first class mail to all persons on the Commission's official service list in this proceeding.

Date: August 27, 2007



Justin C. Richardson, Esq.

City of Nashua

Petition for Valuation Pursuant to RSA 38:9

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 3 Round 2

Date Request Received: January 26, 2006

Date of Response: February 6, 2006

Request No. 3-51

Respondents: Philip G. Ashcroft.

Req. 3-51 Please state every fact in support of the contention on page 4 of the Ashcroft/Ford/Burton/Noran testimony that "Investor owned utilities like PWW are focused on the stockholder not the customer."

OBJECTION: Nashua objects to this request on the grounds that it is overbroad and fails to identify the information sought with specificity pursuant to Puc 204.04. Nashua cannot possibly specify "every fact in support" of the conclusion that investor-owned monopolies like PWW are responsible primarily to their shareholders.

ANSWER: *Without waiving the foregoing objection, Philip G. Ashcroft, David W. Ford, P.E., Robert R. Burton, Paul F. Noran, P.E., state as follows:*

To the extent the above-statement was included in our testimony, it is withdrawn.

City of Nashua

Petition for Valuation Pursuant to RSA 38:9

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 3 Round 2

Date Request Received: January 26, 2006

Date of Response: February 6, 2006

Request No. 3-51

Respondents: Brian S. McCarthy.

Req. 3-51 Please state every fact in support of the contention on page 4 of the Ashcroft/Ford/Burton/Noran testimony that "Investor owned utilities like PWW are focused on the stockholder not the customer."

OBJECTION: Nashua objects to this request on the grounds that it is overbroad and fails to identify the information sought with specificity pursuant to Puc 204.04. Nashua cannot possibly specify "every fact in support" of the conclusion that investor-owned monopolies like PWW are responsible primarily to their shareholders.

ANSWER: *Without waiving the foregoing objection, Brian S. McCarthy states as follows:*

I have been informed by counsel that Veolia withdrew the above-statement as a result of complaints filed by United Water and American Water to the Water Partnership Council, a trade association of which Veolia is a member. See <http://www.waterpartnership.org/> I note that Don Correll, CEO of Pennichuck Corp., is a former CEO for United Water, and that attorney Joe Conner, counsel to PWW in this case, serves or has served as legal counsel to American Water in several cases. I am disappointed that these complaints have resulted in the need for Veolia's withdrawal of a statement that I believe is important to this proceeding. I have therefore adopted the statement as my own and respond to it here:

The statement was intended to explain how Nashua's public-private partnership will use market forces to the benefit customers of its water system. Both Veolia and Pennichuck are obviously owned by and responsible to their respective investors. However, Veolia's operations, unlike those of PWW, will be subject to competitive forces. For example, in the *highly unlikely* event that Veolia failed to provide high quality services at competitive prices, Nashua has several options that are not available to customers of an investor owned utility, including (1) the option to not renew its contract and award the contract to another operator; or (2) exercise its right to terminate the contract for convenience. As a

result, despite its obligation to its shareholders, it is in Veolia's best interest to provide service that is superior in both quality and price.

Investor owned utilities like PWW are monopolies. Their primary focus is to provide a return on shareholder investment while operating within the limits set by regulatory authorities. While this approach often provides acceptable service, it is less efficient than competitive markets. Veolia being the subject of competitive bidding, must be responsive on both service and price, whereas a regulated utility must provide adequate service at an acceptable cost. This selects neither the best nor the lowest option on either axis, and allows service and price to be suboptimal in favor of profit. Recourse through the regulatory process is limited and customers do not have the ability select a better operator if they are not satisfied with the terms and conditions of their service.

One example of PWW's focus on shareholders instead of the best interests of rate-payers and conservation is PWW's sale of land that had been set aside for watershed protection in the 1980s. As has been documented in Mr. Sansoucy's testimony and appraisal report and elsewhere, between 1983 and December 31, 2004, PWW's affiliate the Southwood Corporation sold approximately 1,019 acres of land that had been purchased by rate-payers for watershed protection. PWW sold the land for over \$26 million, an enormous profit over its net book value. Its development resulted in additional demand for water, and the need for public infrastructure such as roads, schools and police and fire protection.

A second example is PWW's decision to relocate to its expensive corporate headquarters space in order to send more of the ratepayer's money to a Pennichuck subsidiary which is, according to their reports, operating at periodic negative cashflow. This decision has not received adequate scrutiny, and PWW's customers have little or no recourse, short of initiating a complex and uncertain regulatory process before the Public Utilities Commission.