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**Please respond to the Portsmouth office**

October 5, 2007

**Via First Class and Electronic Mail**

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

Re: City of Nashua; Petition for Valuation DW04-048

Dear Ms. Howland:

Enclosed please find an original and seven copies of Nashua's Response to Commission Record Request in the above entitled matter, as well as an electronic copy on compact disc. A copy of this filing is being sent by electronic mail to the service list, and to Ms. Claire McHugh by first class mail.

Nashua and Pennichuck have agreed to separately exchange lists of proposed full exhibits today, and to provide the Commission with a list of disputed exhibits, if any, on Wednesday October 10, 2007.

If you have any questions, please feel free to contact me.

Very truly yours,

Justin C. Richardson

[jrichardson@upton-hatfield.com](mailto:jrichardson@upton-hatfield.com)

Enclosure

cc: Service List (via electronic mail)

## City of Nashua

*Petition for Valuation Pursuant to RSA 38:9*

DW 04-048

## Nashua's Response to Commission Record Request

Date of Request: Sept. 12, 2007

Date of Response: October 5, 2007

Request No.: Trans. Pages 210,211

Respondent: Glenn Walker

**Request:** Are you aware of any situations in which there has been more than one not-for-profit or governmental entity bidder for the purchase of an investor owned utility?

**Response:** It is my understanding that Commissioner Below's record request was specifically directed to situations where there were multiple "not-for-profit or governmental bidders"<sup>1</sup> acted as competitors in the market place to purchase an investor owned utility.

I have briefly reviewed the response prepared by Mr. Reilly on September 28, 2007, and the examples he cited. In general, his response lists four examples where more than one not-for-profit or governmental entity "sought to purchase" a water utility, but his response does not state whether more than one entity bid competitively for the same assets.

While I have not had the opportunity to thoroughly investigate the examples cited by Mr. Reilly, my own research suggests that in each of the examples he cited, the public entities involved did not bid competitively against each other, and, in some cases, actually cooperated to acquire the investor owned utility.

1. *Duke Energy Corp. sale to City of Anderson, South Carolina and Anderson County Water Association.*

The South Carolina Public Service Commission order approving the sale (attached) shows that the City acquired the retail system serving the City of Anderson and the Anderson County Joint Municipal Water System acquired the wholesale system as part of the same transaction. As a result, it appears that the two governmental entities did not compete as bidders for the same assets, and even cooperated to purchase the system to "promote

<sup>1</sup> Transcript, September 12, 2007, p 210, 211.

regional water use and efficient aggregation of retail water service.”<sup>2</sup>

2. *New Haven Water Company sale to City of New Haven and South Central Connecticut Regional Water Authority (“SCCRWA”).*

Mr. Reilly’s response states that these organizations “sought to purchase the system” but does not state that they bid as competitors in the market. In fact, there is evidence indicating that these entities cooperated to acquire the company in order to establish a regional water authority. For example, in *Who Wants To Buy A Water Company?: From Private to Public Control in New Haven*, McCluskey and Bennitt report that in 1977, several years prior to the sale completed in 1980, “an agreement was reached for cooperation among [SCCRWA] and the City to guarantee regional ownership” and the City’s offers were made for that purpose.<sup>3</sup>

3. *Utilities Inc. of Maryland sale to Washington Suburban Sanitation Commission (“WSSC”).*

It is my understanding that this system, known as Marlboro Meadows, was located within the WSSC and Marlboro sought to have WSSC “connect its system to the water system currently serving Marlboro Meadows.”<sup>4</sup> WSSC filed a petition to acquire the system by eminent domain after approval by WSSC and local county authorities.<sup>5</sup>

I asked my associate, Ms. Charlene Genest to contact Maryland Environmental Services (MES) regarding its involvement in the project. Ms. Genest contacted MES and was informed that MES acts only as an operator of water systems and does not own them. There is no indication that it ever competitively bid against WSSC.

4. *General Development Utilities Inc. (“GDU”) of Florida to Port St. Lucie County.*

GDU was a building contractor that built homes and had to construct a water system for its various developments. In 1990, the company filed for bankruptcy and the County acquired its water system. The City was growing rapidly and in 1994 the County

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<sup>2</sup> Public Service Commission of South Carolina, Docket No. 2001-305-W, Order No. 2001-1114, December 27, 2001.

<sup>3</sup> Rutledge Books, Inc (1996), Page 49 & generally, 43 – 53.

<sup>4</sup> See Maryland Public Service Commission, *Joint Petition Of Utilities, Inc. Of Maryland And The Washington Suburban Sanitary Commission* in Docket No., 9077, and *Order No. 81,084* (attached).

<sup>5</sup> *Joint Petition*, paras. 4 & 5.

transferred the water system to the City. There is nothing in this transaction which suggests the County and the City were competitive bidders.


BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2001-305-W - ORDER NO. 2002-222

MARCH 26, 2002

IN RE: Application of Duke Energy Corporation and Duke Water Systems for Approval of the Transfer of Water and Transmission System.	) ) )	ORDER ADDRESSING COMPLIANCE WITH ORDER NO. 2001-1144	
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This matter comes before the Public Service Commission of South Carolina on the filing of certain contracts of sale by Duke Energy Corporation and its division, Duke Water Systems (“Duke”) related to Duke’s sale and transfer of its water collection, treatment, and transmission systems, and associated property to the City of Anderson (“City”) and the Anderson County Joint Municipal Water System (“ACJMWS”).

On July 10, 2001, Duke filed an Application seeking approval of the sale and transfer of its water collection and transmission systems and all real and personal property used for the collection, treatment, and transmission of potable water, serving retail customers in the City as well as serving certain wholesale customers in Anderson County. By Order No. 2001-1144, dated December 27, 2001, the Commission approved the sale and transfer of Duke’s water collection and transmission systems to the City as purchaser of the retail system and ACJMWS as the purchaser of the wholesale system. However, Order No. 2001-1144 further stated that the approval authorized by Order 2001-1144 was contingent upon Duke filing signed contracts of sale between Duke and the City and between Duke and ACJMWS.

On March 13, 2002, Duke filed with the Commission signed contracts of sale between Duke and the City and between Duke and ACJMWS. Specifically, Duke filed the following contracts: (1) Asset Sale Agreement by and between Duke and the City; (2) Asset Purchase Agreement by and between Big Creek Water and Sewerage District, Broadway Water and Sewerage District, Hammond Water Company, Powdersville Water Company, Sandy Springs Water Company, Starr-Iva Water Company, and West Anderson Water Company<sup>1</sup> and Duke; (3) First Amendment to Asset Purchase Agreement between Duke and ACJMWS; (4) Second Amendment to Asset Purchase Agreement between Duke and ACJMWS; and (5) Operating Agreement by and between the City and ACJMWS.

Therefore, upon consideration of the filing of the above-listed contracts, the Commission finds and concludes that Duke has fully complied with the requirements of Order No. 2001-1144, dated December 27, 2001.

IT IS THEREFORE ORDERED THAT:

1. Duke has fully complied with the requirements imposed by Order No. 2001-1144, dated December 27, 2001, in that Duke has filed with the Commission signed contracts of sale between Duke and the City and between Duke and ACJMWS.

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<sup>1</sup> Each of the foregoing entities are members of ACJMWS.

DOCKET NO. 2001-305-W – ORDER NO. 2002-222

MARCH 26, 2002

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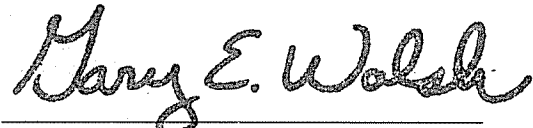
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2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)



# WASHINGTON SUBURBAN SANITARY COMMISSION

COMMISSIONERS  
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DEPUTY GENERAL MANAGER  
Carla Reid Joyner

14501 Sweitzer Lane • Laurel, Maryland 20707-5902

September 27, 2006

FILED

SEP 28 2006

PUBLIC SERVICE COMM.  
OF MARYLAND

O. Ray Bourland  
Executive Secretary  
Maryland Public Service Commission  
6 St. Paul Place  
Baltimore, MD 21202

Re: Joint Petition of UIM and WSSC for Approval of the Utility Asset Acquisition Agreement and the Abandonment of Service

Dear Mr. Bourland:

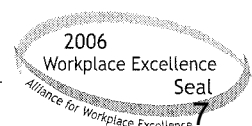
Enclosed please find for filing an original and 14 copies of a Joint Petition of UIM and WSSC for approval of the Utility Asset Acquisition Agreement and the Abandonment of Service. As we set forth in the Joint Petition, WSSC and UIM have entered into a Utility Asset Acquisition Agreement whereby UIM will sell all of its utilities assets used to provide water and sewer service to the residents of Marlboro Meadows to WSSC. We have a scheduled closing date for this transfer of December 12, 2006.

It is my understanding that the Commission will waive its filing fees since WSSC is an agency of the State of Maryland. We have also attached an electronic version of the Joint Petition in pdf format on the enclosed compact disk.

If you need any further information in order to process this Joint Petition, please do not hesitate to contact me directly.

Sincerely,

Robert H. Drummer  
Senior Counsel  
(301) 206-8161



O. Ray Bourland  
September 27, 2006  
Page 2

RHD/egs

Enclosures

cc: Ronald A. Decker, Esq.  
Patricia A. Smith, Esq.  
Andrew N. Beach, Esq.

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BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

JOINT PETITION OF UTILITIES, INC. OF MARYLAND :  
AND THE WASHINGTON SUBURBAN SANITARY :  
COMMISSION FOR APPROVAL OF THE UTILITY : CASE NO.  
ASSET ACQUISITION AGREEMENT AND THE :  
ABANDONMENT OF SERVICE :

JOINT PETITION

Utilities Inc. of Maryland, a Maryland Corporation (UIM), by its counsel, Ronald A. Decker, and the Washington Suburban Sanitary Commission (WSSC), an agency of the State of Maryland, by its counsel, Robert H. Drummer, jointly request that the Public Service Commission approve the Utility Asset Acquisition Agreement dated May 1, 2006 between UIM and WSSC and grant UIM permission to abandon service. In support of their request, the Petitioners state:

1. In 1985, the Public Service Commission (Commission) approved the transfer to UIM of the Certificate of Public Convenience and Necessity for provision of water and sewer service to the residents of Marlboro Meadows in Case No. 7866. UIM is currently operating the water and sewer system in compliance with applicable laws and regulations.

2. WSSC is an agency of the State of Maryland created by Chapter 122 of the 1918 Laws of Maryland to provide public water and sewer service to the residents of the Washington Suburban Sanitary District within Prince George's and Montgomery Counties.

3. The service area currently being served by UIM in Marlboro Meadows is within the Washington Suburban Sanitary District.

4. The County Council of Prince Georges County, Maryland and the County Council for Montgomery County, Maryland have approved the inclusion of the project to

serve the Marlboro Meadows community in Project No. W-123.16 of the WSSC Capital Improvements Program, and the WSSC Commissioners have approved acquisition of UIM's water and sewer systems.

5. After WSSC determined that it was interested in acquiring the subject property through condemnation, UIM and WSSC entered into a Utility Asset Acquisition Agreement on May 1, 2006, a copy of which is attached hereto as Exhibit A. Pursuant to this Utility Asset Acquisition Agreement, UIM agreed to sell its utilities assets used to provide water and sewer service to the residents of Marlboro Meadows to WSSC. The parties have a scheduled closing date for this sale of December 12, 2006.

6. UIM and WSSC have been working together since May 1, 2006 to ensure that the transfer of these utility assets will not result in an interruption of water and sewer service to UIM's customers.

7. WSSC is currently designing an extension to its water distribution system to connect its system to the water system currently serving Marlboro Meadows. The construction of this water main is scheduled for completion in December 2007. Pursuant to the Utility Asset Acquisition Agreement, WSSC and UIM have agreed that UIM will operate and maintain the water plant and the wastewater plant for a one year period under contract with WSSC while WSSC completes the construction of this water main in order to facilitate the transition of service from UIM to WSSC. WSSC intends to operate the wastewater plant currently serving UIM's customers after the one year operating contract with UIM is completed.

8. All of the customers of UIM within the Marlboro Meadows service area will become WSSC customers on the scheduled closing date of December 12, 2006. Water and

sewer service rates charged to these customers will be the same water and sewer service rates charged to all WSSC customers within the Washington Suburban Sanitary District. These rates are set by the WSSC pursuant to Md. Ann. Code art. 29, § 6-101 *et seq.*

9. After the water and sewer systems are acquired, they will continue to be operated in full compliance with all applicable state and federal laws and regulations.

10. The financial condition of UIM is disclosed in the most recent annual report filed with the Commission.

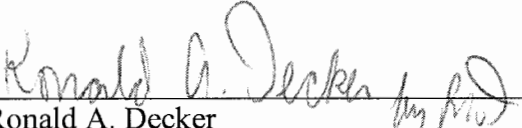
11. Articles of Incorporation for UIM are on file with the Commission.

WHEREFORE, the joint applicants request that the Commission:


A. Find that the Utility Asset Acquisition Agreement dated May 1, 2006 between UIM and WSSC is consistent with the public convenience and necessity; and

B. Authorize UIM to abandon service under its franchise on the closing date, currently scheduled for December 12, 2006, and that the present and future public convenience and necessity allows the abandonment; and

C. Grant such other and further relief as may be necessary.

  
\_\_\_\_\_  
Ronald A. Decker  
Moore, Carney, Ryan and Lattanzi, L.L.C.  
4111 E. Joppa Road, Suite 201  
Baltimore, MD 21236  
410-529-4600

Attorney for Utilities Inc. of Maryland

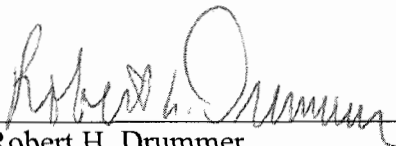


Robert H. Drummer  
Senior Counsel  
General Counsel's Office  
14501 Sweitzer Lane  
Laurel, MD 20707  
301-206-8161

Attorney for Washington Suburban  
Sanitary Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27 day of September, 2006, a copy of the foregoing Joint Petition of Utilities, Inc. of Maryland and the Washington Suburban Sanitary Commission for Approval of the Utility Asset Acquisition Agreement and the Abandonment of Service was mailed, first class mail, to Patricia A. Smith, Esq., Office of the People's Counsel, 6 St. Paul Place, Baltimore, MD 21202 and to Andrew N. Beach, Esq., Staff Counsel, 6 St. Paul Place, Baltimore, MD 21202.

  
Robert H. Drummer

**ORDER NO. 81084**

IN THE MATTER OF THE JOINT APPLICATION OF UTILITIES, INC. OF MARYLAND AND WASHINGTON SUBURBAN SANITARY COMMISSION FOR AN ORDER AUTHORIZING UTILITIES, INC. OF MARYLAND TO ABANDON THE EXERCISE OF ITS FRANCHISE AND TO SELL AND TRANSFER ITS PHYSICAL EQUIPMENT AND ASSETS TO THE WASHINGTON SUBURBAN SANITARY COMMISSION.	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND  _____  CASE NO. 9077  _____
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On September 28, 2006, Utilities, Inc. of Maryland ("UIM") and Washington Suburban Sanitary Commission ("WSSC") filed with the Public Service Commission ("Commission") a joint application requesting authority for UIM to abandon the exercise of its franchise and to sell and transfer its physical equipment and assets to WSSC.

The Commission's Technical Staff reviewed the application and, by memorandum dated October 17, 2006, stated that WSSC is an experienced operator charged with providing water and sewer services to residence within the Sanitary District and it has the means to raise capital to improve and maintain its water and sewer systems. Staff also noted that as a State agency, WSSC is accountable to its customers pursuant to Article 29, and that WSSC's rates currently are lower than UIM's. Accordingly, the Technical Staff recommended to the Commission that the joint application be granted.

Public Utility Companies Article, §§5-103 and 5-202, *Annotated Code of Maryland*, requires a public service company to obtain authorization from the Commission before abandoning the exercise of any franchise.

After review of the joint application and considering Technical Staff's recommendations, and after considering comments at the regularly scheduled and advertised Administrative Meeting on October, 25, 2006, the Commission finds that the sale and transfer of physical equipment and assets to Washington Suburban Sanitary Commission and the abandonment of franchise by Utilities, Inc. of Maryland is consistent with the public convenience and necessity and accordingly should be authorized.

**IT IS, THEREFORE**, this 25th day of October in the year Two Thousand and Six, by the Public Service Commission of Maryland,

**ORDERED:** (1) That Utilities, Inc. of Maryland is authorized to abandon the exercise of its franchise and to sell and transfer its physical equipment and assets to the Washington Suburban Sanitary Commission.

(2) That Utilities, Inc. of Maryland report to the Commission the date of the disposition of the physical equipment and the abandonment of its franchise.

By Direction of the Commission,

O. Ray Bourland  
Executive Secretary

ORB/gjd