

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

City of Nashua: Taking Of Pennichuck Water Works, Inc.

Docket No. DW 04-048

**PENNICHUCK WATER WORKS, INC. AND PENNICHUCK CORPORATION'S
OBJECTION TO CITY OF NASHUA'S COMPLIANCE FILING AND MOTION FOR
CONFIDENTIAL TREATMENT PURSUANT TO COMMISSION ORDER NO. 24,699**

Pennichuck Water Works, Inc. and Pennichuck Corporation (collectively, "Pennichuck") object to the City of Nashua's ("Nashua") Compliance Filing and Motion for Confidential Treatment Pursuant to Commission Order No. 24,699 (the "Compliance Filing"). In support of this objection, Pennichuck states as follows:

1. This discovery dispute arises out of a data request Pennichuck submitted to the City of Nashua nearly a year ago (January 17, 2006) requesting documents relating to publicly reported problems associated with Veolia Water Indianapolis LLC's operation and maintenance of the Indianapolis water system. Pennichuck submitted this request in an effort to assess Nashua's testimony in this docket that Veolia Water North America – Northeast, LLC, an affiliate of Veolia Water Indianapolis, is qualified to operate and maintain the PWW assets should the Commission approve Nashua's taking of those assets through eminent domain.

2. From the time this data request was submitted, Nashua has been actively resisting producing documents responsive to the request. Pennichuck filed its first motion to compel on this request on March 16, 2006. The parties met with the Commission's Hearings Examiner on April 28, 2006, at which time Nashua agreed to produce responsive documents upon receipt of a further data request from Pennichuck. Yet after receiving the follow on data request, Nashua

again refused to produce the documents about Veolia. Pennichuck was forced to file yet another motion to compel on July 21, 2006.

3. This second motion became the subject of Order No. 24,699, in which the Commission considered Nashua's refusal to produce responsive documents until a protective order was in place. In its Order, the Commission denied Nashua's request for a protective order because Nashua had not produced any documents. The Commission then considered whether Nashua should be required to produce the documents in light of its denial of protective treatment, and concluded that Nashua was legally obligated to do so: "We thus deny the motion, stressing that our disagreement with Nashua on the question of protective treatment does not comprise a basis for withholding documents that are responsive to the discovery request at issue." Order No. 24,699 at 7. The Commission thus unequivocally ordered Nashua to produce the documents prior to the grant of any protective order. In an effort to accommodate Nashua's confidentiality concerns, the Commission ruled that Nashua could limit initial distribution of the documents "when it files the responsive documents and a copy of the subpoena in question." *Id.* at 8.

4. However, in direct contravention of the Commission's order, Nashua did not produce the documents. Instead, it submitted the pending Compliance Filing and Motion for Confidential Treatment, despite the Commission's clear directive otherwise. Nashua's filing is really nothing more than a thinly veiled motion for reconsideration.

5. In its Compliance Filing, Nashua claims that the Commission erred, and reargues the underlying issues in this case – whether the documents sought by Pennichuck are relevant to this proceeding, and should be produced. Nashua requests that the Commission find that it has fully complied with Order No. 24,699 despite its failure to produce the Veolia documents, claiming that to do so would be a "fools [sic] errand" and that such discovery is "unwarranted"

because Pennichuck sought documents from all four categories of the Veolia grand jury subpoena. Compliance Filing at 7, 9.

6. However, Nashua fails to tell the Commission that it would be *impossible* for Pennichuck to narrow its request, because neither Nashua nor Veolia have cooperated in any manner with Pennichuck regarding this discovery request. When Pennichuck and Nashua reached agreement in May, 2006 that the subpoena would be produced first, with Pennichuck following up with a data request, Pennichuck had no idea what categories of documents were either requested by or submitted in response to the subpoena. *See*, Pennichuck's May 10, 2006 letter to Nashua's counsel, attached to Nashua's Compliance Filing, stating that a further request would follow Pennichuck's "reviewing the subpoena." All that Pennichuck has seen is the bare grand jury subpoena. Pennichuck's request for items one through four relating to that subpoena is appropriate given the magnitude of the issue – whether Veolia would be a capable and reputable operator of the PWW assets – and its lack of any further detailed information from Nashua.

7. Nashua's entire objection to the relevance of the information (repeated in paragraphs 5, 7, 8 and 9 of its Compliance Filing) is based on a single press release from the Indiana Department of Water Management regarding its limited sampling of the water in the Indianapolis system. Instead of allowing Pennichuck to conduct its own investigation of Veolia's operation of the water system, Nashua simply seeks to shut the door on all such discovery, claiming that no problems exist. But that is not for Nashua to decide. In fact, Nashua and Veolia's extraordinary efforts to stonewall discovery of these documents makes one wonder even more what is contained therein.

8. Prompt resolution of this dispute is not insignificant, particularly given that the merits hearing is only one month away. Veolia is not some bit player in Nashua's plan to take over the PWW water system; it is the lead contractor that would operate the assets on a day-to-day basis. Nashua's intention is clear: continue to fight the production of this information, knowing that the longer it can prolong the battle, the less likely it will be that information about Veolia's problems will be presented to the Commission. This will deprive Pennichuck of its right to a hearing contesting Nashua's claims that a taking would be in the public interest. Beyond that, the Commission and Pennichuck customers that will be harmed if this information is not produced.

9. For these reasons, the Commission should deny Nashua's Compliance Filing to the extent it seeks to evade production of the Veolia documents. Given the gravity of the issue, the looming hearing, and Nashua's year long refusal to produce the documents, the Commission should promptly issue an order compelling Nashua to produce the documents within 24 hours.

10. Not having seen the documents, Pennichuck takes no position as to whether they should be accorded confidential treatment, although Pennichuck is willing to maintain their confidentiality pending any further decision of the Commission.

WHEREFORE, Pennichuck respectfully requests that the Commission:

- A. Deny Nashua's Compliance Filing;
- B. Order Nashua and Veolia to produce documents responsive to Pennichuck's Data Request 5-89 and Order No. 24,699; and
- C. Grant such other and further relief as the Commission deems necessary and just.

Respectfully submitted,

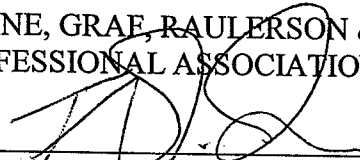
Pennichuck Water Works, Inc.
Pennichuck Corporation

By Their Attorneys,

McLANE, GRAE, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: December 4, 2006

By:

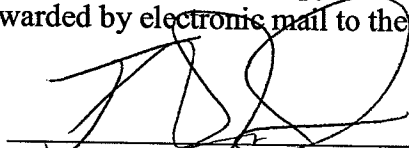


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Certificate of Service

I hereby certify that on this 4th day of December, 2006, a copy of this Objection to City of Nashua's Compliance Filing has been forwarded by electronic mail to the parties listed on the Commission's service list in this docket.



Thomas J. Donovan