

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

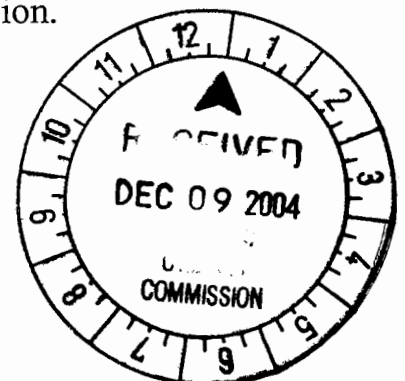
**City of Nashua Petition for Valuation
Pursuant to RSA 38:9**

Docket No. DW 04-048

Preliminary Statement of the Town of Merrimack

The undersigned, Edmund Boutin, represents the Town of Merrimack. The Town is quite concerned that the Commission closely scrutinizes the proposed taking of the Pennichuck Water Company by the City of Nashua. Pennichuck has been a valued corporate citizen. It employs several Merrimack Citizens. The Town's largest employer is Anheiser Busch, with nearly 800 employees. It accounts for 15% of Pennichuck's average daily flow of water distribution. With the Merrimack Water District and citizens of the Town, it consumes nearly 20% of the average daily flow. Merrimack's prime industrial zone is in the Pennichuck franchise. I am particularly concerned about the following.

1. My first concern is that the Commission will review this as a zero sum game. This will involve an unstated assumption that municipal ownership is better and that the whole public good issue is nothing but an argument among municipalities. If so, staff will see this as merely a political decision.



However, Merrimack has a lot at stake. It does not endorse either position at the moment, but it does see that Nashua's pre-filed testimony, and the defects it perceives in the Water District Charter, present severe problems which may not be resolvable.

What is presently known is that Pennichuck is a well-managed water utility with reasonable rates, by all accounts. It will have normal demands for foreseeable rate increases, involving capital improvements and a decent rate of return on its investment. What is unknown is whether a municipal utility, heavily weighted by Nashua's parochial interests, is a viable replacement for a known quantity. The Charter raises the specter of overbearing Nashua control of capital investment and rate setting, as well as where and how to place capital improvements. There is the additional question of whether Nashua or the Water District will have the wherewithal financially to at least even equal Pennichuck's performance.

Merrimack wants to bring to the staff's attention that the Commission has a vital role that Merrimack is depending on it to perform. The District seems to take the position that all it has to do is demonstrate that it will do no worse as a water utility than Pennichuck does. If that is the District's ambition, the public good has

been ignored, since the test should be whether the District can be a long-term improvement and how. Pennichuck has a demonstrated ability to do the utility business. The District bears the burden of showing why this is not enough.

2. Merrimack has a more significant interest than other non-Nashua towns. Anheuser-Busch consumes about 15% of Pennichuck's average daily flow. As noted above, the combined Merrimack consumption is about 20% of average daily flow. The Anheuser-Busch plant employs 800 people in Merrimack. Merrimack is also a community that has its own water district which wheels Pennichuck water through to consumers in Amherst and Bedford.

3. Pre-filed testimony indicates that valuation is going to be a prime factor in evaluating the public good and that the pre-filed testimony on this issue is extremely thin. First of all, the valuation method appears to use allegedly comparable sales. This is a significant variance from Nashua's expert's testimony in other cases in New Hampshire (one of which I litigated), which took the position that valuation should be done based on a replacement cost, less depreciation

methodology. This expert particularly likes this method when doing appraisals to be used for tax valuation because it yields a much higher number than other methods in most capital- intensive industries. The Commission should take a close look at the comparable sales, because they may not be valid under generally acceptable appraisal principals, considering the mix of large industrial customers in the Pennichuck system, including Anheuser-Busch.

4. I also want to express Merrimack's concern that the foundation for the economic viability of the acquisition is based upon what may be an artificially low estimated valuation. Cost of capital is a key concept here. Although there are many factors that determine cost of capital and may affect the comparison of cost of capital for a municipality and a private entity, there is a glaring defect in the pre-filed testimony. In determining relative cost of capital, one has to assume a capital requirement. Acquisition price is a large part of determining that capital requirement. Therefore, a 2 to 3 % differential in the cost of capital percentage rate does not yield a meaningful answer to the cost of capital question. Rather, the cost of capital question is determined by what capital is needed. Since Pennichuck

does not have to raise acquisition capital, its capital requirements may be considerably less than Nashua's and the cost of capital for Nashua considerably higher than estimated, when viewed in real terms.

5. If Nashua's cost of capital is relatively higher than estimated, this could have an impact on their willingness to expand outside of Nashua. As a regulated utility, Pennichuck has little choice but to expand where there is demand. Nashua may seek to inhibit expansion in non-local areas because of the capital requirement versus revenue enhancement equation and also because other towns are competing for the most valuable industrial customers with Nashua. One aspect of this argument that needs further development is that capital requirements for new industrial customers, and many residential customers which abut the core system, are mitigated by developer contributions (sometimes called contributions in aid of construction, CIAC). Whether these contributions are meaningful to this equation is yet to be determined.

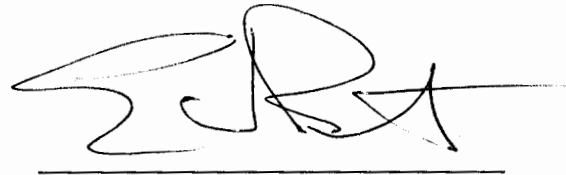
6. Because of these significant concerns, Merrimack intends to be directly involved in discovery in this case and will ask for leave to file testimony after

discovery and after reviewing Pennichuck's pre-filed testimony, which is scheduled to be filed after the discovery has been obtained.

Dated: December 9, 2004

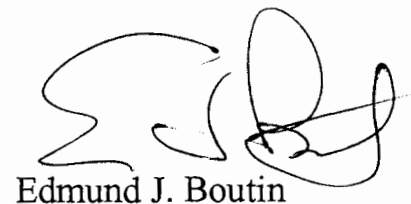
RESPECTFULLY SUBMITTED

TOWN OF MERRIMAC

A handwritten signature in black ink, appearing to be 'E. Boutin', written over a horizontal line.

BY: Edmund J. Boutin

I certify that I have presented the original and eight copies of this statement to the Public Utilities Commission and have provided copies by U.S. pre-paid mail this date.

A handwritten signature in black ink, appearing to be 'E. Boutin', written over a horizontal line.
Edmund J. Boutin