

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

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

DW 04-048

MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF R. KELLY MYERS

The City of Nashua (“Nashua”) submits this motion in limine to exclude the January 12, 2006 and other testimony R. Kelly Myers. In support of this Motion, Nashua states as follows:

1. On January 12, 2006, Pennichuck Water Works submitted the testimony of R. Kelly Myers arguing that voters in the City of Nashua no longer supported Nashua’s efforts to establish its water system in this proceeding.

2. Nashua disputes the conclusions reached by Mr. Myers and, on May 22, 2006, submitted reply testimony from its own market research consultant Brendan C. Cooney pointing out significant errors in the methods and conclusions contained in the Myers testimony.

3. Regardless of whether the Commission agrees or disagrees with Pennichuck’s or Nashua’s testimony concerning public opinion, the issue has no relevance to the determinations to be made by the Commission in this proceeding. Nashua therefore moves to exclude the testimony of Mr. Myers. In the event the Commission grants this motion and excludes the Myers testimony, Nashua will voluntarily withdraw the testimony of its own consultant.

4. Under RSA 38, Nashua has the burden to demonstrate that it followed the statutory procedures and sought voter approval for acquisition of the assets of Pennichuck

Water Works by a petition to the Commission. On March 25, 2004, Nashua filed its *Petition For Valuation Under RSA 38:9*, demonstrating, *inter alia*, Nashua's compliance with the statutory procedures of RSA 38:3, and that citizens in Nashua by an overwhelming majority had approved Nashua's decision to acquire Pennichuck under RSA 38.

5. On April 5, 2004, The Pennichuck Companies filed a *Motion to Dismiss*. The Commission, on October 1, 2004, by Order No. 24,379, requested briefs on several questions of law, including whether "Nashua properly followed the voting requirements of N.H. RSA Chapter 38". The parties submitted briefs and by Order No. 24,425, dated January 21, 2005, the Commission determined that Nashua had met the voting requirements of RSA 38:3.

6. The questions to be decided by this proceeding are the valuation of the Pennichuck Water Works' assets, and whether or not Nashua's Petition is in the public interest. See e.g. RSA 38:9, I. The public interest is a regulatory determination to be made by the Commission and not merely a measurement of whether one firm or another, using research methods that may or may not be reliable, produced a survey result contrary to what the voters actually decided through the electoral process.

7. In short, the determination of the public interest by the Commission in this proceeding is not a popularity contest or a measurement of public opinion from time to time. Rather it is a technical determination to be made by the Commission based upon factors such as rates, quality of service and technical, managerial and financial capabilities.

8. As a result, even if the Commission agreed with Mr. Myers' assertion that voters no longer supported Nashua's Petition, a fact which Nashua firmly disputes, it is entirely irrelevant to this proceeding which is based upon a vote that met the requirements of RSA 38:3. The Mr. Myers' testimony is therefore "irrelevant, immaterial or unduly repetitious" within the meaning of RSA 541-A:33, II, which the Commission may exclude.

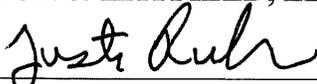
WHEREFORE, Nashua respectfully requests that the Commission:

- A. Grant this motion in limine; and
- B. Exclude the testimony of Pennichuck witness R. Kelly Myers; and
- C. Grant such other relief as justice may require.

Respectfully submitted,

CITY OF NASHUA
By Its Attorneys
UPTON & HATFIELD, LLP

Date: December 8, 2006

By: 

Robert Upton, II, Esq.
23 Seavey St., P.O. Box 2242
North Conway, NH 03860
(603) 356-3332

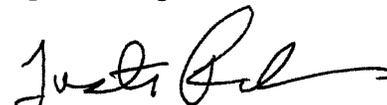
Justin C. Richardson, Esq.
159 Middle Street
Portsmouth, NH 03801
(603) 436-7046

David R. Connell, Esq.
Corporation Counsel
229 Main Street
Nashua, NH 03061-2019

CERTIFICATION

I hereby certify that a copy of the foregoing was this day forwarded to all persons on the Commission's official service list in the above proceedings.

Date: December 8, 2006


Justin C. Richardson, Esq.