

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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

Docket No. DW 04-048

OBJECTION TO NASHUA'S MOTION TO COMPEL AS MOOT

NOW COMES Pennichuck Water Works, Inc. ("Pennichuck") in the above-captioned action and objects to the Motion to Compel filed by the City of Nashua ("Nashua") on or about November 1, 2006, and, in support of this Objection, states as follows:

Procedural Introduction

1. Nashua cites Puc Rule 203.09 for the proposition that Pennichuck should have raised any objections to requests made in counsel's August 9, 2006 letter (mistakenly referred to in Nashua's motion as its August 7, 2006 letter) within ten days. However, Puc Rule 203.09(f) deals with responses to data requests. Objections to data requests are dealt with in Puc Rule 203.09(g). In any event, the letter requests at issue here are not "data requests." That term has a specific meaning and refers to the rounds of data requests set forth in the procedural schedule for this docket, and does not include deposition document requests as such.

Deposition Request to R. Kelly Myers

2. Nashua made a written document request by its August 9, 2006 letter based upon the deposition testimony of R. Kelly Myers on June 26, 2006. Mr. Myers is a witness who provided pre-filed testimony on behalf of Pennichuck on January 12, 2006.

3. Pennichuck counsel indicated repeatedly to Nashua's counsel that he was seeking from Mr. Myers the documents requested by the August 9, 2006, letter. Those documents, to the

extent they exist, have now been submitted to Nashua's counsel. Pennichuck's counsel's letter enclosing those documents is attached as Exhibit A. The delay in the production of these documents is attributable to common logistical issues with a third party witness.

4. Because the documents have now been produced, the Commission should deny as moot Nashua's motion on this request.

Deposition Request to Eileen Pannetier

5. Nashua's counsel also made a written document request in its letter dated August 9, 2006 based upon the deposition testimony of Eileen Pannetier on June 14 and 26, 2006. Ms. Pannetier is a witness who provided pre-filed testimony on behalf of Pennichuck on January 12, 2006.

6. On October 12, 2006, Pennichuck's counsel forwarded 190 pages of documents in response to Nashua's deposition testimony request concerning Ms. Pannetier. She had previously produced other documents in response to data requests.

7. Ms. Pannetier did not refuse to produce documents responsive to Nashua's Request #4. Ms. Pannetier's response in her letter dated September 22, 2006, attached as Exhibit B, noted that the request sought many reports and recommendations prepared for regional authorities supplying water to the Greater Boston Metropolitan Area. Ms. Pannetier objected to the production of all such documents because of their volume. She noted, "these documents [each] are approximately an inch thick each and can be provided if they are still needed based on the titles." Pennichuck's counsel never received a follow-up response from Nashua's counsel indicating that it wanted only the Sudbury reservoir watershed management plan. Since Nashua singled out only the Sudbury plan in its motion, a copy has now been

provided to Nashua's counsel. Pennichuck's counsel's cover letter enclosing that document is set forth in Exhibit A. Nashua's request is therefore moot.

8. In its Request #6 to Ms. Pannetier, Nashua requested materials related to Ms. Pannetier's ongoing work with Manchester Water Works for its watershed. Ms. Pannetier declined to produce those materials because it is an ongoing project with documents subject to change. Nashua used the same reasoning in refusing to produce to Pennichuck "present valuation work" materials concerning a power plant which had been authored by its valuation expert, George E. Sansoucy, for a municipal client. The Commission in its Order No. 24,681 declined to compel production to Pennichuck for that very reason. Order No. 24,681, p. 8. See, RSA 91-A:5, IX. Accordingly, the Commission should deny Nashua's request here as well.

WHEREFORE, Pennichuck Water Works, Inc. requests that the Commission:

- A. Deny the City of Nashua's Motion to Compel; and
- B. Grant such other and further relief as may be just.

Respectfully submitted

PENNICHUCK WATER WORKS, INC.

By Its Attorneys,
McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

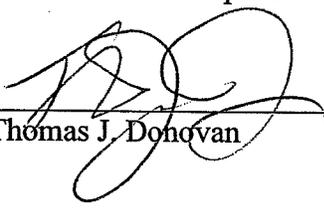
Date: November 9, 2006

By: 
Thomas J. Donovan
Steven V. Camerino
Sarah B. Knowlton
Bicentennial Square
Fifteen North Main Street
Concord, NH 03301
Telephone (603) 226-0400

Joe A. Conner, Esquire
Baker Donelson Bearman
Caldwell & Berkowitz, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450

Certificate of Service

I hereby certify that on this 01 day of November, 2006, a copy of this Objection to Nashua's Motion to Compel as Moot has been forwarded to the parties listed on the Commission's service list in this docket.



Thomas J. Donovan

McLane

**McLane, Graf,
Raulerson &
Middleton**

Professional Association

NINE HUNDRED ELM STREET • P.O. BOX 326 • MANCHESTER, NH 03105-0326
TELEPHONE (603) 625-6464 • FACSIMILE (603) 625-5650

THOMAS J. DONOVAN
(603) 628-1337
tdonovan@mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

November 9, 2006

Justin C. Richardson, Esq.
Upton & Hatfield
159 Middle Street
Portsmouth, NH 03801

Re: Pennichuck Water Works

Dear Justin:

In further response to Robert Upton's August 7, 2006 letter request for documents based upon deposition testimony of certain witnesses, enclosed are further documents.

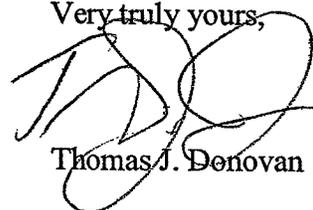
R. Kelly Myers:

Enclosed are all reports he prepared for the New Hampshire Public Utilities Commission. In reviewing his files, Mr. Myers has no other Pennichuck studies as referenced in letter request no. 2.

Eileen Pannetier:

In response to request no. 4, as modified by your motion to compel dated November 1, 2006, enclosed please find the Sudbury Reservoir watershed study.

Very truly yours,



Thomas J. Donovan

TJD:dap
Enclosures



COMPREHENSIVE
ENVIRONMENTAL
INCORPORATED

September 22, 2006

Thomas J. Donovan, Esq.
McLane, Graf, Raulerson & Middleton, PA
900 Elm Street
P.O. Box 326
Manchester, NH 03105-0326

- Engineering
- Design
- Construction
- Inspection

Responsive
service,
cost-effective
solutions
and
technical
excellence

- Water
- Wastewater
- Hazardous Waste
- Stormwater
- LID
- Industrial

RE: PENNICHUCK

Dear Mr. Donovan:

In response to your letter of August 16, 2006, I have gone through CEI's files to develop the following information in response to the requests from Justin C. Richardson at Upton & Hatfield regarding my deposition of June 14th and 26th, 2006. Each item references the numbers identified in Mr. Richardson's letter of August 9, 2006.

1. The contract and scope of services for the TMDL project being completed by CEI for Pennichuck is attached as Attachment 1.
2. This item requests a map showing municipalities for which CEI has provided consulting services. Considering that the reviewers for the City of Nashua include engineering and consulting firms that are CEI's competitors, I consider this proprietary information and do not agree to its release.
3. This item requests Master Plans for the Merrimack Village District (MVD) in which Ms. Pannetier or CEI was involved. The updated 1991 Master Plan for MVD is attached herewith. This was done pro bono as I was a Commissioner for MVD at the time. CEI provided consulting services on a subsequent update, but did not receive a copy of the documents.
4. This item requests reports and recommendations prepared for City of Boston and/or the Metropolitan District Commission (MDC). I believe Mr. Richardson means the Massachusetts Water Resources Authority (MWRA) and the Metropolitan District Commission, who are the agencies involved. There are 3 documents related to watershed management, including a document on agricultural best management practices for what was the Metropolitan District Commission; a document on Emergency Response Planning, also for the Metropolitan District Commission; and a Watershed Management Plan for Sudbury Reservoir, an emergency water supply for the Massachusetts Water Resources Authority. These documents are approximately an inch thick each and can be provided if they are still needed based on the titles. I have not



COMPREHENSIVE
ENVIRONMENTAL
INCORPORATED

Mr. Thomas J. Donovan, Esq.
September 22, 2006
Page 2 of 2

- Engineering
- Design
- Construction
- Inspection

Responsive
service,
cost-effective
solutions
and
technical
excellence

- Water
- Wastewater
- Hazardous Waste
- Stormwater
- LID
- Industrial

included them at this time, nor have I included any of the hazardous waste projects done for MWRA or MDC over the years as I do not believe these are relevant.

5. Letters from CEI to local land use agencies concerning Holts Pond. This letter is attached.
6. Any and all reports or recommendations prepared by CEI for the Manchester Water Works is requested. Since this project is still ongoing, and still in front of the Aldermen, I would prefer not to release any information. Once finalized and a public document, then we would be more comfortable in providing this information.
7. Any and all presentations made by CEI or Ms. Pannetier to the New Hampshire and/or New England Water Works Associations at a meeting near Lake Winnepesaukee in January 2005. My presentation files show one presentation given in Meredith, NH to the joint meeting of the New England Water Works and New Hampshire Water Works Association. This is attached.

If you have any questions regarding this information, please contact me.

Sincerely,

COMPREHENSIVE ENVIRONMENTAL INC.

Eileen Pannetier
President

Enclosures

PW 023415 b