

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

Docket No. DW 04-048

**DIRECT TESTIMONY OF
WILLIAM F. RUOFF**

Q. What is your name and your association with the Town of Milford?

A. My name is William F. Ruoff. I am the Director of Public Works for the Town of Milford, and I have worked in that capacity for about five years, since July of 2000. Among other things, I am responsible for Milford's water supply.

Q. Does Milford rely on Pennichuck Water Works for any of its water?

A. Milford has its own water system but, since 1987, Milford has relied on Pennichuck to provide a backup supply of water.

Q. Could you describe Milford's own water system?

A. Milford has two wells located in close proximity to each other known as the Curtis Wells. One of the wells has a capacity of 916,364 gallons per day and the other has a capacity of 523,642 gallons per day. They are actually located on land across the town line in Amherst. Milford also owns three other wells, but two are contaminated, and the water is no longer safe to drink. The third well contains too much iron and manganese, requiring special treatment that is cost prohibitive.

Q. So Milford's water supply system consists of only two useable wells?

A. Yes.

Q. How many people rely on those wells for water?

A. Milford has approximately 3,200 active water accounts.

Q. How much water does Milford use on a maximum day?

A. On a maximum day, Milford's usage can be as high as 2 million gallons.

Q. You said that Milford relies on Pennichuck for a backup supply of water. How often does Milford actually call upon Pennichuck to supply water?

- A. We rely on Pennichuck in cases of emergency, such as when a pump breaks down. Each of our two useable wells has only one pump. When only one well is useable, we actually use Pennichuck as our primary water supply with our remaining well serving as backup. We do that as a precaution to minimize the risk of pump failure in the remaining well. Over the past five years, we have relied on Pennichuck two to three times per year due to emergencies, and each emergency shutdown lasted from between eight hours and five days.

We also rely on Pennichuck when we have to close a well for routine maintenance. That happens roughly one to two times per year, and the shutdown lasts approximately eight hours.

We also rely on Pennichuck to supplement our own water supply in periods of high demand. On a maximum day with a demand of 2 million gallons, our own system has a shortfall of approximately 600,000 gallons, and we rely on Pennichuck to supply the difference. We rely on Pennichuck to supplement our own water supply due to high demand roughly five to ten times per year.

We also rely on Pennichuck on a more frequent basis so that we can run our own wells at less than full capacity, thereby extending the life of our pumps.

In 2005, Milford relied on water from Pennichuck during every month of the year, using a total of approximately 47 million gallons of Pennichuck's water.

Q. Would the proposed condemnation of Pennichuck Water Works' assets by the City of Nashua have any effect on Milford?

- A. Yes. I participated in the negotiation of Milford's current water supply agreement with Pennichuck Water Works, dated March 21, 2002. A true copy of the agreement is attached as Exhibit A. Section 5 of the agreement provides that, if Nashua, Amherst, or Merrimack acquires property of Pennichuck Water Works by condemnation and the acquisition "directly and adversely affects the ability of [Pennichuck] to provide water service to Milford," then the agreement terminates. So, if Nashua acquired all of the Pennichuck assets or even a significant portion of those assets, the agreement would terminate. In fact, because all of Pennichuck's water flows through its water treatment plant in Nashua, acquisition of that asset alone could result in termination of the agreement.

Q. So, if the proposed condemnation is approved, Milford will lose its backup supply of water?

- A. Yes.

Q. Would the same thing happen if a private company acquired Pennichuck's assets?

- A. No. Section 9 of the agreement specifies that, in the event of a sale of all or part of Pennichuck's assets, the agreement remains in effect, unchanged.

Q. Could you summarize the benefits that Milford enjoys under its agreement with Pennichuck?

A. Under Section 1 of the agreement, Milford has the right to take up to 1,389 gallons of water per minute from Pennichuck, which amounts to 2 million gallons per day. That is enough water to meet Milford's entire demand for water on a maximum day. Under Section 2 of the agreement, Milford pays Pennichuck a fixed fee of \$81,000 per year to have that capacity on hand. Under Section 3 of the agreement, Milford also pays a rate per 100 cubic feet of water actually used. The rate changes from time to time based on changes in Pennichuck's tariff and published rates as approved by the New Hampshire Public Utilities Commission. Milford currently pays a rate of \$1.1057 per 100 cubic feet. Under Section 7, Pennichuck has the right to use Milford's water mains to supply water to Pennichuck's own customers. Pennichuck then pays Milford at the same rate that Milford charges Milford's own customers, resulting in income to Milford. The agreement expires on March 31, 2022.

Q. How difficult would it be to obtain a backup water supply on the same terms?

A. I don't know. Milford is currently exploring the possibility of entering into such an agreement with the City of Nashua in the event that it acquires Pennichuck's assets, but no agreement has yet been reached.

A. Do you think the condemnation of Pennichuck's assets would provide any advantages to Milford?

A. No, I don't.

Q. Is the condemnation of Pennichuck's assets in the public interest of the people of Milford?

A. No.

Q. Does this conclude your testimony?

A. Yes.

RUOFF EXHIBIT A

AGREEMENT

AGREEMENT made as of this 25th day of March, 2002 by and between the Town of Milford, a municipal corporation established and existing under the laws of New Hampshire (hereinafter referred to as "Milford"), and Pennichuck Water Works, Inc., a New Hampshire corporation with its principal place of business in Nashua, New Hampshire (hereinafter referred to as the "Company").

WITNESSETH:

WHEREAS Milford desires that the Company provide it with water service to the extent stated herein; and

WHEREAS the Company is engaged in business as a public utility in the State of New Hampshire in gathering and distributing water to the public and is willing to undertake to provide the desired source of water service to the Town of Milford upon the terms and conditions and subject to certain contingencies set forth herein; and

WHEREAS Milford desires that the water service continue to be available on an uninterrupted basis, pursuant to this Agreement, and for this Agreement to become effective on April 1, 2002.

NOW, THEREFORE, Milford and the Company, for and in consideration of the mutual covenants and agreements set forth herein, do hereby agree as follows:

1. Volume of Use

Milford shall have the right to take up to, but not in excess of, 1,389 gallons per minute (2 million gallons per day), provided that takings in excess of 1,389 gallons per minute for fire fighting purposes, or other declared emergencies shall not be deemed a violation of the provisions of this paragraph. In the event the Company's water supply is impaired due to unusual circumstances beyond the reasonable control of the Company, the Company shall have the right, in its discretion upon twenty-four hours notice to Milford, to temporarily reduce the

amount thereafter to be taken by Milford. The Company will promptly notify Milford when the circumstances which lead the Company to its decision to so reduce takings by Milford have ceased to exist, and, thereupon, the rights of Milford to take water as herein set forth shall be restored.

It is recognized that during the term of this Agreement the parties intend that the Company provide Milford with a supplemental source of water service and that Milford will continue to use its present source of supply, absent unusual circumstances or the temporary malfunction of its wells or related equipment. Milford agrees to provide the Company with reasonable notice of any unusual circumstance or malfunction of equipment which would necessitate its use of the Company's source of water for purposes other than as a supplemental source of supply. In the event Milford expects its consumption requirements to exceed 1,389 gallons per minute, Milford shall provide the Company with notice sufficient for the Company to evaluate the capacity of its facilities to produce water to meet the demands of such increased consumption, said notice to be made at least six months in advance of the desired implementation date of the increase. The Company shall respond to such a request within ninety (90) days, indicating whether it will agree to provide additional supply. The Company retains the right to refuse to increase the supply.

2. Effective Date, Term and Extension Periods

This Agreement shall take effect on April 1, 2002 and shall remain in effect until Twenty (20) years after the date that water service is first available to Milford hereunder. The above Agreement shall automatically renew for each of two (2) ten (10) year extensions unless a party gives written notice to the other party of its desire to terminate the Agreement at least twelve (12) months prior to the expiration date. Commencing on the date that water service is first available to Milford and continuing for the life of this Agreement, Milford agrees to pay a minimum fixed amount of Eighty-one Thousand Dollars (\$81,000) per year in equal monthly installments to the Company in consideration of the aforementioned capacity.

3. Volumetric Charge

For all water taken by Milford, in addition to the minimum fixed amount referenced above, Milford shall pay the rate of \$0.97 per 100 cubic feet, the Company's "production cost", excluding administrative and general cost. This rate shall change from time-to-time in pro rata accordance with the Company's tariff, and published rate, on file with the New Hampshire Public Utilities Commission ("NHPUC") in effect in the City of Nashua.

If Milford uses in excess of 450,000 gallons per day for a period in excess of one year, the Company agrees to conduct a cost of service study. Based upon this cost of service study and conditioned upon continued use in excess of 450,000 gallons per day the Company agrees to discuss modification of the above referenced rate. Any change in the rates shall be subject to the approval of the NHPUC.

4. Contingencies

This Agreement is subject to approval of the New Hampshire Public Utilities Commission.

5. Condemnation

It is understood that the City of Nashua and the Towns of Milford, Amherst, and Merrimack have a statutory right under RSA 38 to acquire the plant and properties of the Company located within their respective municipal areas, which, if so acquired, could make it impossible for the Company, thereafter, to render water service to Milford under the terms of this Agreement. It is agreed that any condemnation of the Company's plant and property by Milford will not relieve Milford of its obligation for payment, subject to the conditions expressed in the paragraph 2 above, to the Company of the monthly installments for the term of the Agreement to the extent that any purchase price agreed on or directed by the statutory process does not include consideration of this debt. If plant or property of the Company is so acquired by any of the aforementioned municipalities other than Milford, and such acquisition directly and adversely affects the ability of the Company to provide water service to Milford, the obligations of the

parties under the terms of this Agreement shall cease and terminate.

6. Restrictions of Use

Milford agrees that the Company shall not be obligated to provide water service to any other municipality or water company by virtue of any assignment by Milford of its rights under this Agreement or any contract of sale of water by Milford to any other municipality or any other commercial use of water outside the municipality unless the Company consents in writing.

Recognizing that the service provided by the Company is subject to environmental and other factors beyond the Company's control, it is agreed that Milford shall not be entitled to compel the Company to supply it with water as a result of the Company's determination that its ability to meet supply is impaired. In any such circumstances, however, Milford shall receive a pro rata credit for any decrease in supply during the period of restriction or impairment of supply on a per diem basis against the minimum fixed amount for that period.

Milford shall impose on its customers, which receive water supplied by the Company pursuant to this Agreement, the same restriction on water use which the Company shall impose from time to time on its core system customers.

7. Regional Interconnection

The Company shall have the right to utilize water mains within the municipality provided that it does not diminish water supply, pressure or quality to the municipality. The Company shall pay the town a fee for use of the municipality's water mains, to be negotiated at such time as such access is required based upon Milford's cost-of-service.

8. Integration Clause

This instrument constitutes the entire Agreement between the parties and is executed by each with reliance upon any representations made by either to the other during the course of the negotiations with respect thereto.

9. Successor Clause

In the event of a sale of all or part of Pennichuck Water Works, Inc. assets, it is

understood and agreed to by both parties to this Agreement, that such a sale shall in no way compromise, diminish or alter this contract or conditions thereof.

10. Severability Clause

If any term or condition of this Agreement is found to be unenforceable, the remaining terms and conditions shall remain binding upon the parties as though said unenforceable provision were not contained herein.

IN WITNESS WHEREOF, the parties have caused their corporate names to be subscribed by an officer duly authorized and their corporate seals to be affixed.

PENNICHUCK WATER WORKS, INC.

Witness

By: Stephen J. Dinsbury
Its: Vice Pres.

TOWN OF MILFORD, By Its Board of Selectmen

Witness


By: John P. D'Amato
Selectman

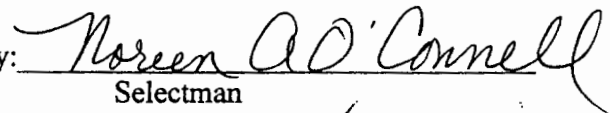
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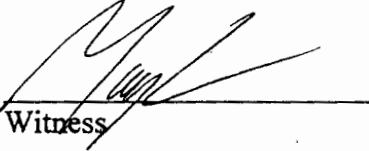
By: John S. Rinaldi
Selectman

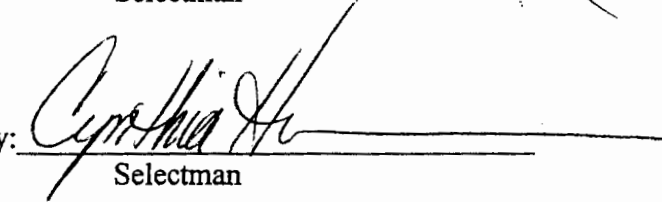
Witness

By: Nancy A. Amato
Selectman


Witness

By: 
Selectman


Witness

By: 
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