

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DW 04-048

In the Matter of:
City of Nashua
Petition For Valuation Pursuant to RSA 38:9

Testimony

of

Mark A. Naylor
Director, Gas & Water Division

April 13, 2006

1 New Hampshire Public Utilities Commission

2 Testimony of

3 Mark A. Naylor

4 City of Nashua/Pennichuck Water Works, Inc.

5 DW 04-048

6
7 **I. INTRODUCTION**

8 **Q. Please state your name, occupation and business address.**

9 A. My name is Mark A. Naylor; I am the Director of the Gas & Water Division at the
10 New Hampshire Public Utilities Commission (Commission). My business address is 21
11 South Fruit Street, Suite 10, Concord, New Hampshire.

12 **Q. Please describe your education and work experience.**

13 A. My education and work experience are summarized as Attachment MAN-27 to this
14 testimony.

15 **Q. Please describe the issues raised by this docket.**

16 A. This docket involves a petition filed by the City of Nashua (Nashua) pursuant to RSA
17 38. Nashua seeks a valuation of the assets of Pennichuck Water Works, Inc. (PWW)
18 pursuant to RSA 38:9 and a determination by the Commission that a taking of those
19 assets by Nashua is in the public interest. Nashua's original filing in this docket
20 requested a taking of all three of the regulated water utilities owned by Pennichuck
21 Corporation (PC), namely PWW, Pennichuck East Utility, Inc. (PEU) and Pittsfield
22 Aqueduct Company, Inc. (PAC). The Commission, in response to a Motion to Dismiss
23 filed by the three Pennichuck utilities, issued its Order No. 24,425 on January 21, 2005 in

1 this proceeding, ruling that because PEU and PAC do not provide any utility service
2 within the municipal boundaries of Nashua, the City may not proceed with a taking of the
3 assets of those utilities. Since PWW also provides service outside the municipal
4 boundaries of Nashua, both through an interconnection with the Nashua “core” system as
5 well as through stand-alone systems, the Commission addressed in Order No. 24,425
6 whether Nashua could proceed with a potential taking of all of the assets of PWW, even
7 those providing service to customers outside the City¹. The Commission cited the
8 language of RSA 38:2 which expressly authorizes a municipality to take property “for the
9 use of its inhabitants and others.” Additionally, the Commission cited RSA 38:9 which
10 states that when a municipality and a utility fail to agree upon how much property
11 “within or without the municipality the public interest requires” be taken, then it remains
12 for the Commission to determine the extent of the taking. Thus, the Commission ruled
13 that Nashua may pursue a taking of all property of PWW, regardless of where the assets
14 are located, but that the potential taking of any or all of PWW’s assets remained a factual
15 determination of the public interest which the Commission will consider in the docket.

16 **Q. What is the purpose of your testimony in this proceeding?**

17 A. The purpose of my testimony is to provide an opinion based on the evidence in this
18 docket as to whether Nashua’s taking of any or all of PWW’s assets is consistent with the
19 public interest. Upon advice of counsel, I am aware that a municipal vote in favor of a
20 taking creates a rebuttable presumption that the taking of assets within Nashua is in the
21 public interest, pursuant to RSA 38:3. The presumption does not apply to assets outside
22 Nashua. Nashua held such a municipal vote on January 14, 2003 and in Order No.

¹ The Nashua “core” system is considered to be the water system serving the City of Nashua and very limited portions of the Towns of Hollis and Merrimack. References to the “core system” or the “Nashua core system” within this testimony include those limited areas outside Nashua’s municipal boundaries.

1 24,425, the Commission determined that Nashua has met the voting requirements of RSA
2 38:3. Staff is accustomed to conducting an assessment as to an acquiring entity's
3 managerial, technical, legal and financial capability to operate a water utility, but counsel
4 advises me that, in this particular case, the Commission is charged with analyzing
5 Nashua's proposal in a manner different from that in a voluntary sale of utility assets. In
6 a condemnation or eminent domain action such as what Nashua proposes, the public
7 interest must be analyzed on a "net benefits" basis. That is to say, the entity wishing to
8 take assets of an investor-owned utility must demonstrate reasonable necessity for the
9 taking and the Commission must balance the public benefit of the taking and the benefits
10 of the eradication of any harmful characteristics of the property in its present form,
11 against the social costs of the loss of the property in its present form. It is within this
12 framework that Staff has assessed not only whether Nashua possesses the requisite
13 managerial, technical, legal and financial capabilities to own and operate the PWW
14 system but also whether under municipal ownership there are net benefits to the
15 customers of the utility and to the public overall. Staff has also considered public policy
16 as expressed by the General Court.

17 **Q. Is the Staff prepared to address valuation issues in this testimony?**

18 A. No. Staff will not address the specifics of valuation. PWW and Nashua have
19 provided testimony on valuation in this docket. For purposes of Staff testimony, Staff
20 assumes that the value ultimately set by the Commission for the PWW assets, if it finds
21 the taking to be in the public interest, represents market value. To the extent specific
22 issues identified in this testimony implicate valuation, those issues will be identified and
23 a discussion will follow where appropriate.

1 **Q. Please describe how your testimony is organized.**

2 A. First, I will summarize Nashua's initial filings in this docket, including its public
3 interest case provided through testimony filed November 22, 2004, and I will summarize
4 the testimony provided by intervenors that support Nashua's proposal. Following this
5 will be summaries of testimony filed by Nashua to complete its public interest case.
6 Included in this summary will be a review of the proposed contracts with third-party
7 vendors Nashua has selected for operation and oversight of the water system, and the
8 testimony provided by Nashua on public interest issues related to valuation Nashua filed
9 on January 12, 2006. Next, I will summarize the filings made by PWW in this docket,
10 including its public interest testimony filed January 12, 2006 and February 27, 2006, and
11 the testimony and positions taken by other parties to this proceeding. Following that, I
12 will provide Staff's opinion on whether or not the proposal of the City of Nashua to take
13 the assets of PWW is in the public interest, with the reasons and analysis on why Staff
14 takes the position it takes in this case.

15 **II. NASHUA'S FILINGS ON PUBLIC INTEREST AND SUPPORTING**
16 **TESTIMONY**

17 **Q. Before proceeding, please briefly describe the PWW system.**

18 A. The PWW system is a regulated public utility pursuant to RSA 362:2 and RSA 362:4
19 and provides water service to approximately 24,500 customers in the City of Nashua and
20 ten other municipalities in New Hampshire. It is the largest investor-owned water utility
21 in the state with 2004 revenues of \$15,685,000. The largest portion of the PWW system
22 is the Nashua core, which serves approximately 21,900 customers in the City of Nashua
23 and adjacent areas of the Towns of Hollis and Merrimack. The sources of water for the

1 Nashua core are the Pennichuck Brook and associated system of surface waters along the
2 Nashua/Merrimack municipal boundary, and the Merrimack River. PWW also owns and
3 operates the Amherst Village and Bon Terrain systems in the Town of Amherst which,
4 although connected to the core system for a backup source of supply, primarily rely on
5 their own wells for water service to their 760 customers. PWW also owns and operates
6 some 21 stand-alone, or “satellite” water systems in various municipalities. Altogether
7 and including Amherst Village and Bon Terrain, PWW serves some 2,951 additional
8 customers outside the Nashua core in these satellite systems.

9 **Q. Please describe Nashua’s public interest case as set forth in its petition.**

10 Nashua has stated the taking is in the public interest by citing the following supportive
11 benefits: In paragraph 11 of its petition, Nashua states “there is a public good for it to
12 acquire the assets of PWW, PEU, and PAC because of the benefits associated with
13 supplying its water users and the other water users in the Pennichuck rate base with
14 relatively inexpensive water; and that there is no greater public harm sufficient to rebut
15 the RSA 38:3 presumption.” In paragraph 16 of the petition, Nashua states: “[a]cquiring
16 such assets is further in the public interest because of the passage of Chapter 281 and
17 Nashua’s participation in, and support of, a regional water district.” In paragraph 17 of
18 the petition, Nashua states that “the acquisition by Nashua would be in the public interest;
19 and that acquisition, ownership and control of these facilities by Nashua, or the regional
20 water district, is essential to the economic viability and orderly economic growth of the
21 City and Region.”

1 **Q. Please describe Nashua’s public interest case as set forth in its pre-filed**
2 **testimony.**

3 A. It is important to note that, at the time Nashua’s initial public interest testimony was
4 filed, the Commission had yet to rule that PEU and PAC could not be taken by Nashua as
5 the City had requested in its initial petition. On November 22, 2004, Nashua
6 supplemented the public interest arguments set forth in its petition with pre-filed direct
7 testimony of five witnesses: Alderman Brian S. McCarthy; George E. Sansoucy of
8 George E. Sansoucy, P.E., LLC; Philip L. Munck an associate with George E. Sansoucy,
9 P.E., LLC; Steven L. Paul of the law firm of Palmer & Dodge LLP; and Steven A.
10 Adams of First Southwest Company.

11 Nashua Alderman Brian McCarthy recounted how Nashua had come to pursue
12 municipalization, arising from the proposed merger of Pennichuck Corporation with
13 Philadelphia Suburban Corporation. He describes how the city engaged consultants to
14 advise Nashua on the merger proposal, and to conduct a review of the Pennichuck
15 system. He further indicates that the consultants had concluded that public ownership of
16 utilities in general is financially beneficial to customers. Mr. McCarthy states that he
17 believes it is in the public interest for Nashua to acquire the Pennichuck utilities because
18 “water is a crucial community resource, which should be locally owned and controlled.”
19 He states that Pennichuck Corporation has made it clear that it is for sale, that the most
20 likely acquirers are going to be foreign, and that Nashua will not accept decisions with
21 respect to its water resources being made by a company removed from the local area. He
22 expresses concern that such ownership will not be aware of or sensitive to long term
23 effects on the community. Mr. McCarthy indicates that the Board of Alderman has found

1 that an adequate supply of clean and affordable water is vital to the economic vitality of
2 any community, and that the maintenance of a water system to perform this function is
3 best served by the formation of a regional water district. He further states that acquisition
4 of all three of the Pennichuck utilities is in the public interest because a) it will eliminate
5 any claim for severance losses by any of the Pennichuck companies; b) it is likely to
6 prevent rate increases for any portion of the system which is not acquired by Nashua in
7 response to proportionally higher operating expenses; c) it will protect the level of service
8 to be received by PEU and PAC customers; and d) it will mitigate harm to Pennichuck
9 and its shareholders by eliminating the need to operate a smaller or less efficient portion
10 of the system. He also pointed to other benefits of the acquisitions such as implementing
11 the will of Nashua voters; promoting the goals of the Merrimack Valley Regional Water
12 District (MVRWD); lower rates over time; retention of adequate service; long range
13 public control over water supplies; continued employment of current Pennichuck
14 employees; and fair value to Pennichuck owners for the assets taken. Mr. McCarthy
15 avers that Nashua has the technical, managerial and financial capabilities to own and
16 operate a water utility, and describes Nashua's interest in contracting for operating and
17 oversight contractors to run the water system. He concludes that if the Commission were
18 to limit Nashua's taking to the core system of PWW, there would be no change to his
19 analysis of the city's capabilities to own and operate the system.

20 Nashua filed testimony of George E. Sansoucy of George E. Sansoucy, P.E.,
21 LLC. Mr. Sansoucy describes the three Pennichuck utilities and the assets of each that
22 Nashua seeks to acquire. He describes the then-current PWW rate case before the
23 Commission in docket DW 04-056 and indicates that PWW will require an additional,

1 substantial rate increase within three years as a result of pending capital improvements.
2 He also reviews the current earnings levels of both PEU and PAC. He indicates that
3 Pennichuck Corporation is still likely to be sold to another entity located out of state if
4 not foreign, and describes what he believes to be the implications of such a sale on the
5 regulated utilities, including: a) a distant owner; b) an infusion of new equity capital; and
6 c) an upward shift in the overall cost of capital as a result of the new equity capital with a
7 resulting upward trend in rates. Mr. Sansoucy then asserts that future rate increases are
8 likely to be less under Nashua ownership than under current ownership, and he presents a
9 financial model and an analysis of costs going forward. He assumes for this purpose an
10 acquisition price for the three utilities of \$81 million. He concludes his testimony with a
11 discussion of the impact if Nashua were to be restricted to a purchase just of the assets of
12 PWW. He asserts that counsel has advised that there is no issue of severance damages in
13 the event the acquisition is restricted to PWW. He projects rate increases for PEU and
14 PAC under Pennichuck ownership once PWW is taken by Nashua, and asserts that
15 because rate increases for those utilities would be less under municipal ownership, it is
16 therefore in the public interest for Nashua to acquire the assets of those utilities as well,
17 notwithstanding their location outside Nashua.

18 Nashua filed testimony of Philip L. Munck, an associate of George E. Sansoucy,
19 P.E., LLC. Mr. Munck supports the managerial and technical competency of Nashua to
20 own and operate a water utility, and asserts that there are financial advantages of public
21 ownership. He indicates that Nashua intends to contract for operation of the water
22 system, and contends that such an arrangement has been successful in other locations. He
23 indicates that a municipal owner gains the services of an organization which is focused

1 on a single task, that is operating and maintaining a specific plant, and has resources
2 which can be called upon when needed. Disadvantages of such a public-private
3 arrangement, according to Mr. Munck, are less flexibility on the part of the owner to
4 change directions due to the contractual arrangements, and a reduced ability to gain
5 advantages of an integrated public works department. He asserts that the advantages and
6 disadvantages of a public-private arrangement balance fairly closely. He describes the
7 process Nashua is using to develop requests for proposals for contractors, one for
8 operation and maintenance, and one for oversight. Mr. Munck also indicates his belief
9 that rates under public ownership will be less than under private ownership.

10 Nashua filed testimony of Steven L. Paul, a partner in the law firm of Palmer &
11 Dodge, LLP. He indicates in his testimony that, while Pennichuck will realize a gain for
12 income tax purposes in an eminent domain action such as this, that gain may not be
13 subject to taxation. He asserts that Pennichuck may elect “nonrecognition” of the gain if,
14 within two years after the close of the year in which the transfer takes place, Pennichuck
15 purchases qualifying replacement property with a cost at least equal to the proceeds it
16 receives from Nashua. Mr. Paul presents an example of how Pennichuck could avoid tax,
17 and presents different scenarios post-transfer for how gains might be handled for tax
18 purposes. He indicates that generally, under the Internal Revenue Code, qualifying
19 replacement property means “property similar or related in service or use to the converted
20 property.” He further indicates that replacement property does not have to be a water
21 utility and could be any other business or investment real property. Mr. Paul also
22 describes “like kind” property and provides examples of some investments Pennichuck

1 Corporation could make which would allow it to avoid tax on the proceeds of a municipal
2 taking.

3 Steven A. Adams, a Senior Vice President for First Southwest Company,
4 provided testimony for Nashua. Mr. Adams states that First Southwest is the financial
5 advisor to the City of Nashua and has been so for 15 years. He describes his company's
6 experience with municipal bonds, and provides his company's opinion that the bonds
7 proposed by Nashua to affect the purchase of the Pennichuck utilities are marketable at
8 the rates included in Nashua's financial plan. He avers that Nashua could issue
9 investment grade revenue bonds and would qualify for municipal bond insurance. Mr.
10 Adams describes Nashua's current credit ratings and asserts that there are few entities,
11 municipal or corporate, that enjoy ratings as high as Nashua's.

12 **Q. Were there other parties filing supporting testimony?**

13 A. Yes, on April 22, 2005 the following persons or entities filed testimony in support of
14 Nashua. These are Michael J. Scanlon on behalf of the Town of Bedford, Claire B.
15 McHugh, and Barbara Pressly.

16 Mr. Scanlon describes the Town of Bedford, its recent growth, and its planning
17 for the future of water service in the town. He explains the town's support for Nashua's
18 petition and indicates that Bedford believes that the trend of mergers of smaller water
19 companies with larger ones will result in the loss of control of local water resources, a
20 decline in customer service, and increases in rates for water that are unrelated to the
21 actual cost of service. He believes that Pennichuck is positioning itself to be sold, and
22 that a loss of the management personnel previously involved with assisting Bedford with
23 its water expansion strategy is inevitable. Mr. Scanlon points to other mergers of New

1 Hampshire based utilities with out-of-state entities as resulting in loss of local managers
2 and replacement with others from the home office of the acquiring entity. He states that
3 Bedford believes that acquisition of the Pennichuck utilities by Nashua will result in
4 lower rates and more stable rates, and would ensure that customer service functions
5 remain in the state. He further states that Bedford believes that ownership of all of the
6 Pennichuck utility assets by the MVRWD would be in the public's best interest.

7 Claire B. McHugh filed testimony as an individual in support of Nashua. She
8 cites lower capital and operating costs, local control of water, and wetlands protection as
9 prime reasons for her support. She also averred that Pennichuck had broken faith with
10 the public by selling off buffer lands and acting in an unethical manner.

11 Barbara Pressly filed testimony as an individual, also in support of Nashua. Ms.
12 Pressly's support of Nashua's taking of the water utility is based on her belief that: a)
13 water is a unique utility; b) that public ownership will provide accountability and
14 transparency in terms of decisions made which impact ratepayers; c) that public
15 ownership will protect wetlands; and d) that public ownership is cost effective and will
16 save money for the ratepayers by eliminating the profit paid to shareholders.

17 **Q. Are you aware that Nashua modified its prefiled testimony?**

18 A. Yes. On February 13, 2006, in response to Commission Order No. 24,555, Nashua
19 submitted a filing which modified the original testimony of Mr. McCarthy, Mr. Munck,
20 and Mr. Adams. A prior Commission Order, No. 24,488 denied a request by PWW to
21 compel responses to certain data requests regarding Nashua's claim that it had expertise
22 in operating municipal systems. PWW filed a Motion to Reconsider or Rehear Order No.
23 24,488 arguing that it should not be barred from discovery into Nashua's operation of

1 municipal systems if it is going to operate the PWW system. In Order No. 24,555 the
2 Commission noted that Nashua affirmed that it will not operate the water system if
3 acquired, and indicated that it was willing to strike the testimony regarding its experience
4 operating municipal systems. The Commission therefore instructed Nashua and PWW to
5 identify the portion(s) of Nashua's testimony to be stricken, for submission to the
6 Commission. Nashua did so on February 13, 2006, with the concurrence of the MVRWD
7 and Staff. The Town of Merrimack concurred with the filing but took no position on the
8 scope of testimony. The Town of Milford took no position. PWW disagreed with the
9 scope of Nashua's filing but indicated it did not intend to object. Other parties were
10 silent. Thus, the testimony of Mr. McCarthy, Mr. Munck and Mr. Adams were modified
11 as indicated in the February 13 filing.

12 **Q. Nashua was permitted to complete its public interest case with testimony filed on**
13 **January 12, 2006, is that correct?**

14 A. Yes, it was. That date had been set previously by the Commission for filings: a) by
15 PWW and Nashua on valuation; b) by PWW on its assessment of Nashua's technical,
16 financial and managerial capability, as well as PWW's public interest case; and c) by
17 Nashua on public interest issues dependent on valuation. On December 22, 2006, the
18 Commission issued its Order No. 24,567 which, among other things, addressed PWW's
19 Motion for Summary Judgment and Motion to Bar Testimony which was filed September
20 6, 2005. PWW had sought to bar Nashua from submitting additional testimony on
21 January 12, 2006 with respect to the qualifications of its intended third party contractors.
22 The Commission noted that Nashua had indicated it intended to file such testimony on
23 January 12, and the Commission found that filing such testimony on that date would

1 promote the orderly conduct of the proceeding. The Commission modified the
2 procedural schedule such that PWW could file responsive testimony on February 27,
3 2006.

4 On January 12, 2006, in addition to its testimony on valuation and public interest
5 issues dependent on valuation, Nashua filed the direct joint testimony of Stephen R.
6 Gates, P.E. and Paul Doran, P.E., employees of R.W. Beck, Inc. (Beck), and Jack
7 Henderson, P.E., an employee of Tetra Tech, Inc. (Tetra Tech) along with a draft
8 contract. Nashua proposes to hire Beck as its oversight contractor, with Tetra Tech
9 available to Beck for certain other services. Nashua also filed the direct joint testimony
10 of Philip G. Ashcroft, David W. Ford, P.E., Robert R. Burton, and Paul F. Noran, P.E.,
11 employees of Veolia Water North America-Northeast LLC (Veolia), Nashua's proposed
12 operator of the system, along with a draft contract for services. As to public interest
13 issues dependent on valuation, Nashua filed the direct joint testimony of George E.
14 Sansoucy, P.E. and Glenn C. Walker.

15 **Q. Please summarize the testimony of the Beck and Tetra Tech witnesses and**
16 **describe the terms of the R.W. Beck contract.**

17 A. There are multiple copies of Nashua's draft contract with R.W. Beck that have been
18 circulated during discovery. The version that Nashua directed Staff's attention to, and
19 which is attached to the Beck witnesses' testimony, is dated October 12, 2005. Under the
20 contract, R.W. Beck will provide water utility oversight services. Paul B. Doran, P.E., is
21 the project manager. Nashua will pay R.W. Beck an hourly rate for its work in support of
22 Nashua's petition before the Commission. Nashua may elect to defer payment for work
23 associated with docket DW 04-048 until approval of Nashua's 2006/2007 budget, but no

1 later than September 1, 2006. I should note here that Nashua's RFP first indicated the
2 Service Commencement Date would be January 1, 2006, but Nashua later revised that
3 date to be January 1, 2007, due to the lengthened procedural schedule in this docket.
4 Thus, Staff interpreted the dates mentioned in the Beck contract to apply a year later.
5 Nashua will pay R.W. Beck \$230,000 for *Initial Tasks* performed through December 31,
6 2005. This fee will be adjusted July 1, 2006 in accordance with the Consumer Price
7 Index (CPI), with a 10% ceiling on energy or fuel cost portions of the CPI. Future
8 revisions based on the CPI are envisioned and will be specified in an amendment to the
9 contract, which has yet to be developed. Payment of the *Initial Tasks* will be made upon
10 submission of 8 monthly invoices. In addition to a fee schedule for services related to
11 Docket No. DW 04-048 and the *Initial Tasks*, Nashua has a third fee structure for
12 *Recurring Services* which are billed at an hourly rate² and the hourly rate will be
13 increased by 10% if services are performed by subconsultants. A fourth fee structure
14 exists for *Supplemental Services*, paid at R.W. Beck's "then current Billing Rates" and
15 will be paid through monthly invoices and will be subject to a 10% increase for
16 subconsultants. The contract may be terminated "upon thirty (30) days prior written
17 notice to the other Party." The contract is assignable to the MVRWD.

² \$12.00 to \$72.00 for clerical, administration, junior engineers, and technicians.
\$84.00 to \$120.00 for staff engineers, consultants, and technicians.
\$132.00 to \$168.00 for senior engineers and consultants, technicians, and project managers.
\$180.00 to \$240.00 for executive engineers and consultants, senior project managers, and principals.
\$252.00 to \$295.00 for executive engineers and consultants, executive project managers, and senior principals. These rates are valid through December 31, 2005 and are subject to review and annual CPI adjustment beginning July 1, 2006.

1 **Q. Please describe R.W. Beck's services to Nashua pertaining to Docket No. DW 04-**
2 **048.**

3 A. According to the draft contract, Beck will work with Nashua, Upton & Hatfield, and
4 Veolia to develop and oversee a Service Agreement for Water Utility Operations and
5 Maintenance. R.W. Beck will support on-going proceedings in Docket No. DW 04-048.
6 R.W. Beck will work with Nashua's Chief Financial Officer and Finance Department to
7 provide: support for bonding requirements; monthly and totalized year to date revenue
8 projections and actuals; monthly and totalized year to date expense projections and
9 actuals; monthly and totalized year to date capital expense projections and actuals; and
10 monthly and totalized year to date long-term improvement projections and actuals. R.W.
11 Beck will meet monthly with Nashua's Chief Financial Officer and Finance Committee;
12 R.W. Beck will meet quarterly with Aldermen; and annually or semi-annually with bond
13 agents. R.W. Beck will ensure Veolia adheres to Nashua's Water Ordinance in certain
14 areas.³ R.W. Beck will oversee Veolia and Nashua's permit obligations. It is unclear to
15 Staff whether these obligations extend to Dig Safe compliance.

16 **Q. Please describe R.W. Beck's services to Nashua pertaining to *Initial Tasks*.**

17 A. The *Initial Tasks* involve one-time activities relating to the transfer of PWW assets to
18 Nashua during the first 8 months after the notice to proceed, or Transition Period, as
19 follows: 1) evaluate Veolia's maintenance plan and prepare a summary letter report of
20 findings; 2) evaluate Veolia's initial inventory for completeness; 3) evaluate Veolia's
21 initial staffing plan; 4) evaluate the appropriateness and adequacy of Veolia's condition
22 assessment plan; 5) collaborate with Veolia and utility staff to evaluate existing hydraulic

³ Those areas involve: applicable rate structure; turn-on and shut-off policy; CIAC policies; backflow prevention program; conservation plans; contamination mitigation; watershed protection and management; and jobbing policies and fees.

1 models; 6) work closely with Veolia and key Nashua staff and the MVRWD to create a
2 Long-Range Plan; and 7) review existing vulnerability assessments, emergency
3 preparedness and response plans, risk assessments, and other security plans.

4 **Q. Please describe R.W. Beck's services to Nashua pertaining to *Recurring Services*.**

5 A. *Recurring Tasks* are intended to be those services performed as of the date Veolia
6 begins providing services under the Operation, Maintenance and Management Agreement
7 (OM&M). Services to Nashua and will be completed annually as follows: 1) represent
8 Nashua in negotiations with Veolia; 2) annually audit Veolia's compliance with planned
9 maintenance terms; 3) review Veolia's unplanned Renewal, Repair and Replacement
10 Maintenance (RRRM) requests; 4) review operations data and assess completeness and
11 accuracy and check operating data to ensure facility is operating as required; 5) review
12 and evaluate test reports prepared for submittal to regulatory agencies; 6) review and test
13 Veolia's security plans and annually assess number and type of incidents; 7) on an as-
14 needed basis, coordinate construction and prepare a Construction Administration Plan
15 (CAP); 8) update long-range plans and collaborate with key stakeholders to assure the
16 plan remains current with the highest priorities of the utility's leadership; and 9) review
17 capital improvement plans for affordability, consistency with the selected rate structure,
18 deferred and ongoing asset renewal and replacement, and to ensure future needs of the
19 utility are addressed.

20 **Q. Please describe R.W. Beck's services to Nashua pertaining to *Supplemental***
21 ***Services*.**

22 A. If services beyond the *Initial Tasks* are necessary during the Transition Period, then
23 those services will be billed as *Supplemental Task 1 – Transition Services* and may

1 include information technology reviews, engineering services, finance and accounting
2 services, forming a strategy for transitioning information from PWW to Nashua, and
3 conducting project management and budgetary control services. *Supplemental Task 2 –*
4 *Community Outreach* involves assisting Nashua in establishing positive community
5 relations using a variety of media and educating the public on water system issues.
6 *Supplemental Task 3-Comprehensive Watershed Protection Planning Program* services
7 will involve developing and implementing a source protection program and creating a
8 detailed watershed management plan. *Supplemental Task 4-Water Conservation*
9 *Program Implementation* requires R.W. Beck to review Veolia’s water conservation plan
10 and modify the plan to implement it within the service area. Under *Supplemental Task 5-*
11 *Profesional Engineering Services*, R.W. Beck will provide professional engineering
12 services as required. Under *Supplemental Task 6-Engineering Management Services for*
13 *Nashua CIAC projects*, R.W. Beck will perform activities associated with providing
14 water service to new customers in Nashua’s service area, including review, inspection,
15 monitoring of developer water main extensions and new service line installations in
16 accordance with applicable law and Nashua’s standards. Also under this task, R.W. Beck
17 will oversee Veolia’s supplemental services under CIAC, including interfacing and
18 coordinating activities with other Nashua departments. Under *Supplemental Task 7-*
19 *Financial Consulting*, R.W. Beck will construct a financial model for the utility prior to
20 final acquisition but R.W. Beck first suggests Nashua conduct an engineering due
21 diligence review, have experienced plant operations personnel review existing Operations
22 and Maintenance (O&M) and Renewal and Replacement (R&R) allowances, and
23 construct a financial model to calculate debt service coverage and projected rate

1 increases. Under *Supplemental Task 8-Strategic Planning*, R.W. Beck will develop a
2 simple but iterative process which integrates the strategic plan with the utility's annual
3 budget cycle. Under *Supplemental Task 9-Grant Funding Assistance*, R.W. Beck would
4 assist Nashua with obtaining state and federal grants.

5 **Q. Please describe the assumptions of the R.W. Beck contract.**

6 A. The scope of services and associated pricing is based on Nashua providing R.W. Beck
7 with a final draft of Veolia's Maintenance Plan, Initial Inventory, Initial Staffing Plan,
8 Condition Plan and Asset Register, Billing Procedures and Standard Operating
9 Procedures, all existing hydraulic models, operations manuals and asset drawings, system
10 operations and maintenance records for 2000-2006, all facility plans 1980-12/21/2006,
11 and as-bid plans and specifications for capital construction projects.

12 The contract assumes 14 meetings with Nashua during the *Initial Task* period, 2
13 meetings with the Mayor and Board of Aldermen over the *Initial Task* period, 10 full-day
14 and 5 half-day meetings with Veolia during the *Initial Task* period. The contract assume
15 R.W. Beck will also review during the *Initial Task* period the final staffing plan, final
16 maintenance plan, final initial inventory, and Vulnerability Assessment and Emergency
17 Response Plan.

18 For *Recurring Tasks*, R.W. Beck assumes 2 meetings per month with Nashua, 1
19 meeting with the Mayor and Board of Aldermen each month, and 3 full-day on-site
20 meetings per month with Veolia over the first year of service. R.W. Beck will review the
21 Vulnerability Assessment and Emergency Response Plan updates.

1 An allowance of \$20,000 is estimated for *Recurring Task 1*. An allowance of
2 \$40,000 is estimated for *Recurring Task 7*. An allowance of \$20,000 is estimated for
3 *Recurring Task 9*.

4 **Q. Can you please describe how Nashua proposes to operate the PWW water**
5 **system facilities?**

6 A. Yes, Nashua proposes to hire Veolia Water North America-Northeast, LLC (Veolia)
7 to operate, maintain, and manage the PWW water system facilities. Nashua submitted
8 with Veolia's testimony an unexecuted contract, dated "January ____, 2006" and entitled
9 "Operation, Maintenance, and Management Agreement" between Nashua and Veolia.
10 Veolia lists its principal address as Norwell, Massachusetts; however, Staff is aware
11 Veolia plans to have an office closer to Nashua to service this contract. The contract is
12 divided in to five parts: 1) Services provided for the annual fee; 2) Renewal, Repair,
13 Replacement, & Maintenance (RRR&M) Services; 3) Transition Services; 4) Capital
14 Improvement Services; and 5) Supplemental Services. According to Section 13.1, the
15 proposed contract is for a term of 6 years and will be automatically renewed for 3
16 successive 2-year terms unless either party cancels the contract in writing no later than
17 120 days before the expiration of the term.

18 **Q. Please describe the services Veolia will provide for an annual fee.**

19 A. According to Article 9 of the contract, Veolia will perform Operation, Maintenance,
20 and Management (set forth in Appendix D) of the Managed Assets for an annual fee of
21 \$4,996,203. The fee can be adjusted if the assumed number of customers varies and will
22 be subject to an annual cost of living adjustment.

1 Services listed in Appendix D fall into the following categories: General OM&M
2 Services; Source of Supply; Water Treatment Plant; Transmission & Distribution – Pump
3 Stations; Transmission & Distribution – Pipes and Appurtenances; Transmission &
4 Distribution – Reservoirs & Tanks; Customer Service; Instrumentation & Controls;
5 Computerized Operation, Maintenance & Management; Electrical; Safety & Security;
6 Vehicles, Heavy Equipment, Rolling Stock, Tools; OM&M Plan; Records and Reports;
7 Staffing; Licenses & Certifications; Public Education Support; and Laboratory Services.

8 Specifically, the services involve: provide all water treatment chemicals to treat
9 Raw Water; subject to Appendices E, G, H, I, and O, keep all equipment in good
10 operating condition; provide emergency service and critical service needs 24/7; perform
11 high priority repairs and maintenance; report faulty or leaking underground storage tanks
12 or hazardous or toxic waste when Veolia encounters them during the course of
13 excavation; support Nashua’s compliance with federal, state, and local permits; maintain
14 existing statutory standby power equipment for the Managed Assets; maintain portable
15 emergency power equipment; and respond within 30 minutes to any emergency event;
16 provide a toll-free twenty-four hour telephone number for reporting emergencies.

17 With respect to Source of Supply, Veolia will be contracted to inspect wells and
18 intake structures; clean, repair, rehabilitate, replace, or abandon wells and associated
19 equipment; repair and maintenance of dams; Well Head protection; and perform flow
20 tests and perform preventive and predictive maintenance.

21 With respect to the water treatment plant, Veolia will be contracted to: operate
22 and staff the Central Control System 24/7; perform regulatory mandated improvements;

1 repair or replace plant, plant equipment, and filter media; and perform Preventive and
2 Predictive Maintenance.

3 With respect to Transmission, Distribution, and Pump Stations, Veolia will be
4 contracted to repair or replace existing pumps, motors, and related appurtenances; repair
5 and replace same with upgraded capacity; install new pump stations, equipment, and
6 related appurtenances.

7 With respect to Reservoirs and Tanks, Veolia will be contracted to repair, replace,
8 and paint existing reservoirs and tanks; washdown, dry inspect, dive inspect, and
9 chemically treat tanks and reservoirs. Appendix D provides time frames within which to
10 perform such maintenance.

11 With respect to Customer Service, Veolia will be contracted to install new meters,
12 replace existing meters with new meters, install new service lines, and replace existing
13 service lines. Veolia will use reading devices provided by Nashua and read meters on a
14 monthly and quarterly basis, depending on the meter size. Veolia will electronically
15 transfer readings to Nashua's Designated Agent. Veolia will perform service
16 disconnections and reconnections for enforcement of payments. Veolia will test meters
17 and inform customers during service outages. Veolia will provide a customer contact to
18 answer all water quality-related customer inquiries. When feasible, Veolia will work
19 with Nashua to resolve any customer inquiries and establish a Water System Web Site.

20 With respect to Instrumentation and Controls, Veolia will be contracted to install,
21 repair, or replace new or existing instruments and appurtenances, including setup costs;
22 provide new hardware and/or software for the SCADA or PLC systems; and provide new
23 or repair or existing communications systems.

1 Veolia will be required to respond to pipe breaks and pressure problems within 30
2 minutes. Veolia will be required to minimize unaccounted for water. Reference is also
3 made to Dig-Safe and that Veolia will mark facilities “when requested by the Owner,
4 contractors, or by Dig-Safe.”

5 Veolia will provide electrical services; care for the buildings, parking lots, roads,
6 and grounds; ensure the safety and security of the Managed Assets; repair vehicles, heavy
7 equipment, and other rolling stock and specialized tools; and provide engineering
8 services (including evaluations and studies) and construction management for RRR&M
9 projects. Nashua will provide Veolia with PWW’s Computerized Maintenance
10 Management System (CMMS) that is capable of providing records of Prevention and
11 Predictive Maintenance and records for accounting purposes. Lastly, RRR&M services
12 will include costs related to adding new customers, dismantling and disposing of existing
13 plant and equipment; relocation, replacement or modification of Managed Assets due to
14 public works projects; repair structural problems and failures; repair or replace Managed
15 Assets; cleanout, repair or upgrade sludge lagoons; management of all property and
16 easements purchased or leased.

17 Veolia will also be required to submit monthly and annual reports to Nashua on
18 the OM&M elements.

19 Within the first 12 months, Veolia will update PWW’s existing OM&M Plan.
20 This plan will be updated annually and will include Veolia’s standard operating
21 procedures. The OM&M Plan will address operations, maintenance, water quality,
22 emergency response, risk management, residuals handling and disposal, safety and

1 security, backflow prevention and cross connection control, regulatory compliance,
2 customer service, quality control and quality assurance, and O&M Manuals.

3 Veolia will also assist Nashua's education efforts relating to water conservation
4 and pollution prevention and will meet with the public, elected officials and interested
5 groups.

6 **Q. Please describe the services Veolia will provide as Renewal, Repair,**
7 **Replacement & Maintenance (RRR&M) Services.**

8 A. Pursuant to Appendix H, RRR&M services include all maintenance activities related
9 to Managed Assets (machinery, equipment, facilities, pipes, valves, hydrants, and other
10 structures) with a life expectancy greater than one year except where such maintenance
11 activities have been defined as OM&M under Appendix D and Appendix G (relating to
12 Capital Improvement Projects). Nashua will pay Veolia for these services according to a
13 fee schedule at Schedule H-1. Fees will be adjusted annually based on a Consumer Price
14 Index formula. Fees for specific unit costs are not yet identified.

15 Veolia will be obligated to provide budget estimates no later than 90 days prior to
16 Nashua's fiscal year. Veolia and Nashua plan to monitor budget estimates against actual
17 costs and make appropriate adjustments in order to perform RRR&M Services in
18 compliance with the contract, applicable law, prudent industry practice, and within
19 budgets approved by Nashua. Items beyond budget are to be carried out only upon
20 express approval by Nashua.

21 RRR&M services fall into categories similar to Appendix D: Maintenance;
22 Source of Supply; Water Treatment Plant; Transmission & Distribution – Pump Stations;
23 Transmission & Distribution – Pipes and Appurtenances; Transmission & Distribution –

1 Reservoirs & Tanks; Customer Service; Instrumentation & Controls; Electrical;
2 Civilworks; Safety & Security; Vehicles, Heavy Equipment, Rolling Stock, Tools;
3 Planning & Engineering; and Miscellaneous.

4 **Q. Please describe the services Veolia will provide as Transition Services.**

5 A. According to Article 9 of the contract, Nashua will pay Veolia \$1,380,000 to perform
6 Transition Services, which involve one-time activities related to transferring PWW assets
7 to Nashua. Pursuant to Appendix Q, Veolia will be contracted to develop a transition
8 organization that will implement a scope of services. Veolia will execute a detailed
9 staffing plan, identify IT gaps, prepare operational plans, make improvements to PWW's
10 capital accounting systems, review escrow accounts and CIAC accounts and transfer
11 these accounts to Nashua. Veolia will submit a preliminary Emergency Preparedness
12 Response Plan, complete a physical inventory, inventory consumables, and draft
13 Maintenance Plan within 30 days. Veolia will provide a AMR cost benefit analysis
14 within 90 days and submit a final Maintenance Plan. Veolia will review and update the
15 Vulnerability Assessment and Emergency Preparedness Response Plan within 180 days.
16 If significant modifications are necessary, the work will be performed under
17 Supplemental Services. Also within 180 days, Veolia will report on the condition of the
18 fixed assets and provide a listing of recommended capital improvements. Within 6
19 months, Veolia will conduct safety training and will perform a safety audit within one
20 year. Within 18 months, Veolia will provide a water Conservation Plan. During the first
21 24 months, Veolia will provide a watershed evaluation

1 **Q. Please describe the services Veolia will provide as Capital Improvement**

2 **Services.**

3 A. A Capital Improvements Plan (CIP) is covered under Nashua's annual fee,
4 Transitional Service fee, and Supplemental Services fee structure with Veolia. Veolia
5 will prepare an initial Capital Improvements Plan as part of Transitional Service. Veolia
6 will monitor the Managed Assets and identify improvements pursuant to terms of the
7 annual fee arrangement. Veolia will prepare a detailed CIP for projects under
8 Supplemental Services.

9 **Q. Please describe the services Veolia will provide as Supplemental Services.**

10 A. Veolia will provide Supplemental Services pursuant to Appendix E for a separate fee
11 identified in that appendix. Supplemental Services include: reviewing new construction;
12 inspecting new construction; creating as-built records; preparing hydraulic modeling and
13 analysis; preparing fire flow test and report; performing specialized watershed
14 engineering studies; implementing Capital Planning for water system improvements;
15 providing other engineering services as Nashua may require.

16 **Q. Please describe the testimony filed by Nashua relating to public interest issues**
17 **dependent on valuation.**

18 A. Nashua filed the direct joint testimony of George E. Sansoucy, P.E. and Glenn C.
19 Walker in support of public interest issues dependent on valuation. They assert that,
20 based on their recommended valuation of the PWW assets and the proposed contracts for
21 operation and oversight of the water utility, Nashua's customers will benefit by receiving
22 state of the art service at reduced rates than those of PWW. They indicate that Nashua's
23 primary goal with the oversight and operations agreements is to "optimize the efficient

1 operation of the water system.” A secondary goal is to design the contracts to allow a
2 comparison to operation and maintenance of the system under current PWW ownership.
3 Mr. Sansoucy and Mr. Walker indicate that Beck’s role as oversight contractor would be
4 the same as that of a city department head. They estimate the total revenue requirement
5 for Nashua under public ownership over the thirty year life of the anticipated revenue
6 bonds as being some \$292 million less than under PWW ownership. They provide a
7 series of schedules with their testimony that calculate ongoing revenue requirements and
8 deferred federal income taxes under current ownership, revenue requirements under City
9 ownership, bond payment requirements, comparisons of revenue requirements between
10 PWW and Nashua ownership, and schedules of anticipated pipe replacements. They
11 summarize their testimony by explaining that, although due to the ongoing upgrade of the
12 water treatment facility and other improvements rates will need to increase in coming
13 years under either PWW or Nashua ownership, rates will rise less under City control.
14 They assert this is due to lower operation and maintenance costs, less taxes the City
15 would have to pay, and a lower cost of capital due to 100% debt financing. Mr. Sansoucy
16 and Mr. Walker assert that the proposed taking is in the public interest because Nashua
17 will be a better steward of the source of supply and watershed areas, Nashua will enact
18 water conservation measures, Nashua’s ownership will create the opportunity to develop
19 a regional water district, water rates will be lower than they otherwise would have been,
20 and operating subsidies to PWW’s affiliates will cease.

1 **Q. Please summarize Staff's understanding of the public interest benefits that**
2 **Nashua asserts will result from the proposed taking.**

3 A. From Nashua's petition and the testimony provided by Nashua's witnesses, Staff
4 believes the benefits that Nashua asserts can be summarized in the following subject
5 areas: 1) Nashua's taking will lower customer rates; 2) the taking will further the goal of
6 a regional water district; 3) the taking is essential to the economic viability and orderly
7 economic growth of Nashua and the region; 4) the taking will promote retention of local
8 control over water resources; 5) Nashua will be a better steward of the watershed than
9 PWW; 6) the taking will enable Nashua to retain adequate water service while providing
10 an acceptable level of customer service; 7) the taking will not harm PWW or shareholders
11 because a fair price will be paid for the assets, and capital gains taxes can be avoided by
12 reinvesting the sale proceeds.

13 **III. PWW'S PUBLIC INTEREST CASE AND OTHER OPPOSING TESTIMONY**

14 **Q. Please describe the public interest case of PWW.**

15 A. PWW's initial round of testimony filed on January 12, 2006 puts forth the testimony
16 of several witnesses. Donald L. Correll, President and Chief Executive Officer of
17 Pennichuck Corporation, describes the nature of the business operations of Pennichuck
18 Corporation and how those operations are integrated. He describes Pennichuck Water
19 Service Corporation (PWSC) and The Southwood Corporation (Southwood) as
20 unregulated businesses, with PWSC an operator of municipal and privately owned water
21 systems, and Southwood as a developer of commercial and residential real estate. He
22 points out that PEU, PAC and PWSC have no employees of their own but instead rely on
23 the 93 employees of PWW, and that the costs of those employees as well as many assets

1 owned by PWW are allocated according to a cost allocation agreement. Mr. Correll
2 asserts that, under the sharing of costs of that agreement, PWW is able to reduce the costs
3 to serve its customers, and the customers of PEU, PAC and PWSC also benefit since they
4 do not need to acquire similar assets for their own use. He also points to the benefits that
5 accrue to PEU and PAC as a result of better short term debt rates offered by Pennichuck
6 Corporation, and asserts that such benefits would be reduced in the absence of PWW.
7 Mr. Correll describes the benefits that Pennichuck brings to the state of New Hampshire,
8 based on its managerial capabilities, asset base, financial strength and its personnel,
9 which includes the ability to acquire and operate other drinking water systems,
10 particularly troubled systems. Mr. Correll asserts that not only would the company be
11 unable to continue such acquisitions if the assets of PWW were taken, he does not believe
12 that any successor municipal entity would have an incentive to do so. He describes what
13 he sees as a risk to the water supply contracts that PWW has with other municipalities,
14 and indicates that he believes leaders in surrounding towns have expressed concern about
15 what he describes as a lack of consensus building on the part of Nashua officials. Mr.
16 Correll goes on to describe the harm that he believes will arise from a taking of PWW's
17 assets by Nashua, including higher rates for customers of PEU and PAC, unprofitable
18 operations for PWSC, lack of access to capital markets, loss of tax revenues to the state,
19 and the adverse tax impact on Pennichuck Corporation.

20 Douglas L. Patch testified on behalf of PWW. Mr. Patch is an attorney and a
21 Director/Shareholder at Orr & Reno, Professional Association. He was Chairman of the
22 New Hampshire Public Utilities Commission for over nine years, and his testimony in
23 support of PWW is based on his experience in that position. He believes that PWW has

1 excellent qualifications to own and operate a public utility, and cites numerous
2 Commission decisions issued during his tenure as evidence of those qualifications. Mr.
3 Patch asserts that PWW is well known in the state as a well-run, highly qualified utility,
4 and is a good corporate citizen through its contributions to organizations and programs.
5 He points to PWW's acquisitions of smaller water utilities as evidence of a benefit to the
6 public good, and asserts that a taking of PWW by Nashua would have negative effects on
7 PWW's ability to continue in that role. A taking of PWW by Nashua would also
8 negatively impact Nashua ratepayers through a loss of economies of scale, and the
9 uncertainties and lack of track record surrounding Nashua and its potential third party
10 operator. Mr. Patch contrasts investor-owned utilities, where regulation ensures a
11 predictable system of accountability and incentives, with the proposed arrangement of
12 Nashua. He asserts that the balancing of interests between ratepayers and shareholders,
13 the review of the prudence of investments and expenditures, the resolution of disputes,
14 and the removal of politics from the provision of water service are evidence that
15 regulation of an investor-owned utility such as PWW has multiple benefits for the public.
16 Further, under Nashua's proposal, the City would own assets which serve customers
17 outside its boundaries, and he does not believe that Nashua has proposed anything which
18 ensures that the interests of those customers would be adequately protected. Mr. Patch
19 discusses the impact of the proposed taking on the customers of PEU and PAC, including
20 higher rates and insufficient capital. He opines that Nashua's proposed taking, if
21 approved, would have a chilling effect on the investor-owned utility industry in the state
22 by sending an unfavorable message about the business climate in New Hampshire when a
23 well-run, growth-oriented company is taken against its wishes. Mr. Patch asserts that a

1 review of the needs of ratepayers, the public at large, and the welfare of the utility itself
2 will reveal significant harm to the public interest if the taking were approved.

3 Bonalyn J. Hartley testified on behalf of PWW. Mr. Hartley is Vice President of
4 Administration for PWW and for Pennichuck Corporation, and her testimony describes
5 the service provided to customers of PWW including establishment of new accounts,
6 information on how water service is provided, and the 24-hour availability of a customer
7 service representative or other PWW employee. She describes PWW's customer
8 complaint resolution practices, its meter reading and billing functions, and PWW's
9 handling of customer payments. She asserts that PWW does an excellent job at these
10 functions and that customer complaints are minimal. Ms. Hartley notes that PWW
11 follows the Commission's regulations prior to disconnections for non-payment, and
12 indicates that PWW takes extra steps to avoid a termination of service for a customer
13 having difficulty paying a bill. She questions whether customer service under Nashua's
14 ownership would be nearly as comprehensive as that provided by PWW, pointing to the
15 unlikelihood that Nashua would establish regulations as comprehensive as those of the
16 Commission which PWW is obligated to comply with. Ms. Hartley also points to PWW
17 as an active participant in the community, and cites PWW's charitable contributions as
18 something that would be lost under municipal ownership.

19 Testimony provided by Donald L. Ware, PWW's Senior Vice President for
20 Operations, centers on PWW's managerial and technical qualifications and how those
21 qualifications benefit customers of all of Pennichuck's businesses. Mr. Ware indicates
22 that PWW employs two professional engineers and a staff of CAD technicians and
23 inspectors, and that the experience of this staff in water utilities contributes to cost

1 efficiencies. He describes how field personnel are utilized for all of the Pennichuck
2 businesses in the most efficient manner and that field routes are optimized without regard
3 to the utility involved, with costs subsequently allocated. Mr. Ware describes how assets
4 of PWW are used for the benefit of all of the business operations, contributing to
5 efficiencies, particularly for the smaller systems which could never afford to maintain
6 such facilities. He describes his belief that the proposed taking by Nashua would have
7 numerous consequences, including: a) loss of engineering expertise due to the
8 significantly smaller size of the remaining operations; b) loss of travel efficiencies; c)
9 loss of emergency efficiencies; d) loss of favorable staff ratio; and e) loss of joint use of
10 assets. Mr. Ware goes on to describe the PWW system, its assets and facilities, how it
11 processes water from the treatment plant and distributes it, and how PWW tracks and
12 inventories its plant and facilities. He describes PWW's current capital improvement
13 plan, including the current upgrade to the water filtration plant, main replacements, and
14 improvements to the Pennichuck Brook watershed. Mr. Ware details the regulations that
15 PWW must comply with, including those of the Commission, the New Hampshire
16 Department of Environmental Services (DES), Dig Safe, the Safe Drinking Water Act
17 (SDWA), ordinances and regulations of the local communities in which it serves, as well
18 as Occupational, Safety and Health Administration (OSHA) regulations. He contrasts
19 these regulatory controls with those which Nashua would be able to avoid as a municipal
20 system and suggests that the loss of these protections for PWW customers could well lead
21 to a degradation of service quality, land use protection, and public and worker safety.
22 Mr. Ware also details PWW's water sources, provides information on PWW's and

1 PWSC's operations outside of Nashua, and avers that these business activities have
2 substantially contributed to the public benefit.

3 Eileen Pannetier is the President/CEO of Comprehensive Environmental, Inc.
4 (CEI), an environmental and consulting firm. Ms. Pannetier describes the Pennichuck
5 Brook watershed and describes CEI's watershed management plan begun for PWW in
6 1997 and completed in 1998. She identifies the recommendations put forth in that plan
7 and details the implementation of those recommendations by PWW. She asserts that
8 PWW has substantially implemented the plan's recommendations, including an
9 innovative runoff filtration methodology for a commercial strip mall. Ms. Pannetier
10 describes CEI's current efforts on a model watershed restoration plan and on the
11 restoration of the Tinker Road detention basin. She offers an opinion on PWW's efforts
12 to maintain the watershed as being one of the best in the region, and asserts that PWW's
13 efforts are greater than that of any government-operated system of its size, based on her
14 experience. She disputes assertions that have been advanced that PWW's sale of lands to
15 Southwood Corporation has affected the quality of the Pennichuck Brook watershed,
16 stating that the 500 or so acres developed were done so with the best runoff controls
17 known, and were combined with careful erosion control. She further disputes assertions
18 that acquisition of more land in the watershed would have been beneficial, asserting that
19 acquisition of land is advantageous only to large systems that have the advantage of large
20 reservoir size and treatment waivers. Ms. Pannetier states that treatment waivers for
21 PWW would never have been possible even with additional land acquisition, considering
22 that the nature of the Pennichuck Brook system as a riverine system will always require
23 treatment due to color and turbidity. Finally, Ms. Pannetier pointed to two specific

1 instances in which she asserts projects she was involved in, which also involved the City
2 of Nashua, where Nashua did not seem particularly interested in water supply protection
3 recommendations that were put forward in those efforts.

4 R. Kelly Myers is President and Director of Communications Research for RKM
5 Research and Communications, Inc. Mr. Myers provides testimony regarding a series of
6 telephone survey research studies that RKM conducted for PWW between 2003 and
7 2005. Mr. Myers describes the scientific basis that public opinion polls must have in
8 order to be considered valid and reliable, and indicates that the polls conducted for PWW
9 met these standards. Eight separate public opinion polls were conducted, in order to
10 determine the extent of the public's awareness of and position on the Nashua proposal.
11 These polls also used a consistent set of questions such that changes in public support
12 could be tracked over time. Mr. Myers avers that KRM's polling has shown that voters,
13 if faced with a ballot initiative that would authorize Nashua to acquire PWW, have
14 consistently opposed the proposed taking of PWW over the period of the polling. The
15 results of polling in March 2004, he indicates, show 60% of Nashua voters opposed and
16 24% in favor. Polling done in September of 2005 shows 64% of voters opposed and 22%
17 in favor. Mr. Myers indicates that each poll was conducted with a minimum of 400
18 registered voters, and has a maximum margin of error of +/- 4.9 percentage points. He
19 states that, although a change in public opinion may be a possible explanation for these
20 results when compared with the municipal vote taken in January 2003, a more likely
21 reason is that voters in January 2003 were not asked if they favored a taking by eminent
22 domain. Mr. Myers asserts that the polling that RKM conducted was not a "push poll",
23 where the objective of the polling is to influence or alter the responses by introducing

1 distorted or false information. He testifies that the goal of the surveys taken for PWW
2 was to get a genuine sense of the public's opinion, and he indicates that PWW would not
3 have been well served by conducting a push poll. He concludes by stating that the
4 polling reveals that there is strong public opposition to a taking of PWW by Nashua.

5 **Q. Please summarize the balance of PWW's public interest case filed on February**
6 **27, 2006.**

7 A. On February 27, 2006, PWW filed testimony in response to Nashua's January 12,
8 2006 testimony regarding its plans to contract out the operation of the PWW system if its
9 request in this proceeding is approved. PWW's witnesses in this round of testimony are
10 Donald L. Correll, John F. Joyner, and Donald L. Ware.

11 Mr. Correll testified regarding Veolia and its affiliates with respect to information
12 that PWW had been able to obtain in a limited period of time allowed for discovery on
13 Nashua's January 12, 2006 testimony. Mr. Correll points out that Veolia is a company
14 within the family of Veolia Environnement, which was formerly known as Vivendi
15 Environnement, an entity that had ownership in Philadelphia Suburban Corporation,
16 Pennichuck's proposed merger partner in 2002. He notes that one of Nashua's objections
17 to that planned merger was based on that ownership, and also formed the basis for
18 Nashua's efforts in this proceeding to take PWW's assets. He states that because Veolia
19 and its operation of the Nashua system would be a very small part of the total Veolia
20 Environnement company, it is likely that the interests of shareholders of the larger
21 company will take precedence over the interests of Nashua's customers. Mr. Correll
22 points out that many of the major functions related to the operation of the PWW system
23 will occur outside New Hampshire, and he also indicates that Veolia and Nashua do not

1 as yet have a binding commitment with regard to the services to be provided, the costs of
2 those services, and that the arrangement remains subject to change. He discusses
3 concerns he holds with respect to Veolia's track record in other communities in the
4 United States, suggesting that the nature of Veolia's business requires it to develop close
5 relationships with government officials whose business they are seeking. He relates
6 instances in which he states that representatives of Veolia have engaged in criminal
7 conduct with regard to operation of water and wastewater systems or in obtaining the
8 contract for such operations. Mr. Correll details disputes between Veolia and its
9 employees in certain circumstances where employees are operating municipal systems.
10 He notes that Veolia will not be obligated to recognize the union representing PWW
11 employees and asserts that it will not assume their collective bargaining agreement. He
12 expresses the opinion that labor unrest may result from Veolia's plans to eliminate
13 defined benefit pensions and retirement health benefits. He further states that what he
14 describes as Veolia's lack of candor with respect to quality of service has led to
15 problems, and that it has tried to prevent its employees from speaking about such
16 problems. Finally, Mr. Correll states that, because of a short timeframe in which PWW
17 has had to investigate Veolia's operations elsewhere, PWW may bring forward additional
18 information at a later date.

19 John E. Joyner is President of Infrastructure Management Group, Inc. (IMG). He
20 testifies that IMG has been retained by PWW to review the City of Nashua's process for
21 selecting a third party contractor to operate the water system, and to review the proposed
22 contract between Nashua and Veolia. He indicates that Veolia has substantially more
23 experience operating wastewater systems than drinking water systems. Mr. Joyner

1 criticizes Nashua's request for proposal (RFP) process, and avers that the lack of bidders
2 is evidence that other potential bidders saw problems that caused reluctance to commit to
3 entering into a contract with Nashua. He further states that these problems are reflected
4 in Veolia's contract proposal, which he says shifts risks to Nashua and may result in
5 Nashua's total costs to ultimately be much higher. Mr. Joyner evaluates the proposed
6 contract and cites numerous deficiencies, including an \$800,000 termination fee if the
7 proposed taking is not litigated to conclusion, a lack of performance standards, a lack of
8 incentive to economize on fuel and electric costs, a failure to protect the pay and benefits
9 of existing employees who are needed to effect a smooth transition, and numerous other
10 basic utility services which are not included in the base fee and which will constitute
11 extra costs for Nashua. He suggests that this approach to the contract enables Veolia to
12 set a low base fee, and enables Nashua to support its argument that ratepayers will see
13 lower rates under municipal ownership. Mr. Joyner further opines that, with these
14 additional costs reducing the claimed savings and if the purchase price assumed by
15 Nashua turns out to be higher, the claimed savings could be eliminated entirely.

16 The testimony of Donald L. Ware reviews the proposed Veolia contract with
17 Nashua, as well as the R.W. Beck contract for oversight. He believes the two contracts
18 fail to provide a comprehensive approach to water supply and distribution and customer
19 service as that provided by PWW. He points to unplanned maintenance, the management
20 oversight contract, costs for billing and collection, customer service, purchased water,
21 hydrant checks, permitting and police protection, power costs, labor expenses, and Dig
22 Safe as costs which are underestimated or not accounted for at all. He states that Veolia
23 is obligated to provide drinking water that meets safe drinking water requirements only if

1 the raw water it is required to treat meets certain standards, and contrasts this with
2 PWW's obligation to provide water which meets all standards regardless of the quality of
3 the raw water. Mr. Ware states that Veolia has no meaningful experience operating a
4 regional water utility such as PWW with its many unconnected satellite systems, and
5 points to PWW's experience operating water systems that Consumers Water Company
6 struggled to operate but that PWW now owns and runs successfully. Finally, Mr. Ware
7 notes that the individuals employed by R.W. Beck to oversee Veolia's operations have no
8 experience doing so and have been employed by Beck for only a very short time.

9 **Q. Please summarize the testimony provided by parties who join PWW in opposing**
10 **Nashua's request in this docket, or who express concerns about it.**

11 A. The Towns of Milford and Merrimack filed testimony on January 12, 2006 in
12 opposition to Nashua's request. Also on that date, Anheuser-Busch, Inc. (AB) filed
13 testimony expressing concern over the potential impact a municipalization could have on
14 its long-term supply of water at predictable rates.

15 Milford sponsored the testimony of Gary L. Daniels, chairman of the Town's
16 Board of Selectmen, and William F. Ruoff, Director of the Town's Public Works
17 Department. Mr. Daniels testified that the Milford Board of Selectmen, at a meeting on
18 January 9, 2006, voted to oppose the acquisition of PWW's assets by Nashua for six
19 reasons. These reasons are: a) that Milford's supply agreement with PWW terminates if
20 Nashua acquires the assets, and Milford is unsure if an agreement can be reached with
21 Nashua on terms as favorable to Milford as the current agreement with PWW; b) that
22 Milford believes PWW to be a reliable and dependable partner that has been supportive
23 of the town, and cannot count on the same level of commitment from municipal

1 management; c) Milford opposes the loss of local control over the water system given
2 Nashua's choice of an out-of-state company to manage it, expressing concern that out-of-
3 state management will be less responsive to local needs; d) Milford is concerned that
4 Nashua's potential acquisition of assets outside its borders is an infringement upon the
5 territorial interests of Milford and other affected municipalities; e) Milford has not yet
6 voted to join the MVRWD, and given Nashua's intent to convey the water system to
7 MVRWD, Milford is concerned that under the district charter communities with more
8 users will have greater control over water district decisions; f) Milford is concerned that
9 Nashua expects the MVRWD to reimburse Nashua for its costs in acquiring the PWW
10 assets when Milford, if it joins the district, would not have had any control over the costs
11 incurred; and g) Milford's Board of Selectmen do not believe the acquisition is in the
12 interest of the people of Milford or of the region as a whole because there is no guarantee
13 that Nashua will honor the regional concept. Mr. Ruoff's testimony on behalf of Milford
14 describes how Milford depends on a backup supply of water from PWW in times of
15 emergencies, when one of the Town's wells is shut down for maintenance, and in times
16 of high demand. He indicates that, during 2005, Milford relied on water from PWW in
17 every month, and purchased approximately 47 million gallons. He points out that, in
18 Milford's agreement with PWW, if an acquisition of PWW's property by condemnation
19 by Nashua, Amherst or Merrimack were to directly and adversely affect the ability of
20 PWW to provide water to Milford, the agreement terminates. Mr. Ruoff states that,
21 although Milford is currently exploring the possibility of entering into an agreement with
22 Nashua in the event it acquires PWW's assets, no agreement has yet been reached. He

1 concludes by stating that he does not believe the proposed condemnation of PWW's
2 assets is in the public interest of the people of Milford.

3 Richard Hinch is chairperson of the Merrimack Board of Selectmen and testifies
4 on behalf of the Town of Merrimack. Mr. Hinch urges the Commission to closely review
5 the proposed taking of PWW. He states that PWW has been a valued corporate citizen in
6 that it employs Merrimack residents, serves the Town's largest employer, AB, and that
7 nearly 20% of PWW's average daily flow goes to Merrimack. He is concerned that this
8 proposal will be seen as a zero sum game, based on an assumption that municipal
9 ownership is better. He asserts that PWW is a well-managed utility with reasonable rates,
10 and that it is unknown whether a municipal utility, with Nashua's interests in the
11 forefront, is a viable replacement for a known entity. Mr. Hinch also expresses concerns
12 about the charter of the MVRWD giving Nashua substantial control over capital
13 investments and rates, and whether MVRWD or Nashua will have the financial capability
14 equal to that of PWW. He asserts that the proposal as put before the Commission should
15 demonstrate long-term improvement over PWW's operations, given that PWW has a
16 demonstrated ability to operate a utility. He notes the various ways that this proposal
17 impacts Merrimack, including: a) that PWW serves industrial areas, AB, fire protection,
18 and the Town itself; b) Pennichuck Brook forms a portion of the Town's border with
19 Nashua, and part of the watershed is located in Merrimack, and thus Merrimack has a
20 responsibility for maintaining the quality of the watershed; c) About 20% of PWW's
21 daily flow from its core system goes to Merrimack, and thus Merrimack has a substantial
22 stake in this proceeding; and d) PWW has, since about 1990, provided an emergency
23 connection to the Merrimack Village District (MVD) and that link is vital when MVD

1 sources have become contaminated. He states that Merrimack does not believe this
2 proposal to be in the public interest of Merrimack residents and businesses as the Town
3 does not have confidence that it would be treated equally with Nashua residents, and
4 notes that Nashua would be exempt from Commission regulation if it takes the water
5 system. He states that Merrimack's main industrial and commercial zone abuts a similar
6 zone in Nashua, and questions whether Merrimack would receive fair consideration in
7 water decisions when it comes to competition over the location of development. Mr.
8 Hinch notes that Nashua has supplied draft contracts for operation of the system and he
9 believes those contracts do not provide a full picture of operating costs. He suggests that
10 Nashua is a stalking horse for the MVRWD, which has no staff, experience, background
11 or funding. Finally, Mr. Hinch discusses concepts of valuation and cost of capital as they
12 relate to the determination of public good, and asserts that Nashua carries the burden of
13 proof in that the economics of the acquisition may not be as favorable as is necessary to
14 justify the taking.

15 AB sponsors the testimony of Dennis Nesbitt, plant manager of AB's brewery in
16 the Town of Merrimack. He states that AB uses about 15% of PWW's average daily
17 volume of water and that AB has taken water from PWW under special contracts since
18 1970. AB needs high quality water at long-term rates that are stable and reasonable, he
19 states, and believes that both AB and PWW have benefited from their relationship. Mr.
20 Nesbitt states that he believes that Nashua too could provide satisfactory service to AB,
21 but asks that the Commission condition any final approval on Nashua's assumption and
22 continuation of the Third Special Contract currently in place with PWW. Alternatively,

1 he asks on behalf of AB that the Commission condition any final approval on the
2 implementation of such other, similar agreement between AB and Nashua.

3 **IV. STAFF ANALYSIS**

4 **Q. What is your opinion of Nashua's proposal to take the assets of PWW pursuant**
5 **to RSA 38?**

6 A. Staff has reviewed the testimony provided by all parties in this case, and has
7 participated in extensive discovery. After consideration of all of this evidence, Staff does
8 not believe the proposed taking is in the public interest.

9 **Q. Please explain the basis for your opinion.**

10 A. There are a number of reasons why Staff reaches the conclusion that Nashua's
11 proposal is not in the public interest, but it is important to note that it is a combination of
12 factors which lead Staff to this conclusion. In summary, these reasons are in order of
13 importance:

14 1) PWW and its regulated affiliates, and to some degree PWSC, constitute a true
15 regional water utility with a track record of pro-active cooperation on water supply and
16 water distribution issues; the evidence clearly shows that a taking of PWW's assets will
17 eliminate this important benefit to the State;

18 2) The evidence clearly shows that the taking of PWW's assets will adversely
19 affect rates in the other regulated water utilities owned by Pennichuck, and will cause
20 substantial harm to PWSC;

21 3) Nashua's proposal contains uncertainties and lacks evidence demonstrating that
22 important functions such as customer service and billing and collections will be
23 adequately addressed;

1 4) Acquisitions of small troubled water systems by PWW and its affiliates are not
2 likely to continue if PWW ceases to exist;

3 5) Nashua's projection of a lower cost of service under its contracts with its third
4 party operator and oversight contractor is speculative considering that Nashua's rate
5 projections are based on the City's estimate of value for the assets and this value has yet
6 to be established; and

7 6) PWW is a water utility that serves customers in stand-alone systems far beyond
8 the boundaries of the City, and Nashua's attitude toward PWW's acquisition of those
9 systems as evidenced in the discovery responses raises concerns with Staff as to whether
10 the level of service and capital improvements those systems would receive would be
11 compromised by Nashua's ownership.

12 **Q. Please state how Staff considered the asserted benefits of the taking.**

13 A. As indicated earlier in this testimony at the conclusion of Staff's summary of
14 Nashua's public interest case, Staff understands the benefits Nashua cites are these: A)
15 Nashua's taking will lower customer rates; B) The taking will further the goal of a
16 regional water district; C) The taking is essential to the economic viability and orderly
17 economic growth of Nashua and the region; D) The taking will promote retention of
18 local control over water resources; E) Nashua will be a better watershed steward than
19 PWW; F) The taking will enable Nashua to continue safe and adequate service while
20 providing an adequate level of customer service; and G) The taking will not harm
21 Pennichuck Corporation shareholders because a fair price will be paid for the assets, and
22 capital gains taxes can be avoided by reinvesting the sale proceeds. Staff has reviewed

1 each of these articulated benefits to assess whether Nashua's proposed taking is in the
2 public interest.

3 A. Nashua's Taking Will Lower Rates

4 **Q. Nashua points to lower rates to PWW customers as a significant benefit that**
5 **would result from the proposed taking. Please discuss whether you believe this to be**
6 **the case.**

7 A. It is obvious that a major portion of any possible reduction in rates is going to depend
8 on the fair market value ultimately set by the Commission if Nashua's proposal is
9 deemed to be in the public interest. Unknown as well is whether or not the Commission
10 will find that severance damages may be appropriate, as the Commission discussed in
11 Order No. 24,487 issued on July 8, 2005 in this docket. In addition, Staff has some
12 questions as to the extent of savings in rates that Nashua claims can be realized through
13 municipal ownership of the water system. Staff agrees that Nashua can realize savings in
14 the areas of cost of capital, the elimination of federal income taxes, and the elimination of
15 regulatory compliance.

16 In the February 27, 2006 testimony of Mr. Ware on behalf of PWW, he points out
17 a number of areas where he asserts Nashua's estimates of costs are understated.⁴ He also
18 points out that costs related to billing and collections, customer service, labor rates, and
19 the development of a GIS system have not been accounted for or are underestimated.
20 Staff has looked at these costs and has been able to verify some of them from PWW's
21 2005 Annual Report to the Commission. See, Attachment MAN-1. It appears that
22 Nashua has underestimated the cost of unplanned maintenance, utilities such as fuel and

⁴ These include unplanned maintenance of \$815,000, purchased water of \$82,125, hydrant checks of \$23,967, permitting and police protection of \$12,417, power and fuel of \$475,758, and DigSafe related activities of \$78,198, for a total of \$1,487,465.

1 electricity, purchased water, and costs related to the Dig Safe program or Nashua's
2 alternative to that program. In the testimony of Mr. Joyner on behalf of PWW, he also
3 discusses certain costs that he asserts are not accounted for when Nashua makes its claim
4 that municipal ownership will result in lower rates for customers. He also points out that
5 the impact of a higher purchase price than Nashua projects is completely unknown at the
6 time of his testimony, while Nashua's estimate of rates put forth in the testimony of Mr.
7 Sansoucy and Mr. Walker is based on the City's estimate of that value. Any value set by
8 the Commission higher than the value suggested by Nashua will also reduce the savings
9 that Nashua believes PWW customers will realize going forward under municipal
10 ownership.

11 The timing of Staff's testimony in this procedural schedule precludes discovery
12 on PWW's claims as to the unaccounted for costs that Staff has not been able to verify.
13 Based on what information Staff has at this time on how much it will cost Nashua to
14 operate the water system, and based solely on Nashua's estimate of the value of PWW's
15 assets, it appears that Nashua would have a slightly reduced cost of service. However, it
16 is my opinion that the question of actual savings to customers and possible lower rates
17 under municipal ownership will remain uncertain until such time as a value is set for the
18 assets proposed to be taken.

19 **Q. Will a taking of PWW adversely impact the rates of the other regulated utilities?**

20 A. Yes. Rates for PEU and PAC customers will need to be increased following a taking
21 of PWW's assets. Even Nashua agrees that the impacts of this proposal go well beyond
22 Nashua's municipal boundaries. A reading of Mr. McCarthy's testimony on behalf of
23 Nashua makes it clear that he believes that the Pennichuck utilities are fully integrated,

1 and generate efficiencies and economies of scale. In his testimony, filed prior to the
2 Commission's ruling that Nashua's proposed taking could not include PEU and PAC, he
3 states that Nashua believes that it is in the public interest to take all three utilities because
4 "it will prevent likely rate increases for that portion of the system which is not acquired
5 by Nashua due to the need to generate additional revenue to offset proportionally higher
6 operating expenses." [Emphasis added] He also states that taking the three utilities "will
7 mitigate harm to Pennichuck and Pennichuck shareholders by eliminating the need to
8 operate a small or less efficient and less profitable portion of the system." [Emphasis
9 added] McCarthy testimony at 8.⁵ I agree with Mr. McCarthy that rates for PEU and
10 PAC ratepayers will have to go up if PWW's assets are taken. I believe there will be
11 substantial adverse impacts to these operations because a loss of scale will render them
12 much less efficient. PEU and PAC have relied on, to the benefit of all three companies,
13 common assets and personnel of PWW. Being a part of a larger entity, these utilities
14 have been able to access capital at reasonable rates, and have been able to rely on
15 engineering and management expertise not typically available to smaller utilities. This
16 will change if PWW is removed from the corporate structure, and will result in higher
17 rates to PEU and PAC.

18 **Q. Did PWW put forth estimates of the potential rate impact on PEU and PAC if**
19 **Nashua is permitted to take the assets of PWW?**

20 A. Yes it did. On March 31, 2006, PWW submitted a supplemental response to Nashua
21 data request 3-11. See, Attachment MAN-2. In this response, PWW estimates that PEU
22 rates would need to increase approximately 66% and PAC rates would need to increase

⁵ Counsel for Nashua also put forth this belief on behalf of the City at the July 28, 2004 prehearing conference in this docket when he stated "We're also saying that, if we acquire all the assets, it will prevent likely rate increases for the remaining assets." Hearing Transcript of July 28, 2004 (Tr. 7/28/04) at 28.

1 approximately 64% over their respective 2005 revenue requirements. Additionally,
2 PWW asserts PWSC would become unprofitable. Without an opportunity for discovery
3 on these figures, Staff is unable to render an opinion on them. Nonetheless, I believe it is
4 quite clear that there would be negative financial impacts to both PEU and PAC if the
5 assets of PWW are taken.

6 **Q. Do you believe there could be an adverse impact on rates to the PWW satellite**
7 **system customers under Nashua's proposal?**

8 A. It is unclear what Nashua would do as to satellite system rates. Nashua has stated that
9 the City will charge satellite customers the same rates as charged in the core. See Nashua
10 response to Staff 1-27, Attachment MAN-3. Nashua has also indicated that satellite rates
11 could be adjusted once a cost of service study is performed. See Nashua response to
12 PWW 1-168, Attachment MAN-4.

13 **Q. Has Nashua stated that one reason for its requested taking is that Nashua**
14 **customers are subsidizing other water systems?**

15 A. Yes it has. Nashua has complained that its ratepayers are not only subsidizing the
16 water service to customers located in other municipalities, but are also subsidizing
17 acquisitions of other water systems by PWW and its regulated affiliates. See Nashua
18 response to Staff 3-6, Attachment MAN-5.

19 **Q. Has the Commission previously addressed satellite systems and so-called**
20 **subsidies?**

21 A. Yes. On March 25, 1998, the Commission issued its Order No. 22,883 in docket DR
22 97-058 which granted PWW's request to consolidate the rates of its satellite systems with
23 the rates of its core system. This decision resulted in the rates paid by customers of the

1 core system to increase at that time by an additional \$8.00 or so annually. The
2 Commission's decision pointed out that traditional cost of service regulation already
3 includes some rate averaging, and that stand-alone rates as proposed for the PWW
4 satellite systems in that docket were "well beyond" the zone of "just and reasonable."
5 The Commission went on to say "[m]ost of the community systems are simply too small
6 to absorb the magnitude of investments mandated by environmental enactments.
7 However, without these investments, it is clear that the small community systems would
8 have been unable to provide safe and adequate water service to their customers."

9 **Q. How has Nashua's position regarding subsidization factored into your analysis?**

10 A. I understand Nashua's arguments but I do not believe they present a viable reason for
11 the proposed taking. First, as to the issue of Nashua ratepayers subsidizing acquisitions,
12 PWW certainly does derive earnings from its infrastructure investments in the core
13 system and can reinvest those earnings in acquisitions. I would not, however, categorize
14 such earnings as Nashua customers "subsidizing" acquisitions by PWW. Nashua's
15 argument as put forth in its response to Staff data request 3-6, as best as Staff can
16 understand it, is that because PWW is a substantial portion of the entire corporation and
17 derives the majority of its revenues and earnings from within Nashua, Nashua is therefore
18 "subsidizing" PWW's and Pennichuck Corporation's growth as a business. This
19 argument is not convincing. In my opinion, it is more likely that, over the long term,
20 such acquisitions benefit Nashua ratepayers because of operating efficiencies and the
21 sharing of common assets over a larger customer base, exactly in the manner perceived
22 by Mr. McCarthy as to the efficiencies and economies of scale that benefit ratepayers of
23 PEU and PAC.

1 As to PWW satellite system rates, it is clear as a result of Commission Order No.
2 22,883 in docket DR 97-058 that there has been a subsidy running from core system
3 customers to customers in PWW's satellite systems. The Commission has already
4 considered the argument for adhering to traditional cost of service ratemaking which
5 would support non-consolidation of core and satellite rates. The Commission stated it is
6 appropriate to recognize that, beyond the public benefit of a utility acquiring smaller
7 systems and bringing them up to standard, efficiencies can be realized through sharing of
8 common assets as mentioned above.⁶ This Commission policy supporting the
9 consolidation of rates for disparate water systems under the same ownership, and finding
10 that certain levels of subsidy are in the public interest, can be seen most recently in the
11 Commission's decision in the PEU rate case DR 05-072, and in Lakes Region Water
12 Company's rate case DR 97-188/DR 98-112.⁷

13 What concerns me is what I perceive as ambivalence on the part of Nashua with
14 respect to the satellite systems. I don't believe Nashua needs or wants the satellite
15 systems now that PEU and PAC are off the table and a conveyance to MVRWD of
16 PWW, PEU and PAC can never happen. A reading of Nashua's data response to Staff 3-
17 6 fuels Staff's concern. While elsewhere in its case Nashua insists it will not increase
18 rates to satellite customers, in its response to Staff 3-6 the City lists numerous reasons
19 why it feels that PWW's extension of water service outside Nashua has harmed Nashua
20 and ratepayers within the City. Recognizing that rates to satellite system customers are

⁶ See *Pennichuck Water Works, Inc.*, 83 NH PUC 197 (1998).

⁷ *Lakes Region Water Company*, 84 NH PUC 125 (1999). The Commission stated "In addition to the foregoing considerations, we also believe that rate consolidation will have the salutary effect of encouraging financially sound utilities to acquire community systems that are not otherwise attractive acquisitions in the short term. Rate consolidation is therefore a policy that promotes the expansion of public water systems, which we believe is in the overall public good."

1 the same as those charged in Nashua, the City has stated that one of the reasons for the
2 taking is that it no longer wishes to subsidize the rates of those satellite systems. Under
3 the current rate structure, I question what incentive Nashua has to treat the satellite
4 systems equally with respect to rates, customer service, maintenance, and future capital
5 improvements. My further concern is that customers of these satellite systems live in
6 municipalities other than Nashua and would have no recourse absent Commission
7 oversight, and would have no input into selecting municipal officials in the City.⁸

8 B. Establishment of a Regional Water District

9 **Q. According to Nashua’s petition and testimony in this docket, the proposed**
10 **taking of PWW will further the goal of the establishment of a regional water**
11 **district. Do you believe this to be the case?**

12 A. Staff understands Nashua’s original intent was to take utility assets and transfer them
13 to the MVRWD.⁹ Nashua’s proposal, however, is a municipalization and nothing more.
14 It is one municipality exercising its right under RSA Chapter 38 to request to take the
15 assets of a private, investor-owned utility. Given the Commission’s decision in Order
16 No. 24,425 partially granting Pennichuck’s Motion to Dismiss as to PEU and PAC, Staff
17 believes that this proposal cannot establish a regional approach to water supply issues
18 because the MVRWD is not a part of this proposal. See, Commission Order No. 24,489.

⁸ Counsel advises me that the particular issue of core versus satellite rates may be moot, however, considering the limitations contained in RSA 362:4,III-a. In that statute, a municipal corporation may continue to avoid Commission regulation if it charges customers outside its municipal boundaries a rate “premium” no more than 15% over the rate charged within the municipality. However, that statute also indicates that only new customers, added to the water system by means of a main extension or an expansion of the municipal corporation’s system, may be charged this rate “premium.” Staff believes that this may mean that, should Nashua acquire all of PWW’s assets including its satellite systems, customers taking service at the time of the sale to Nashua could not be charged higher rates than those charged within Nashua, unless the City were to be regulated by the Commission with respect to its service to those customers in other municipalities.

⁹ See Nashua response to Staff 1-1: “Nashua still intends to transfer all of the assets, core and satellite, acquired from Pennichuck Water Works to the Merrimack Valley Regional Water District”, Attachment MAN-6.

1 Further, Nashua acknowledges in discovery responses such as its response to Staff 2-9
2 that any future conveyance of any assets acquired will require a proceeding before the
3 Commission where such a transfer will be evaluated as to the public benefit, and the
4 qualifications of the MVRWD will be examined. See, Attachment MAN-7. As a further
5 basis for Staff's opinion, it is noted that a regional water district cannot take assets; only a
6 municipality can take assets under RSA 38. See, Commission Order No. 24,425.
7 Nashua's original request to take all three of the Pennichuck utilities as a platform for
8 MVRWD was rejected by the Commission as a matter of law. The legislature has
9 rejected the concept of a regional taking in RSA 38:2-a,VI. Further, membership of the
10 MVRWD at this point consists of just eight municipalities. And of those eight, only
11 Amherst, Bedford and Nashua are municipalities in which PWW provides service.

12 **Q. Are all municipalities where water service is provided by PWW supportive of**
13 **Nashua's petition?**

14 A. No. Two municipalities served by PWW are openly opposed to this taking, Milford
15 and Merrimack. Witnesses for each of these towns have expressed concerns about
16 Nashua's ownership and management of the water system and, if the PWW system was
17 subsequently conveyed to the MVRWD, about whether smaller towns like Milford and
18 Merrimack would be treated equally within the proposed MVRWD given Nashua's size
19 and therefore control over decisions made with respect to capital investments and rates.
20 Milford has also expressed concern regarding the costs incurred to acquire the water
21 system, and that it is Nashua's intention to recover those costs from MVRWD if the
22 assets acquired are ultimately conveyed to the MVRWD.

1 **Q. Is it your opinion that a regional water utility is important?**

2 A. Yes. Based on my experience, it is a tremendous benefit to the State when an entity
3 provides a strong regional presence and can offer regional and cooperative solutions to
4 problems. I am familiar with the experiences in some other states and the same issues
5 exist in those states with respect to water utilities: small in size; undercapitalized;
6 struggling with Safe Drinking Water Act (SDWA) testing requirements; and aging
7 facilities. Many of these are developer-installed systems constructed with poor quality
8 materials. Then there are smaller municipal systems, often lacking the expertise and the
9 funding to deal with water supply and distribution problems. As I will describe next,
10 PWW's approach to regional cooperation and its willingness to work with various parties
11 contributes to the development of solutions, a role which has been invaluable to the State.

12 The importance of regional cooperation was also emphasized by the legislature in
13 2000 by the passage of Chapter 64 which required, among other things, the Commission
14 and DES to prepare a report and make "findings and recommendations for future action
15 to encourage water conservation and regional cooperation on water resource management
16 matters." 2000 N.H. Laws 64, Attachment MAN-8. In support of the legislation, Senator
17 Eaton testified that "[a] regional approach is recommended for the following reasons:
18 Water supply and needs are exceeding the capacity of local public water systems. There
19 is uncertainty regarding the adequacy of developing water supplies on a community by
20 community basis. The cost associated with expanding or developing a regional water
21 supply are significant, or perhaps inhibited in areas of sparse development, and the state
22 could develop ways to more efficiently use limited resources." See, Attachment MAN-9.
23 The Commission and the DES submitted a joint statement in support of the legislation

1 wherein they stated “[r]egional water resources management is key to ensuring that New
2 Hampshire can provide adequate quantities of high quality drinking water in the future.
3 This is already well-recognized in southern New Hampshire where water supply sources
4 are limited and stresses on the resource already exist caused by high growth rates. In
5 some localized areas, water supply deficits exist which might only be addressed by
6 regional solutions. The extent and magnitude of these deficits are likely to increase with
7 time as growth continues unless regional water supply issues are better encouraged.”
8 See, Attachment MAN-10. Mr. Patch’s January 12, 2006 testimony discusses the report
9 that was generated as a result of this legislation: “Regulatory Barriers to Water Supply
10 Regional Cooperation and Conservation in New Hampshire.” I personally participated in
11 the preparation of that report, and some of the issues and findings in it make it clear that
12 the state needs to do more to encourage regional cooperation. It is also clear from a
13 reading of that report that municipal water suppliers are not only not the answer to greater
14 regional cooperation; many contribute to the lack of cooperation. Municipal entities by
15 their nature look inward. In the case of PWW as an investor-owned utility, it is
16 essentially blind to municipal boundaries and is largely unrestrained by politics. An
17 investor-owned utility has the incentive to look outward to expand its business
18 opportunities; municipalities worry about control of “their” water. A true regional utility
19 with a profit motive is incited by effective regulation to get the product to the people
20 who need it and want it under rates and conditions that are just and reasonable for all who
21 are served.

1 **Q. Please describe the existing benefits PWW provides to the State in terms of**
2 **regionalization.**

3 A. PWW and PEU, and now most recently PAC, have a history over a number of years
4 of acquiring water systems, making improvements to bring them up to standard, and
5 operating them efficiently. PWSC is a water service business which provides operation
6 and maintenance service to some 80 privately owned water systems such as
7 condominiums, homeowners associations, and three municipalities.¹⁰ PWSC is also the
8 certified operator for many non-community water systems, and provides laboratory
9 testing, monitoring and consulting services. Staff believes that the Pennichuck utilities,
10 far more than any other water utilities public or private in New Hampshire, bring to the
11 table the full complement of qualifications to fulfill a statewide role: managerial and
12 technical expertise, the ability to raise capital, and a business model which is a proven
13 success. Pennichuck has been continuously and consistently supported in its efforts to
14 acquire and rehabilitate smaller systems by the Commission and by DES. I agree with
15 the assertions of Mr. Correll and Mr. Patch that it is doubtful this benefit to the state as a
16 whole can continue with PWW forcibly removed from the corporation. It is Pennichuck
17 that has built a regional approach to water supply cooperation in southern and central
18 New Hampshire. Nashua witnesses have the facts exactly reversed when they claim that
19 PWW's business plan is a detriment to the regionalization of water. See, Nashua
20 response to Staff 4-72, Attachment MAN-12. Nashua states in that response that PWW's
21 business plan "creates pockets of private ownership and private operation that interfere
22 with the aggregation of connected municipal water systems." To the contrary,

¹⁰ A recent press article in *The Nashua Telegraph* reports that the Town of Wilton Water Works is considering a contract with PWSC to operate the water system which serves portions of Wilton and an additional 30 customers in Milford. See Attachment MAN-11.

1 Pennichuck has worked with municipalities such as Bedford on water supply studies,
2 executed contracts or constructed interconnections to provide backup supplies to Milford,
3 Hudson, Merrimack and Amherst, and negotiated solutions to difficult supply and
4 distribution problems. Examples of PWW's willingness and ability to assist with finding
5 solutions to such problems would be at Green Hills in Raymond, within the Town of
6 Pelham, and the Oakwood system which serves in the Towns of Derry and Windham. In
7 the case of Green Hills, PWW worked with the Town of Raymond to secure a
8 Community Development Block Grant for nearly \$700,000 in funding to assist in
9 dramatic improvements in a water system in complete disrepair. PWW replaced mains
10 and services, increased water pressure, substantially eliminated unaccounted for water,
11 and eliminated wells which had had levels of MTBE and manganese in excess of
12 standards. A further benefit to the Town subsequent to these improvements was the
13 availability of fire protection. In the Town of Pelham, Pennichuck was approached by
14 the town with concerns about fire protection, water quality (area wells all had high levels
15 of radionuclides) and water storage. PEU serves the Williamsburg and Stonegate system
16 which also provides service to two schools, several businesses and the Pelham municipal
17 building. Acquiring a State Revolving Fund (SRF) loan, the company upgraded
18 facilities, added storage capacity, and addressed Pelham's concerns with respect to fire
19 protection, the use of private wells and reliability. And with the Towns of Derry and
20 Windham, the company worked with Town of Derry officials and a local developer to
21 improve water quality in the Oakwood system which serves in both towns. The company
22 negotiated an agreement with Derry to purchase additional water which also made
23 possible the provision of fire protection.

1 PWW's efforts in the Town of Bedford are an excellent example of how the
2 approach taken by PWW in regional cooperation has provided benefits to municipalities
3 and water customers. Bedford's planning director, in fact, effusively praised PWW in her
4 testimony in docket DW 02-126, the Philadelphia Suburban/Pennichuck merger docket.
5 Karen White, planning director for the Town of Bedford since 1989, cited examples of
6 PWW bringing municipal parties together when she stated "Neither Manchester [Water
7 Works] nor Merrimack Village District has expressed any interest in expanding water
8 service into Bedford. It is only through complex arrangements put together by
9 Pennichuck that these two utilities have agreed to sell bulk water outside their franchise
10 areas." Testimony at 16. Ms. White also stated in her testimony, "Unlike MWW or
11 MVD, the current management of Pennichuck takes an active role in the planning
12 processes of the communities it serves. Pennichuck makes a special and specific effort to
13 act in the public interest of the communities it serves and to fulfill the needs of its
14 municipalities, rather than simply using a 'by the book' business as usual approach."
15 Testimony at 17. Further evidence of PWW's role as a regional water utility is seen in
16 the testimony filed in this docket by the Towns of Milford and Merrimack. These
17 examples and others, in my opinion, clearly refute Nashua's allegation of PWW's
18 "interference" with the "aggregation of connected municipal water systems." The fact is
19 PWW and its affiliates have a proven track record of bringing diverse parties together to
20 solve difficult water issues. Whether municipalities, businesses, other water providers, or
21 governmental agencies, it has been the Pennichuck companies that have brought parties
22 together to find answers. Staff cannot see how any party can label this as "interference."

1 **Q. Do you believe Nashua will provide this regional role?**

2 A. No. There is nothing in this record that indicates that Nashua would fulfill this role.
3 Nashua has supplied responses to data requests indicating that it believes the MVRWD
4 will provide this role¹¹, but again, MVRWD is not a part of this proposal. Staff notes
5 evidence exists which clearly demonstrates that Nashua is motivated to provide first for
6 the welfare of its own citizens. See deposition of Bernard Streeter at 46, line 9,
7 Attachment MAN-15.

8 **Q. You state that acquisition of troubled systems is an important State benefit.**

9 **Please comment on the issue of acquisition of troubled systems and the impacts the**
10 **taking will have on this issue.**

11 A. Nashua, in response to Staff 1-14 and 2-6, stated that the MVRWD “would be willing
12 to entertain the acquisition of troubled water systems if the Town wanted it to do so and
13 if the system was in a geographically logical location” and that Nashua “would be willing
14 to acquire troubled water systems in Towns in which it already had a presence and for
15 which there was no objection by the Town.” See, Attachments MAN-16 and 17. Nashua
16 further stated that acquisitions of troubled systems would be considered on a “case by
17 case basis.” These responses indicate that Nashua’s role, at best, would be much more
18 limited than the present role PWW plays with respect to troubled systems. Having
19 considered Nashua’s responses, Staff concludes that the State will lose this beneficial
20 role. Based on the evidence in this docket Staff has little doubt that the public benefit to
21 the region and the State of Pennichuck acquiring and rehabilitating small water systems
22 would end with a municipalization of the water system owned by PWW. See also,
23 Deposition of Brian McCarthy at 61, lines 1-24, Attachment MAN-18.

¹¹ See, Nashua response to Staff 1-7, Attachment MAN-13 and Staff 3-25, Attachment MAN-14.

1 C. Economic Viability and Economic Growth of the Nashua Area

2 **Q. Nashua asserts that a taking of PWW is essential to the economic viability of the**
3 **Nashua area. Do you agree with this assessment?**

4 A. Nashua makes this assertion in its petition. Other evidence suggests there are some
5 concerns among intervening parties. The Town of Merrimack's witness, Mr. Hinch,
6 expresses some concern in this area specifically as it relates to Merrimack. He is
7 concerned that commercial and industrial development in Merrimack may be hindered if
8 Merrimack does not receive fair consideration when decisions regarding capital
9 improvements are made by Nashua's leadership, given the natural competition between
10 municipalities for such economic growth. The Town of Milford's witnesses, Mr. Daniels
11 and Mr. Ruoff, indicate that Milford is concerned that its contract with PWW for a
12 backup supply of water may be terminated, and that without an agreement with Nashua
13 Milford may be economically harmed. In addition, the witness for Anheuser-Busch, Mr.
14 Nesbitt, expresses concerns with Nashua's proposal in light of AB's special contract with
15 PWW, and those concerns are related to a stable, long-term cost-based rate for water.

16 Having reviewed the evidence developed in this docket, I do not see how a taking of the
17 assets of PWW furthers this goal. Nashua has not presented any evidence that
18 Pennichuck ownership of the water system has harmed economic development in
19 Nashua, and Staff would suggest that a reading of the evidence in this case does not show
20 a significant enough price or reliability difference under City ownership to have any
21 impact. Thus, Staff does not agree with Nashua that the taking is reasonably necessary to
22 achieve this benefit.

1 D. Local Control Over Water Resources

2 **Q. Has Nashua expressed a concern over loss of local control in the future?**

3 A. Yes. The City has expressed particular concern regarding a future sale to a foreign
4 company, which it infers would result in loss of local management. Nashua opposed the
5 Philadelphia Suburban acquisition of Pennichuck Corporation, and has expressed concern
6 over a possible future sale of Pennichuck Corporation that Nashua asserts would result in
7 a loss of local control. Nashua argues that, in this scenario, decisions would be made
8 without the interests of the City and the Nashua region in mind. Nashua witness
9 Sansoucy expressed concern regarding upward pressure on rates (Sansoucy testimony at
10 12) resulting from infusions of equity capital which would increase the cost of capital.
11 Nashua has also asserted that, since water is a crucial community resource, it should be
12 locally owned and controlled.

13 **Q. Nashua states the taking is necessary to maintain local control over water
14 resources. Do you believe the proposed taking would address this concern?**

15 A. Presumably it would. At the highest levels of City government, a municipal taking of
16 PWW would prevent the water resources in the Nashua area from being controlled by any
17 entity other than the City of Nashua. Day to day decisions regarding the management of
18 the utility would rest with the City's contractors, however, and it is not at all clear how
19 the City's desire for local control will be manifested in actual operations. Staff does
20 believe a municipal taking could logically effectuate this goal; however, this is not to say
21 mechanisms do not exist to address this concern absent a taking. For example, when the
22 Commission considered Aquarion Water's proposed purchase of Hampton Water Works
23 in Docket No. DW 01-215, the Town of Hampton expressed similar concerns as to

1 possible loss of local control. The Commission in its final order approved conditions
2 requiring Aquarion to maintain a local presence, to honor existing labor contracts, and to
3 participate in a local advisory committee. See, *Hampton Water Works, Inc.*, 87 NH PUC
4 104 (2002). In Staff's opinion, local control can be safeguarded under the present
5 regulatory system. The existence of alternate means of addressing Nashua's concerns
6 diminishes Nashua's argument that the taking is necessary to achieve this benefit.

7 E. Nashua Stewardship of the Pennichuck Watershed

8 **Q. Repeatedly the City has asserted that Pennichuck has mismanaged the**
9 **watershed, and that Nashua would do a better job, is that correct?**

10 A. Yes it is. A recurring theme in Nashua's case and in its responses to discovery
11 requests is the allegation that Pennichuck, primarily through the development of "buffer"
12 areas along the Pennichuck pond system, has not done enough to protect the surface
13 water system that provides water to the core system, and thus has negatively impacted
14 water quality.

15 **Q. What evidence has Nashua put forward to illustrate Pennichuck's**
16 **mismanagement?**

17 A. Staff has reviewed this record, and has not come across any objective evidence.
18 Nashua has not submitted testimony that can be reviewed and cross-examined which
19 identifies instances of harm or mismanagement by PWW resulting in degradation of
20 water quality or increased treatment costs. It is clear to Staff that Nashua believes
21 strongly that the City's purchase of Parcel "M", described in the June 1, 1980 report by
22 Sasaki Associates, Inc. as containing Critical Areas, was necessary to protect a "very high
23 yield ground water aquifer." Nashua response to PWW 1-73, Attachment MAN-19.

1 Staff is aware of the Sasaki report and does not agree that the recommendation contained
2 therein was that Parcel M should not be developed; rather Staff believes the report states
3 that portions of the parcel could be developed but further recommends that certain buffers
4 be maintained around Critical Areas. Staff has also reviewed testimony from Ms.
5 Pannetier and understands that it is her belief that PWW has had “exceptional success in
6 implementing watershed protection plans.” Staff has attempted to corroborate Nashua’s
7 assertions by inquiring of personnel at DES regarding the issue of PWW’s management
8 of the watershed and whether or not it has caused degradation of water quality or
9 increased treatment costs. It is also worth noting that not all of the watershed lies within
10 Nashua. Significant portions lie within the Towns of Merrimack, Hollis, and Amherst.
11 Municipal control and management of the watershed is therefore limited without
12 substantial inter-municipal cooperation. Staff concludes that there is considerable
13 subjective evidence for the arguments presented by both PWW and Nashua, but Staff
14 believes that there is simply insufficient objective evidence that PWW has mismanaged
15 the watershed. Thus, Staff does not believe that Nashua has demonstrated that its taking
16 of PWW’s assets is reasonably necessary to eliminate this harm.

17 F. The Taking Will Allow Nashua to Ensure Adequate Water Service Will

18 Continue

19 **Q. Nashua has stated a benefit to the taking is that it can maintain an adequate**
20 **level of quality of service. Please explain Staff’s review and opinion regarding this**
21 **benefit.**

22 A. Earlier I provided an extensive summary of Nashua’s proposed contracts which form
23 the basis for the operation, maintenance and oversight of the water system. Veolia is part

1 of a large corporation and it is Staff's opinion that Veolia likely has the resources to
2 fulfill its operations & maintenance obligations under the proposed contract with Nashua
3 which theoretically could satisfy the requirement that Nashua possess technical
4 capabilities. However, there are uncertainties with respect to Nashua's proposal that
5 concern Staff, particularly the integration of operation of the system and the oversight of
6 that operation. Veolia will operate the system for Nashua; R.W. Beck will provide
7 oversight of Veolia. In response to data request Staff 2-9, in which the Staff asked
8 whether any assertions made by the City relative to its managerial, technical and financial
9 capabilities are transferable to the MVRWD, Nashua states "[a]ll of the technical and
10 managerial competence required to operate and maintain the system will be embodied in
11 the Oversight and O&M contracts which will be assignable to the District without the
12 consent of the contractors." See, Attachment MAN-7. In its response to Staff 4-51,
13 Nashua makes it clear that there will be no municipal technical staff or employees who
14 will perform cost control functions or who will have expertise in water system operations
15 by stating that R.W. Beck will perform these functions. See, Attachment MAN-20.

16 Staff was concerned with Nashua's response to PWW data request 4-10 in which
17 Nashua states Veolia will have no day-to-day contact with anyone in the City except for
18 billing and customer service; Veolia reports to Beck. See, Attachment MAN-21. Beck
19 reports to the Mayor or his designee, except in case of policy matters where Beck shall
20 consult with the Board of Aldermen. The consultations themselves do not encourage
21 day-to-day contact with City officials. These meetings are contracted to occur monthly
22 with the Chief Financial Officer and Finance Committee and quarterly with the Board of
23 Aldermen. For Recurring Tasks, Beck will meet with the Mayor and Board of Aldermen

1 once a month and two meetings with Nashua, which Staff presumes will be Nashua's
2 Finance Department.

3 Staff is also concerned with how effectively customer service and billing and
4 collection will be handled, since those functions will at times overlap but are to be
5 physically split between Veolia and the City's tax collection department. Nashua's lack
6 of substantive testimony in these areas, and the lack of an oversight role by Nashua
7 personnel does not give Staff assurance that replacing the operations and management of
8 PWW with Nashua's proposal will not place at risk maintenance of quality of service.

9 Staff shares PWW's concern that there is a "significant potential for
10 responsibilities to fall into gaps" and that the proposed arrangement with Veolia and
11 Beck creates "concern about whether any one party has ultimate responsibility for
12 meeting basic performance standards." Ware testimony at 6. Concern over this lack of
13 responsibility is also expressed by Staff Safety Director Randall Knepper with respect to
14 Dig Safe, and Staff Consumer Affairs Director Amanda Noonan with respect to
15 Customer Service.

16 Based on Staff's experience with water utilities, Staff sees the absence of
17 effective internal oversight by Nashua, and more particularly the delegation of both
18 operations and oversight to contractors, as not creating an effective ownership and
19 management approach for a major business. Even with the most experienced contractors,
20 there is considerable risk that their lack of ownership or other long term interest in the
21 assets may cause inefficient and uneconomic operation. Nashua proposes to create a
22 structure that risks a reduction in overall efficiency and effectiveness over time.

1 Therefore Staff can not agree with Nashua that its proposal represents net benefits to the
2 public interest.

3 **Q. Is Staff concerned with the provision of adequate service to satellite customers**
4 **outside of Nashua under the City’s proposal?**

5 A. Yes. Staff’s concern about the quality of service to the satellite systems is fueled by
6 Nashua’s complaint that it is subsidizing non-Nashua customers. However one interprets
7 Nashua’s stated intentions resulting from its concern over providing a subsidy to
8 customers in other municipalities as discussed earlier, it is indisputable that PWW today
9 is itself serving in the role as a regional utility with some 3,000 customers outside of
10 Nashua. Thus, a taking of PWW means that the City of Nashua would have water
11 customers in other municipalities who would not have the Commission to turn to, would
12 not have a municipal vote for mayor and alderman, i.e. the “management” of their water
13 supplier, as customers do in unregulated municipal systems, and whose water supply
14 would not be physically interconnected with the core system serving Nashua.¹² This
15 leads to a concern that those customers would be continually at risk for their water
16 systems to receive fewer capital improvements and less attention from the City, which
17 ironically is the same argument Nashua makes with respect to its desire to ensure future
18 local control of the water system. This very concern is articulated in the testimony of Mr.
19 Hinch, chairperson of the Merrimack Board of Selectmen. He expressed concern that,
20 while served from the core system, because Merrimack’s main commercial/industrial

¹² That Nashua intends to avoid Commission regulation is clear from the November 22, 2004 testimony of Mr. Munck and the January 12, 2006 testimony of Mr. Sansoucy where they each indicate that Nashua is counting on eliminating regulatory costs as one way of reducing rates to customers. See also Nashua response to PWW data request 1-169 where Nashua states “Since Nashua does not plan to have different rates inside and outside the City, it will not be subject to N.H. Public Utilities Commission regulation in the ordinary course of events.” See, Attachment MAN-22.

1 zone abuts a similar zone in Nashua and because municipalities are in competition for
2 such development and associated tax revenue, Merrimack would not likely receive fair
3 consideration with respect to capital investments if Nashua owned the water system.
4 While presumably the alternative exists of permitting Nashua to take only the core
5 system and not the PWW satellites, I would not recommend it. Such a partial taking
6 would lead not only to substantially higher rates in the satellite systems which the
7 Commission found were not in the public interest in DR 97-058, but also because since
8 the core system is such a substantial part of PWW, the impacts of its loss would be
9 virtually the same as the taking of all of the systems owned by PWW.

10 **Q. In an effort to retain adequate service, did Nashua propose to keep existing**
11 **PWW employees?**

12 A. Yes. In fact, Nashua's RFP expressly stated that it "is the desire of the City that the
13 maximum number of the present employees of the Water Utility be employed in the
14 performance of this contract as are required to provide the level of service being
15 requested." RFP at 5. In Nashua response to Staff 4-55, Veolia states that it will give
16 PWW employees priority for all required positions in Nashua. See, Attachment MAN-
17 23. According to PWW's response to Staff 4-13, PWW uses approximately 67 full time
18 equivalents for its PWW operations. See, Attachment MAN-24. According to Nashua's
19 response to Staff 4-53 and Staff 3-24, Nashua expects to use 45 full time equivalents to
20 operate PWW. See, Attachments MAN-25 and 26. By sheer numbers it appears Nashua
21 could retain 2/3 of the present PWW workforce. This reduction is similar to the
22 efficiencies and streamlining argument that has been raised in merger cases previously
23 before the Commission. While it is a laudable goal to retain as many existing PWW

1 employees as possible, it is my opinion that a reduction of the workforce by 1/3 runs the
2 risk of undermining the very goals Nashua seeks as to maintenance of an adequate level
3 of service quality under municipal ownership.

4 G. The Taking Will Not Harm Pennichuck Shareholders

5 **Q. Nashua has provided testimony that shareholders will not be harmed because a**
6 **fair price will be paid for the assets, and capital gains taxes can be avoided as long**
7 **as the sale proceeds are reinvested in “like kind property.” How does Staff view this**
8 **issue?**

9 A. Staff has reviewed Mr. Paul’s arguments that Pennichuck Corporation can reinvest
10 the sale proceeds, estimated by Nashua to be \$85 million¹³, within two years in order to
11 avoid capital gains taxes. I believe it is clear that a taking of PWW’s assets would force
12 Pennichuck Corporation to fully evaluate the dramatic effects on its corporate mission in
13 addition to any consideration of how to avoid taxes. Mr. Correll’s January 12, 2006
14 testimony at pages 18 and 19 provides the scenario that would be played out in the event
15 the assets of PWW were taken. There can be no reasonable expectation that Pennichuck
16 shareholders would direct management to search for other water systems to purchase,
17 even in the unlikely event that tens of millions of dollars could be spent on water systems
18 in New Hampshire or adjacent states. Nor is it a reasonable expectation that shareholders
19 would be satisfied with redeployment of the proceeds of a taking in other non-utility
20 enterprises just to avoid capital gains taxes, given that Pennichuck’s expertise is and has
21 been water. Pennichuck Corporation’s subsequent risk profile would be substantially

¹³ Nashua’s valuation of \$85 million is based on PWW’s assets as of December 31, 2004 and does not include valuation of assets added subsequently, including the upgrade of the water treatment plant.

1 altered. For these reasons, Staff does not agree with Nashua's argument that no harm to
2 PWW shareholders will occur.

3 **Q. Please provide a summary of Staff's position in this docket.**

4 A. This request by the City of Nashua presents the Commission with a critical decision
5 relative to water supply and distribution not only in Nashua, but in the greater Nashua
6 area and in New Hampshire as a whole. The importance of this decision is made clear in
7 the realization that a decision in favor of the City is irreversible. Staff has reviewed all of
8 the public interest issues implicated by Nashua's proposal to take and operate the PWW
9 core and satellite systems, including rates, quality of service in Nashua and to PWW's
10 satellites, regionalization, water supply cooperation, and the goals and objectives of the
11 State relative to these issues. Staff has very carefully considered all of the issues in this
12 case, and has extensively reviewed all of the evidence presented with these public interest
13 issues in mind. Staff's conclusion is that Nashua's request, while perhaps fulfilling the
14 wishes of the voters in the January 2003 municipal vote authorizing the City to explore a
15 taking, does not meet the "net benefits" test and is therefore not in the public interest.

16 Staff understands that the definition of public interest is a broad definition, and
17 that consideration of public interest issues in this proceeding must look beyond Nashua's
18 municipal boundaries. Staff has concerns with Nashua's proposal that render a
19 presumption of public interest to Nashua residents uncertain at best. If the proposed
20 taking by Nashua has uncertain benefits to Nashua residents, it is difficult to imagine that
21 there are benefits beyond the City. It is Staff's view that not only are there not net
22 benefits outside Nashua, there are real harms that will result from the taking of the assets
23 of PWW.

1 In Staff's review of this docket, one factor has stood out time and again, and that
2 is the issue of the promotion of real cooperation in and sharing of not only water
3 resources, but the necessary technical expertise to solve water-related issues which
4 routinely cross municipal boundaries. The evidence put forward in this docket contains
5 numerous examples of how municipalities act first in their own best interests, and it is
6 Staff's opinion that the elimination of PWW through a taking by Nashua will be a step
7 backward for regional cooperation. Nashua will not fulfill this role; it does not have any
8 incentive to do so and its statements in this proceeding make that clear. The substantial
9 public benefit that results from the acquisition and rehabilitation of small water systems
10 by PWW and its affiliates will end. Pennichuck's role as a catalyst for problem solving
11 and promoting regional cooperation will end.

12 The taking of the assets of PWW would be harmful in a number of ways, not only
13 as to regional cooperation, but to the ratepayers of PEU and PAC. The economies of
14 scale which generate efficiencies in operations and allow for the sharing of common
15 assets will drive up rates for PEU and PAC ratepayers. The business operations of
16 PWSC will be similarly impacted, and since PWSC operates largely on a contract basis it
17 cannot simply increase its prices to remain profitable. Nashua's argument that
18 Pennichuck shareholders will not be harmed because capital gains taxes can be avoided
19 by reinvestment of the proceeds is unrealistic.

20 Staff questions the structure Nashua proposes for the water system to be taken,
21 which fractures ownership, oversight, and operations three different ways. The City will
22 be entirely dependent on outside contractors to provide all of the capabilities required for
23 efficient operation, including cost control. Staff believes Nashua is risking a reduction in

1 overall efficiency and effectiveness over time. Customer service and billing and
2 collection are to be divided up between Veolia and the City's tax collection department,
3 yet in reality these functions constantly overlap. Nashua's projected savings to customers
4 remain uncertain and depend substantially on the value to be set for the assets. The
5 projected workforce reductions run the risk of degrading the quality of service PWW
6 customers have been receiving.

7 Nashua's attitude regarding PWW's acquisitions of other water systems leads to
8 questions and concerns about the service customers in those satellite systems can expect,
9 and the rates they may pay. Those customers would also not have Commission oversight
10 or a municipal vote as a way of addressing rates and service. Not all of Nashua's
11 neighbors feel that replacing the existing ownership and management of the PWW
12 system will be beneficial.

13 Nashua has asserted that its proposed taking is necessary to maintain local control
14 of the water resources of the area, and to ensure economic viability of the Nashua area
15 going forward. While presumably City leaders will ultimately make the decisions
16 regarding water resources, the lack of City staff involved in the operation of the water
17 utility leads Staff to question how that local control will be of benefit in the long term.
18 Staff does not believe that the evidence shows that PWW ownership of the water utility
19 has harmed economic development in Nashua and that a taking of the assets of an
20 investor-owned company is necessary to protect economic viability going forward.

21 This proposed taking does not arise out of circumstances where a municipality
22 wishes to take over a poorly run private water company so that service to its own citizens
23 can be improved. This taking is not of a utility that is a stand-alone operation, providing

1 water service in one municipality as its only business. This is not a poorly run water
2 company; even Nashua acknowledges that.¹⁴ This is a well-run, healthy business with
3 various operations centered primarily on water service. Pennichuck has earned a
4 reputation with regulators, both at the Commission and at NHDES, as well as among
5 municipal and business leaders as a good company, with intelligent and pro-active
6 leadership. The only persistent criticism of PWW has been of alleged mismanagement of
7 the Pennichuck watershed. However, Nashua has not put forth evidence to illustrate that
8 anything PWW has done, or has failed to do in that watershed, has negatively impacted
9 water quality or caused higher treatment costs.

10 I question whether the legislature, in enacting RSA 38, and even recognizing that
11 RSA 38 as it exists today is the result of many legislative modifications, could ever have
12 intended that a taking of a water utility which is a substantial and integral part of an
13 larger regional entity be in the public interest. I don't believe anyone questions that
14 removing PWW's assets from this company is going to gut it. In 2004, PWW provided
15 nearly 70% of PC's revenues, 77% of its net income, and owns about 75% of PC's
16 assets. It employs, due to the historical development of the corporation, all of the
17 employees used in Pennichuck's businesses, and holds the common assets used in
18 Pennichuck's businesses. Removing PWW's assets, and PWW's revenues, and PWW's

¹⁴ Testimony proffered by Nashua witnesses in the aborted Pennichuck/Philadelphia Suburban docket provided significant praise for PWW. Witness Sansoucy refers to the regulated Pennichuck subsidiaries as "part of a solid utility corporation." Testimony at 2. As to the question of whether PWW would benefit from economies of scale from being part of a larger entity, he states "I believe that Pennichuck operates efficiently and effectively enough that it will not benefit from the alleged economy of scale." Testimony at 3. And as to the ability to borrow funds, he states "Pennichuck is capable of competitive borrowing." Testimony at 3. Mayor Bernard A. Streeter, in providing reasons why he believed the Commission should deny the proposed merger, stated "Pennichuck Corp. is a more efficient, cost effective and responsive utility than Philadelphia." Testimony at 5.

1 earnings, and the people it employs, will substantially harm this business. Acquisition of
2 small troubled systems, encouraged by and deemed to be in the public interest by the
3 Commission, will end. PWW's role as an effective catalyst in problem-solving and
4 promoting regional cooperation will end. The proposed taking will in fact inflict
5 economic loss to Pennichuck's investors. Can this be what the legislature intended?

6 **Q. Does this conclude your testimony?**

7 A. Yes it does.