

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

ORIGINAL
N.H.P.U.C. Case No. DW 11-026
Exhibit No. #9
Witness Panel #2
DO NOT REMOVE FROM FILE

Re: City of Nashua Acquisition of Pennichuck Corporation

Docket DW 11-026

DIRECT TESTIMONY OF

DONALD L. WARE

February 18, 2011

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1 **Introduction and Purpose of Testimony**

2 **Q. What is your name and what is your position?**

3 A. My name is Donald L. Ware. I am the President of Pennichuck Water Works, Inc.
4 (“PWW”), Pennichuck East Utility, Inc. (“PEU”) and Pittsfield Aqueduct Company, Inc.
5 (“PAC”) (all three utilities collectively hereinafter referred to as the “Pennichuck
6 Utilities”), all of which are subsidiaries of Pennichuck Corporation.

7 **Q. Please describe your educational background.**

8 A. I have a Bachelor in Science degree in Civil Engineering from Bucknell University in
9 Lewisburg, Pennsylvania and I completed all the required courses, with the exception of
10 my thesis, for a Masters degree in Civil Engineering from the same institution. I have a
11 Masters in Business Administration from the Whittemore Business School at the
12 University of New Hampshire.

13 **Q. Please describe your professional background.**

14 A. Prior to joining Pennichuck in 1995 , I served as the General Manager of the Augusta
15 Water District in Augusta, Maine from 1986 to 1995. I served as the District’s engineer
16 between 1982 and 1986. Prior to my engagement with the District, I served as a design
17 engineer for the State of Maine Department of Transportation for six months and before
18 that as a design engineer for Buchar-Horn Consulting Engineers from 1979 to 1982. I
19 am a licensed professional engineer in New Hampshire, Maine and Massachusetts.

20 **Q. What are your responsibilities as President of the Pennichuck Utilities?**

21 A. As President, I am responsible for the overall operations of each of the Pennichuck
22 Utilities, including water quality and supply, distribution, engineering and water system
23 capital improvements. I work closely with PWW’s Engineering Department and its

1 Chief Engineer on capital improvements, including on project selection, project design,
2 project management and construction management for each of the Pennichuck Utilities.

3 **Q. In what capacity are you testifying in this matter?**

4 A. While I am currently employed by the Pennichuck Utilities, the City of Nashua has made
5 an offer of employment to me that is contingent on the closing of the City's proposed
6 acquisition of Pennichuck Corporation. In that new capacity, I would continue to be
7 employed by the Pennichuck Utilities, but as their Chief Operating Officer. Thus, I am
8 testifying here regarding my knowledge about the City's plans for operations of the
9 Pennichuck Utilities upon closing of the proposed transaction.

10 **Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to describe how the Pennichuck Utilities will be operated
12 under City ownership and the resultant benefits of the change in ownership to their
13 customers based on the City's operating plans, analyses and models set forth in the
14 testimony of Mayor Lozeau and Messrs. Patenaude and Gottlieb.

15 **Overview of Merger Transaction; Impact on Operations and Management**

16 **Q. Please provide the Commission with an update on the status of the relationship**
17 **between Pennichuck Corporation and the City of Nashua since the Supreme Court**
18 **affirmed the Commission's decision allowing the City to take the assets of**
19 **Pennichuck Water Works by eminent domain.**

20 A. Pennichuck Corporation has been in negotiations with the City of Nashua regarding the
21 acquisition of Pennichuck Corporation which culminated in the execution of an
22 Agreement and Plan of Merger (the "Merger Agreement") between Pennichuck
23 Corporation and the City of Nashua effective as of November 11, 2010. Subject to the

1 provisions of the Merger Agreement, the City of Nashua will become the sole
2 shareholder of Pennichuck Corporation. As a result, the City of Nashua will indirectly
3 own both the Pennichuck Utilities and Pennichuck Corporation's two unregulated
4 subsidiaries, Pennichuck Water Service Corporation ("Water Service Company") and
5 The Southwood Corporation ("Southwood").

6 **Q. If approved by the Commission, what effect will the Agreement and Plan of Merger**
7 **have on the operation of the Pennichuck Utilities?**

8 A. As noted in the testimony of Mayor Lozeau and Mr. Patenaude, the City has made clear
9 that it plans to continue to operate the Pennichuck Utilities as they are now operated with
10 only minimal changes that do not relate to the service provided to customers. The current
11 employees of PWW that operate PWW, PEU and PAC and the Water Service Company
12 will continue their current employment (with limited exceptions described below),
13 working from the same locations and performing the same job duties at the same rates of
14 pay and with the same benefits as at present.

15 **Q. Which employees would no longer be employed?**

16 A. As noted in the testimony of Mayor Lozeau and Mr. Patenaude, under City ownership,
17 Pennichuck Corporation will no longer require certain officer-level personnel whose
18 backgrounds, duties and responsibilities relate directly to Pennichuck Corporation's
19 status as a publicly-traded company. As noted in Mr. Patenaude's testimony, these
20 include the current Chief Executive Officer, Chief Financial Officer, and General
21 Counsel of Pennichuck Corporation, all of whom will no longer be employed by
22 Pennichuck after the transaction. In addition, upon consummation of the acquisition, the
23 position of President of the Water Service Company will be consolidated under the

1 responsibilities of the Chief Operating Officer of Pennichuck Corporation, and two or
2 three employees of PWW whose job responsibilities are associated with certain public
3 company regulatory and reporting requirements will no longer be employed.

4 **Q. Are there savings associated with the change in management level positions and the**
5 **change in Pennichuck Corporation's ownership?**

6 A. Yes. Upon consummation of the acquisition, Pennichuck Corporation will no longer be
7 publicly-traded. As stated in Mr. Patenaude's testimony, approximately \$1.7 million in
8 annual operating and corporate costs will be eliminated directly or indirectly due to this
9 change in status. This will result in substantial savings to the Pennichuck Utilities, which
10 paid a share of these costs through the management cost allocation previously approved
11 by the Commission.

12 **Q. Who will manage and operate the Pennichuck Utilities once Pennichuck**
13 **Corporation is acquired by the City of Nashua?**

14 A. As noted in Mr. Patenaude's testimony, after closing the acquisition, the City will appoint
15 a new Board of Directors and Chief Executive Officer for Pennichuck Corporation. As
16 noted above, I have been offered the position of Chief Operating Officer ("COO") of all
17 of the regulated and unregulated subsidiaries of Pennichuck Corporation and expect to
18 continue the job responsibilities that I currently have regarding the Pennichuck Utilities
19 As further noted in Mr. Patenaude's testimony, other key employees will be retained
20 under City ownership. Bonalyn Hartley, who is currently employed as the Vice President
21 of Administration & Regulatory Affairs for Pennichuck Corporation and each of the
22 Pennichuck Utilities, will continue carrying out the same job responsibilities that she
23 currently has, which include overseeing Customer Service, Information Systems,

1 Regulatory Affairs and Human Resources for PWW, PEU and PAC. Ms. Hartley has
2 agreed to continue her employment for at least six months after the acquisition Larry
3 Goodhue, who currently serves as the Controller and Principal Accounting Officer of
4 Pennichuck Water Works, will serve as CFO for Pennichuck Corporation and each of its
5 subsidiaries. Mr. Goodhue has been employed by PWW for four years and has over 31
6 years experience in both public accounting and private industry.

7 **Comparison of Merger Transaction to Eminent Domain Taking**

8 **Q. Is this operational plan different than what the City of Nashua proposed in DW 04-**
9 **048?**

10 A. Yes. In DW 04-048, the City proposed operating Pennichuck Water Works on a contract
11 basis through Veolia, R.W. Beck and other contractors. As stated in the testimony of
12 Mayor Lozeau and Mr. Patenaude, the City's proposed plan to continue operating the
13 Pennichuck Utilities using the same employees, and in the same manner as they are
14 currently operated, will insure no loss in operating efficiencies or existing synergies as a
15 result of the ownership change of Pennichuck Corporation. The Pennichuck Utilities will
16 also continue to benefit from the same purchasing power after the acquisition as before
17 which would have been lost had the assets of PWW alone been acquired by the City.
18 Most important, the change in ownership should be seamless to customers because the
19 same employees, with deep historical knowledge of the water systems and familiarity
20 with the customer base will continue to operate the systems and provide service to the
21 customers.

22 **Q. Will the proposed operating structure result in reduced operating costs for the**
23 **Pennichuck Utilities?**

1 A. Yes. As noted above, the Pennichuck Utilities will no longer incur the costs associated
2 with the officer-level personnel and other costs associated with maintaining Pennichuck
3 Corporation's status as a publicly traded company, including the senior management
4 level positions and the substantial costs associated with SEC reporting. Additionally, at
5 the holding company level, costs associated with the Board of Directors, the annual audit
6 and director's and officer's liability insurance costs, among other expenses that will
7 continue to be incurred after the acquisition, are expected to be reduced. As noted in Mr.
8 Patenaude's testimony, the City estimates that the acquired company will be able to
9 reduce operating and corporate expenses by approximately \$1.7 million as a result of the
10 savings identified above and as detailed in Ms. Hartley's testimony. While the initial
11 expense savings will be largely offset by the debt service required to cover the bond to be
12 issued by the City to fund the acquisition, as shown in Mr. Gottlieb's testimony,
13 additional savings should accrue to the benefit of customers over time when one
14 considers that these costs would almost certainly have continued to increase because of
15 inflation and other factors had the Pennichuck Utilities remained under current
16 ownership.

17 **Q. What is the anticipated rate impact of the acquisition of Pennichuck Corporation by**
18 **the City?**

19 A. Based on the plan discussed by Mr. Patenaude, and as shown in the rate schedules set
20 forth in Ms. Hartley's testimony, the revenue requirements for each of the Pennichuck
21 Utilities under Pennichuck Corporation ownership is projected to have been greater than
22 the revenue requirements that are projected under City ownership. As noted in Mr.
23 Patenaude's testimony, the City's revenue requirement includes the debt service on a

1 \$157 million bond issue (the "City Acquisition Bonds"), the proceeds of which will be
2 used to purchase all of Pennichuck Corporation's stock and pay for all transaction costs
3 through the date of the closing (expected to occur sometime in the later part of 2011).
4 Because the City is purchasing the stock of the utilities' holding company, the City's
5 acquisition includes the purchase of about \$10.5 million of assets placed into service by
6 the Pennichuck Utilities during 2010 and 2011, which includes improvements such as the
7 replacement and/or rehabilitation of over 15,000 linear feet ("LF") of unlined cast iron
8 water main in PWW and the replacement of over 900 LF of tin water main in PAC.
9 These investments are not included in PWW and PAC's current rates, nor are they
10 included in either of PWW or PAC's current rate relief filings. On the other hand, under
11 the Fixed Annual Rate Requirement methodology described in Ms. Hartley's testimony,
12 which includes in the revenue requirements of the Pennichuck Utilities the allocated cost
13 of debt service with respect to the City Acquisition Bonds, these costs of these assets are
14 effectively included in the projected revenue requirement under City ownership that has
15 been calculated as part of the filing in this case. I should also note that the cost of these
16 items was also not included in the price set by the Commission in the eminent domain
17 case for PWW, and therefore the purchase price under an eminent domain scenario would
18 have had to have been increased to reflect them. If the current rates for PWW and PAC
19 were recalculated to capture the depreciation, return on investment and property taxes
20 associated with these plant additions, it would create an additional revenue requirement
21 of approximately \$1,676,260.

1 **Conclusion**

2 Q. Based on your testimony and knowledge of the acquisition, will the level of customer
3 service be the same under City ownership as it would be under current ownership?

4 A. Yes. Customers will be served by the same three companies and by the same personnel,
5 who will be employed in the same capacity, with the same operating management in
6 place.

7 Q. Does this complete your testimony?

8 A. Yes.