

**DW 06-073**

**PENNICHUCK WATER WORKS, INC.**

**Rate Proceeding**

**Order on Motion for Confidential Treatment**

**ORDER NO. 24,701**

**November 22, 2006**

In this rate proceeding, Pennichuck Water Works, Inc. (PWW) seeks confidential treatment pursuant to RSA 91-A and N.H. Code Admin. Rules Puc 203.08 of certain material submitted in discovery that reveals the compensation paid to some of the utility's employees. The New Hampshire Public Utilities Commission (Commission) suspended PWW's proposed new tariff pages by Order No. 24,646 (July 18, 2006), conducted a prehearing conference, approved the procedural schedule proposed by the parties and Commission Staff on August 7, 2006, and, following a hearing, adopted a settlement agreement providing for temporary rates in Order No. 24,668 (September 22, 2006).

PWW filed the pending motion for confidential treatment on October 5, 2006. According to PWW, Staff concurred in the motion, intervenor Fred Teeboom objected and no other party took a position upon inquiry prior to the motion. There were no responsive pleadings submitted.

At issue is information requested in Staff's data request 2-41. This data request noted that PWW's 2004 and 2005 annual reports revealed an increase of \$440,271 in administrative and general salaries. Therefore, Staff requested an "analysis which compares the 2004 and 2005 wages/salaries of each position that is reflected in this account."

In support of its request for confidential treatment, PWW stated that with the exception of PWW's officers, wages of employees are not generally known to the public, and it is PWW's

practice to maintain the salaries of its employees in confidence. PWW stated that if the information for which confidential treatment were disclosed publicly, it would likely reveal the salary structure of a significant portion of employees of PWW and could undermine PWW's ability to hire and retain employees which would result in competitive harm to PWW.

The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, RSA 91-A:5, IV, which exempts “[r]ecords pertaining to internal personnel practices, confidential, commercial or financial information . . . whose disclosure would constitute invasion of privacy.” The New Hampshire Supreme Court provided an analytical framework for employing this exception in *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). There must be a determination of whether the information is confidential, commercial or financial information “and whether disclosure would constitute an invasion of privacy.” *Id.* at 552 (emphasis in original, citations omitted). “[T]he asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure.” *Id.* at 553 (citations omitted).

It is a longstanding practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers. In *Union Telephone Co.*, 81 NH PUC 525, 526 (1996), and *Pennichuck Water Works, Inc.*, 86 NH PUC 764, 765 (2001), the Commission noted that compensation information pertaining to corporate officers appears in the utility's annual report and, because it is thus publicly disclosed, is not subject to confidential treatment in a rate proceeding. As to non-officers, the Commission found persuasive the fact that

the utility maintained the privacy of the information in its own files, as well as the utility's assertion that public disclosure of such information would cause harm by making it easier for other companies to recruit the employees away from the utility and potentially causing "discord among individuals within the company." *Id.* at 764-65.

The same reasoning applies here. The competitive harm that would result from the public disclosure of otherwise-confidential employee salaries is significant for the reasons stated by PWW. At the other end of the scale, the public's interest in disclosure is relatively attenuated because the Commission does not directly regulate the salaries of individual utility employees but is focused instead on the extent to which personnel expenses are reasonable in the aggregate.

Puc 203.08(j) provides that, when necessary to protect the confidentiality of documents entitled to such treatment, the Commission may direct the parties also to treat the documents as confidential. Such a determination is warranted here. PWW requests an order prohibiting the parties from copying, duplicating, disseminating or disclosing the material contained in the response to Staff data request 2-41. The Company also asks that such a prohibition extend to the use of this information in discovery, testimony, argument or written briefing, and that the parties be directed to return the documents to PWW at the conclusion of the proceeding. The parties are so instructed.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Pennichuck Water Works Inc.'s motion for confidential treatment to its response to Staff data request 2-41 is **GRANTED** with respect to information pertaining to employees not officers of the corporation; and it is

**FURTHER ORDERED**, that the parties to the proceeding treat such information as confidential as described more fully above, returning all copies of the relevant documents to Pennichuck Water Works at the conclusion of the proceeding; and it is

**FURTHER ORDERED**, that this order is subject to the ongoing right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary