

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

RE: PENNICHUCK WATER WORKS, INC.

DOCKET NO. DW 10-091

**MOTION FOR PROTECTIVE ORDER FOR INFORMATION RESPONSIVE TO
CERTAIN DATA REQUESTS OF STAFF AND ANHEUSER-BUSCH, INC. AND
REQUEST FOR WAIVER OF Puc 203.08(d) & (e)**

Pennichuck Water Works, Inc. ("PWW" or the "Company") hereby moves the New Hampshire Public Utilities Commission (the "Commission") to (i) grant confidential treatment regarding certain materials in the above captioned proceeding and (ii) waive the filing time requirement under Puc 203.08(d) and (e). In support of this motion, PWW states as follows:

1. On April 6, 2010, PWW filed with the Commission its Notice of Intent to File Rate Schedules. Subsequently, on May 7, 2010, PWW filed its 2010 Rate Filing.

2. On October 2, 2010, the Public Utilities Commission Staff (the "Staff") and Anheuser-Busch, Inc. ("Anheuser-Busch") each propounded their second set of data requests to PWW. Certain data requests issued by the Staff and Anheuser-Busch included requests for confidential and commercially sensitive information.

3. Specifically, Data Request Staff 2-8 sought certain confidential employee payroll costs of the Company. Data Requests AB 2-1 and 2-2 sought, respectively, (i) proprietary models and formulas in electronic format of PWW and PWW expert witness John Palko of AUS Consultants pertaining to PWW revenues and expenses, rate base, capital structure and cost of capital, as well as Mr. Palko's cost of service study; and (ii) confidential PWW customer monthly water usage information relating to Anheuser-Busch's current contract for water service with PWW.

4. RSA 91-A:5, IV expressly exempts from the Chapter 91-A public disclosure requirements any “records pertaining to internal personnel practices [and] confidential, commercial or financial information. . . .” NH RSA 91-A:5, IV. The Commission’s decision to protect such information involves “a balancing of the benefits of disclosure to the public against the benefits of nondisclosure to the utility.” *Public Service Company of New Hampshire*, 79 NH PUC 379, 379 (1994) (citing *New England Telephone and Telegraph Company, Inc.*, 74 NH PUC 307 (1989)) (internal quotation marks omitted). As set forth in more detail below, PWW’s responses to the Data Requests contain confidential information relating to internal personnel practices as well as sensitive commercial and financial data which require protective treatment and fall under the exemption set forth in RSA 91-A:5, IV.

A. Data Request Staff 2-8

5. “It is a long-standing practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers.” *Pennichuck Water Works, Inc.*, 91 NH PUC 562, 562 (2006) (citing *Union Telephone Co*, 81 NH PUC 525, 526 (1996) and *Pennichuck Water Works, Inc.*, 86 NH PUC 764, 765 (2001)). With respect to non-officer employee compensation data, it is sufficient that the utility maintains the privacy of such information in its own files for RSA 91-A:5, IV to apply. *See Pennichuck Water Works, Inc.*, 91 PUC at 562.

6. The employee payroll cost information provided in PWW’s response to Data Request Staff 2-8 falls squarely within the RSA 91-A:5, IV exemption because it relates to internal personnel practices and is confidential financial information that reveals compensation data for non-officer PWW employees. It is PWW’s general practice to safeguard the non-officer employee payroll information and maintain it in confidence for the benefit of its employees. The

release of the information to the public would result in the identification of employee wages which would invade the privacy of PWW employees.

7. In addition, releasing such information to the public would reveal PWW's salary structure and affect its ability to hire and retain employees, which would cause the Company competitive harm. The Commission has previously recognized and ruled that protective treatment is warranted where disclosure of employee compensation data could cause harm to a utility by making it easier for other companies to recruit the employees away from the utility and by potentially causing discord among the utility's employees. *See Pennichuck Water Works, Inc.*, 91 NH PUC at 562; *Pennichuck Water Works, Inc.*, 86 NH PUC at 764-75.

8. Thus, whereas the release of such financial information to the public would not advance any substantial public benefit, it would invade the privacy of those PWW employees involved in this matter and could affect PWW's hiring capability. The public release of the compensation received by specific individual employees of PWW would not provide the public with any meaningful additional information regarding the Commission's review of the matters at issue in this proceeding or otherwise advance any significant public interest. Accordingly, PWW requests that the Commission issue an order protecting PWW's confidential employee payroll cost information from public disclosure. PWW notes that its response to Data Request Staff 2-8 also includes payroll information for the Company's officers. PWW does not seek protective treatment for such information and has provided a public version of the response that discloses the officer payroll data.

B. Data Requests AB 2-1 and 2-2

9. Confidential financial information and sensitive, competitive commercial data are exempt from public disclosure under RSA 91-A:5, IV. *See Northern Utilities, Inc.*, 84 NH PUC

300, 301 (1999) (computer model runs demonstrating certain comparative costs is sensitive commercial information protected under RSA 91-A:5, IV); *Public Service Company of New Hampshire*, 79 NH PUC at 379 (data supporting utility company's projected cost savings is competitive commercial information exempt from public disclosure).

10. PWV's response to Data Request AB 2-1 includes PWV's calculations of its permanent rate increase, step increase and rate of return data using confidential customer information, such as customer water consumption and cost data of Anheuser-Busch, as well as Mr. Palko's proprietary model and formulas in electronic format supporting his cost of service study. With respect to PWV's calculations, the data includes confidential customer information that PWV does not disclose to the public. "Customer information that is financially or commercially sensitive to the customer or which, if released, would likely constitute an invasion of privacy for the customer" are protected under RSA 91-A:5, IV. *City of Nashua*, 90 NH PUC 316, 316 (2005). Because the responses include customer-specific information, the Commission should grant the protective treatment requested.

11. Similarly, Mr. Palko's model and formulas employed in his cost of service study is confidential proprietary information. This information is data that Mr. Palko and his firm do not release to the public because its disclosure to the public would likely cause competitive harm to Mr. Palko's firm, as competitors and potential clients could access Mr. Palko's methodology without engaging his services. Further, if PWV were to release this information, PWV's ability to retain Mr. Palko's services and the services of similar consultants would be harmed, creating a chilling effect on those willing to participate in matters before the Commission. This effect would lead to a reduction in information available to the Commission and to the general public, and adversely affect the overall adjudication process of the Commission. Thus, Mr. Palko's model and formulas should be protected from public disclosure. The Commission has previously

protected such information in other rate cases. See *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,208 (March 23, 2011); *Unitil Energy Systems, Inc.*, 91 NH PUC 416 (October 6, 2006).

12. The foregoing electronic models and formulas requested by Anheuser-Busch under Data Request AB 2-1 and which PWW seeks to protect are an integral part of the electronic files throughout and it is not reasonably possible to redact portions in a manner that would not allow a party with access to such information to derive the redacted information. Accordingly, PWW requests that the entirety of the electronic files be afforded confidential treatment.

13. Finally, the Commission regularly “protect[s] data relating to customer-specific power purchases and prices” under RSA 91-A:5, IV because “customers possess a reasonable expectation that such information [will] remain private.” *Retail Competition Pilot Program*, 81 NH PUC 899, 900 (1996). PWW’s response to Data Request AB 2-2 contains financially sensitive water usage and related pricing information for PWW’s key customer, Anheuser-Busch. PWW customers such as Anheuser-Busch maintain an expectation that such information will be kept private. For these reasons, the Company does not disclose such data to the public in its regular course of business. Releasing this information would result in the invasion of Anheuser-Busch’s privacy and loss of customer confidence in the Company. Accordingly, the Commission should issue an order protecting this information from public disclosure.

14. The factors identified above outweigh any minimal benefit of disclosing the foregoing confidential data to the public. PWW requests that the Commission issue a protective order granting this motion and protecting the confidential information described herein from public disclosure. PWW requests that copying, duplication, dissemination or disclosure in any

form should be prohibited, except for use in this proceeding as part of a closed record or subject to similar protections. The protective order should also be extended to any discovery, testimony, argument or briefing relative to the confidential information.

C. Waiver of Filing Time Requirement under Puc 203.08(d) and (e)

15. Puc 201.05(a) provides that the Commission “shall waive the provisions of any of its rules, except where precluded by statute, upon request by an interested party if the Commission finds that (1) [t]he waiver serves the public interest; and (2) [t]he waiver will not disrupt the orderly and efficient resolution of matters before the commission.” The Commission has held that, in determining public interest under Puc 201.05, the Commission is to consider whether compliance with the rule would be inapplicable given the circumstances or whether the purpose of the rule would be satisfied by an alternative method proposed. *See EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,119 (June 25, 2010). For the reasons stated herein, PWW respectfully submits that waiving the filing time requirement under Puc 203.08(d) and (e) serves the public interest and will not disrupt the orderly and efficient resolution of the matters before the Commission in this case.

16. Puc 203.08(d) permits a party seeking confidential treatment of material produced in discovery to assert the confidentiality of the material and subsequently submit a motion for protective treatment prior to the hearing in the relevant matter. The responses to Data Request Staff 2-8 and Data Requests AB 2-1 and 2-2 were submitted to the Commission staff and parties to this case in November 2010 together with an express statement that PWW was submitting such responses pursuant to Puc 203.08 and that PWW intended to file a motion for protective order. Although PWW had prepared a motion for protective order for these responses, the motion was not filed prior to the hearing on the merits as the result of an oversight. In light of

the fact that this proceeding remains open while the Commission considers the Company's request for recovery of rate case expense, the Company believes that neither the general public nor any party to this proceeding would be prejudiced by the granting of this motion at this time. No expense related to the late filing of this motion has been or will be included in the Company's request for recovery of rate case expense. In addition, the information for which protective treatment is sought is highly confidential for the reasons described above and has, to the knowledge of the Company, continued to be maintained in confidence by the Staff and the parties. Accordingly, the purpose of Puc 203.08 is satisfied by the submission of the instant Motion at this time, and waiving the filing time requirement under Puc 203.08(d) and (e) will not disrupt the orderly and efficient resolution of the matters currently before the Commission in this case.

WHEREFORE, PWW respectfully requests that the Commission:

- A. Issue a protective order to prohibit disclosure of the confidential information submitted in response to Data Request Staff 2-8 and Data Requests AB 2-1 and 2-2 as described above;
- B. Waive the filing time requirement under Puc 203.08(d) and (e); and
- B. Grant such other relief as is just and equitable.

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Dated: August 10, 2011

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By Its Attorneys

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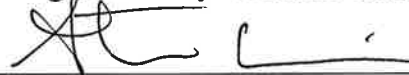
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion has been forwarded to the parties on the service list this 10th day of August 2011 by electronic mail.



Steven V. Camerino