

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DOCKET NO. DW 12-085

AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

Aquarion Water Company of New Hampshire, Inc. (“Aquarion” or the "Company"), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to certain hourly billing rate information provided in connection with the Company’s rate case expense surcharge calculation. In support of its motion, Aquarion states as follows:

1. Concurrently with this motion, Aquarion is submitting the calculation of its rate case expenses and proposed surcharge in compliance with Order No. 25,539. Included with the Company’s filing are supporting invoices from Aquarion’s attorneys, McLane, Graf, Raulerson, and Middleton Professional Association (the “McLane Law Firm”), that contain confidential and competitively sensitive hourly billing rate information.

2. Disclosure of this hourly billing rate information will cause competitive harm to Aquarion’s attorneys. The information is not publicly available, and disclosing it would put the McLane Law Firm at a competitive disadvantage by divulging to its competitors the rates it charges for services. For example, the McLane Law Firm has numerous competitors within and beyond New Hampshire for legal work, and disclosure of the firm’s hourly billing rates for attorney services would harm its competitive position when bidding or negotiating for business in the future.

3. Accompanying this motion and the Company's rate case expense filing are redacted and confidential copies of the McLane Law Firm's invoices, prepared in accordance with Rule Puc 201.04(b)(2)b and (c)(2)(b). Aquarion has redacted only information that would allow a reader to determine the billing rates of the McLane Law Firm, including hourly rates and the number of hours worked.¹ Aquarion is not seeking confidential treatment of any of the amounts billed by the McLane Law Firm (i.e., for individual billing entries on a given day or for the total amounts on any bills), and therefore the dollar amounts billed will remain publicly available if the Commission grants this motion.

4. RSA 91-A:5, IV states, in relevant part, that records pertaining to "confidential, commercial, or financial information" are exempt from public disclosure when such disclosure would constitute an invasion of privacy. The Commission has routinely recognized that this exemption applies to hourly billing rate information. *See, e.g., Pennichuck Water Works, Inc.*, DW 10-091 / DW 11-018, Order No. 25,278 at 11-13 (October 21, 2011); *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11-12 (January 15, 2010); *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 at 10 (April 30, 2007). Specifically, the Commission has balanced the interest that a utility and its service providers have in the confidentiality of hourly billing information against the public's interest in the disclosure of such information and determined that the former interest outweighs the latter. *See, e.g., Pennichuck Water Works, Inc.*, DW 10-091 / DW 11-018, Order No. 25,278 at 11-13 (October 21, 2011); *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11-12 (January 15, 2010). The Commission has also recognized that disclosure of

¹ Certain information contained in the McLane Law Firm's descriptions of services is subject to attorney-client privilege and attorney work product doctrines and has also been narrowly redacted to protect the privileged text.

hourly billing rate information would invade the privacy interests of a utility and its vendors and could damage competitive positions, potentially to the detriment of ratepayers, while providing no information to the public regarding the workings of the Commission. *Pennichuck Water Works, Inc.*, DW 10-091 / DW 11-018, Order No. 25,278 at 12 (October 21, 2011)

5. The Commission has specifically granted confidential treatment to attorney billing rates in prior cases due to the commercially sensitive nature of the information. In *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 (April 30, 2007), the Commission considered the movant's argument that disclosure of the hourly billing rates of its outside attorneys could "detrimentally impact" the competitive position of those attorneys in future negotiations. *Id.* at 9. The Commission agreed, recognizing that "the public's interest in review of this financial, commercially sensitive information" is insufficient to "outweigh the benefit derived from maintaining the confidentiality of such information." *Id.* at 10; *see also Pennichuck Water Works, Inc.*, DW 10-091 / DW 11-018, Order No. 25,278 at 11-13 (October 21, 2011)(concluding that disclosure of the McLane Law Firm's billing rates could damage the firm's competitive position and that the privacy interest in confidentiality outweighed the public interest in disclosure).

6. For the reasons stated above, Aquarion requests that the Commission issue an order granting this motion and protecting from public disclosure the confidential commercial information described above. The protective order should also be extended to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, Aquarion respectfully requests that the Commission:

- A. Issue an order protecting the information described above; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

Aquarion Water Company of New Hampshire, Inc.

By Its Attorneys

MCLANE, GRAF, RAULERSON &
MIDDLETON, P.A.

Dated: July 26, 2013

By: 

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Certificate of Service

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been electronically served and mailed to the service list in this case.



Patrick H. Taylor, Esq.