

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 17-165

Abenaki Water Company, Inc. – Rosebrook Division
Rate Proceeding

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT OF
HOURLY BILLING RATE AND EMPLOYEE COMPENSATION INFORMATION
AND
WAIVER OF N.H. CODE ADMIN. RULE PUC 201.04**

NOW COMES, Abenaki Water Company, Inc.’s (“AWC”) in accordance with N.H. Admin. Rule Puc 203.08 and RSA Chapter 91-A, and hereby moves the New Hampshire Public Utilities Commission (“Commission”) to grant confidential treatment to certain hourly billing rate and employee information provided in the above-captioned proceeding. In support of its motion, AWC states as follows:

1. Pursuant to Order No. 26,205 dated December 27, 2018, and N.H. Code Admin. Rule Puc 1905.02, AWC is required to submit to the Commission its rate case expenses incurred in this proceeding no later than January 28, 2019. The supporting invoices to those expenses include, among other items, invoices from AWC’s attorneys that contains confidential and competitively sensitive hourly billing rate information. The information also includes non-officer employee-specific compensation information and taxpayer identification numbers that AWC does not disclose to the public. It is AWC’s practice to maintain the compensation and personal data of its employees in confidence. Disclosure of this information would reveal the salary structure of AWC’s employees and constitute an invasion of privacy to these employees. Disclosure could undermine AWC’s ability to hire and retain employees which would result in competitive harm to AWC.

2. Seven confidential copies and one public copy of AWC's rate case expenses are being filed with this motion. AWC has redacted only information that would allow a reader to determine the billing rates of AWC's attorney, including hourly rates and the number of hours worked as well as employee-specific compensation and taxpayer identification information that would reveal their identity and pay or would otherwise constitute an invasion of privacy.

3. RSA 91-A:5, IV has been interpreted as requiring analysis of both whether the information sought is "confidential, commercial, or financial information," and whether disclosure would constitute an invasion of privacy. See, RSA 91-A:5, IV and *Union Leader Corp. v. New Hampshire Housing Financing Authority*, 142 N.H. 540, 552 (1997) citing *Perras v. Clements*, 127 N.H. 603, 605 (1986). An invasion of privacy analysis, in turn, requires an evaluation of three factors: (1) whether there is a privacy interest at stake that would be invaded by disclosure; (2) whether there is a public interest in disclosure; and (3) a balance of the public's interest in disclosure and the interests in non-disclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 113 (2005). The Commission has stated that disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. If both of these steps are met, the Commission balances the privacy interest with the public interest to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 (November 9, 2010) at 3-4.

4. The Commission has balanced the interest 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 outweighed the latter and that the exemption under RSA 91-A:5, IV applies to hourly billing rate information. See, e.g., *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) (The Commission stated that disclosure of hourly billing rates of outside attorneys could “detrimentally impact” the competitive position of those attorneys in future negotiations. *Id.* at 9). *Unitil Energy Systems, Inc.*, DE 05-178, Order No. 24,742 at 3-5 (April 13, 2007). AWC seeks to protect the same information for the same reasons.

5. The Commission has balanced the interest non-officer employees have in the confidentiality of their names and compensation information against the public’s interest in the disclosure of such information and determined that the former outweighed the latter and that the exemption under RSA 91-A:5 applied to non-officer employee identities and compensation. See e.g., *Pennichuck Water Works, Inc.*, DW 06-073, Order No. 24,701 (November 22, 2006); *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,208 (March 23, 2011). As with the hourly billing rates, AWC seeks to protect the same employee-specific information for the same reasons.

6. In the instant proceeding, while the public has some interest in the billing information and employee expenses, that interest is tempered by the quality of the information which will be made public, that is, the total amount paid by AWC for its legal services along with descriptions of the services provided as well as total expenses incurred to pay non-officer employees. Therefore, if the Commission protects from public disclosure the hourly rates of AWC’s attorney and the employee-specific compensation information, the public would still have access to the totals of these expenses. Full disclosure of the hourly billing rates and employee compensation will also be provided to the Commission, Commission Staff, and the Office of the Consumer Advocate, where the details of the rate case expenses will be subject to investigation and scrutiny.

7. As stated above, AWC has provided a confidential and public version of its rate case expenses. It has indicated in the header of each copy which copy is confidential and redacted. AWC has not placed “REDACTED” or “CONFIDENTIAL” notations within the pages due to the voluminous nature of the documentation. AWC believes headers indicating which copies are confidential and public and applying black-out to the confidential information on the public version and the specific description of the confidential information sufficiently satisfies the purpose of the rule by “any other method” pursuant to N.H. Code Admin. Rule Puc 201.04(b)(2)(c). To the extent the Commission believes a waiver of the rule is needed, pursuant to N.H. Code Admin. Rule 201.05, AWC requests waiver of N.H. Code Admin. Rule Puc 201.04(b) and (c). AWC believes its method of indicating what information it seeks protective treatment for serves the public interest and will not disrupt the orderly and efficient resolution of the Commission’s review of AWC’s rate case expenses. AWC believes it has satisfied the intent of the rule. To redact the rate case expense documentation with more specificity would require AWC employees to manually notate content over hundreds of pages. This would add unnecessarily to the rate case expenses. AWC respectfully states that the description and black-out sufficiently identifies which material is confidential so as to allow the Commission and the public to identify the information.

8. In conclusion, AWC requests the Commission issue a protective order preventing public disclosure of rate case information which could divulge AWC’s attorney’s hourly billing rates and the specific compensation and taxpayer identification numbers of individual employees of AWC. AWC requests waiver of N.H. Code Admin. Rule Puc 201.04, to the extent needed.

WHEREFORE, Abenaki Water Company, Inc. – Rosebrook Division respectfully requests the Commission:

- A. Grant this motion; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

ABENAKI WATER COMPANY, INC.
ROSEBROOK DIVISION

By Its Attorney,

Date: January 30, 2019

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion for protective order and confidential treatment has been forwarded this day by electronic transmission to the Office of the Consumer Advocate and Docket-Related Service List for DW 17-165.

Dated: January 30, 2019

Marcia A. Brown
Marcia A. Brown