

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 17-165

Abenaki Water Company, Inc. – Rosebrook Division
Rate Proceeding

**AMENDED MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT OF HOURLY BILLING RATE AND EMPLOYEE COMPENSATION
INFORMATION**

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. Confidential copies and one public copy of AWC's rate case expenses were filed on February 11, 2019 and May 8, 2019. Updated rate case expenses are being filed simultaneous with this amended motion.

3. AWC has redacted 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. The affected pages in the February filing are 18, 34, 49, 53, 66, 75, 76, 77, 90, 91, 124, 126, 131, 132, 133, 134, 135, 136, 150, 151, 152, 163, 186, 187, 192, 208, 209, 226, 227, 228, 231, 232, 233, 240, 241, 243, 249, 258, 259, 262, 263, 273, 274, 313, 314, 317, 318, 324, 334, 335, 336, 339, 340, 341, 353, 357, 358, 359, 387, 388, 391, 392, 401, 402, 405, 406, 409, 410, 427, 430, 431, 432, 433, 434, 435, 491, 497, 519, 520, 521, 524, 525, 528, 529, 530, 549, 586, 587, 588, 591, 598, 599, and 600. The affected page in the May filing is electronic page 14. The affected pages in the July, 2019 Company response to Staff, attached, are 4, 36, 37, and 38.

4. 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.

5. 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.

6. 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 employee-specific information for the same reasons as provided in Order Nos. 24,701 and 25,208.

7. In the instant proceeding, while the public has some interest in the billing information and employee expenses, that interest is reduced 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.

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.

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: July 11, 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: July 11, 2019

Marcia A. Brown
Marcia A. Brown