

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 19-084

Pennichuck Water Works, Inc.
Permanent Rate Proceeding

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT OF
HOURLY BILLING RATE DATA AND VENDOR ACCOUNT INFORMATION**

NOW COMES, Pennichuck Water Works, Inc. (PWW) in accordance with N.H. Admin. Rule Puc 203.08 and RSA Chapter 91-A, and hereby motions the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment to certain hourly billing rate data and vendor account information provided as part of PWW's rate case expense filing that is being filed contemporaneously with this motion. In support of its motion, PWW states as follows:

1. Pursuant to PART Puc 1900, Order No. 26,425 dated November 24, 2020, and Secretarial Letter dated December 30, 2020, PWW's rate case expense documentation is due to the Commission no later than January 15, 2021.
2. As part of PWW's rate case expenses, PWW is providing confidential and redacted copies of legal bills from NH Brown Law, PLLC and Rath, Young & Pignatelli, PC as well as consultant invoices from Concentric Energy Advisors, Inc. Each of these three vendor's invoices contain confidential and competitively sensitive hourly billing rate information. The vendors and PWW do not disclose this confidential commercial information to the public. Disclosure of this information would reveal the competitive rates of these vendors, would be an

invasion of the vendor's privacy as to their billing rates, and would result in competitive harm to the vendors.

3. PWW is also filing confidential and redacted copies of its invoices from FedEx. The FedEx invoices contain PWW's FedEx-issued account number. FedEx protects these account numbers from public disclosure because if the account numbers are public, unauthorized users can obtain the account numbers and make unauthorized charges to these accounts. This unauthorized use constitutes a violation of PWW's and FedEx's privacy as to this confidential commercial information. To protect against such theft of services, PWW requests the Commission protect PWW's FedEx account number from public disclosure.

4. PWW has redacted the vendor information that would allow the public to determine the billing rates of PWW's attorneys and consultant, specifically, the hourly billing rates and the number of hours worked. PWW had redacted the FedEx invoices to protect the account number information. Pursuant to N.H. Code Admin. Rule Puc 201.04, the confidential information in the confidential version of the rate case expense documentation has been grey-shaded and "confidential" appears at the top of the affected pages. In the public version of the rate case expense documentation, the confidential information has been blacked-out and "redacted" appears at the top of the affected pages. The affected pages are: 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 19, 24, 25, 26, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 41, 42, 43, 44, 45, 47, 48, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 65, and 66.

5. PWW seeks protection of the above information under RSA 91-A:5. 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.

6. The Commission has previously 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 has 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). PWW requests the Commission make a similar balance finding in favor of protecting PWW's legal and consultant billing information. Further, PWW requests the Commission find in favor of protecting PWW and FedEx's privacy interest in the FedEx account number because

a finding in favor of public disclosure could cause FedEx to suffer a theft of services by an unauthorized user's use of the account number.

7. Additionally, while the public has an interest in rate case expenses, that interest is diminished in that the total amount paid by PWW for legal and consultant services is disclosed, along with the remainder of its rate case expenses. Therefore, if the Commission protects from public disclosure the hourly rates of PWW's attorneys and consultant, the public will still have access to the totals of these expenses. Furthermore, full disclosure of the hourly billing rates will 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. This scrutiny will give the public confidence that the detailed confidential information has been audited.

8. In conclusion, PWW requests the Commission issue a protective order consistent with existing precedent so as to prevent public disclosure of the above-described rate case expense information.

WHEREFORE, PWW respectfully requests the Commission:

- A. Grant its motions for protective treatment; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By Its Attorney,

Date: January 15, 2021

By: *Marcia A. Brown*
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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 Docket-Related Service List for DW 19-084.

Dated: January 15, 2021

Marcia A. Brown
 Marcia A. Brown