

**STATE OF NEW HAMPSHIRE**

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION**

Docket No. DW 19-131  
Abenaki Water Company, Inc. – Rosebrook Division  
Omni Complaint

**SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL  
TREATMENT OF WATER FACILITIES**

NOW COMES, Abenaki Water Company, Inc.'s (AWC or Company) 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 plans and maps of its water facilities and customer service lines. In support of its motion, AWC states as follows:

1. On October 1, 2019, the Company filed a motion requesting protective treatment of maps that had been filed in this docket and in Docket No. DW 17-165. This motion supplements that request to add certain plans and maps that were introduced at hearing in this proceeding by the Company and Omni Mount Washington, LLC (Omni). AWC seeks to protect from public disclosure plans and maps depicting its system as well as any customer service lines.
2. The Company's confidential documents were introduced as:
  - a) Exhibit No. 9 – Horizons Engineering Hydraulic Modeling report done for New England Service Company and dated March, 2017. The report contains plans adapted for its report at pages 6 and 19. The redacted public version was marked as Exhibit 10.
  - b) Exhibit No. 14 – Horizons Engineering System Evaluation for Pressure Reduction report done for Abenaki Water Company and dated July, 2016. The report contains plans adapted for the report at page 45. The redacted public version was marked as Exhibit 15.

c) Exhibit No. 29 – AWC’s response to data request Staff 2-3 wherein AWC included certain of its record drawings. The redacted public version was marked as Exhibit 30.

3. Omni Mount Washington, LLC’s confidential documents were introduced as:

a) Exhibit No. 16 – Omni’s complaint included a colored map at page 2. The redacted public version was marked as Exhibit 21.

b) Exhibit No. 17 – Omni’s response to data requests Staff Set 2 wherein Omni provided fold-out colored maps at pages 6, 7, and 8. The redacted public version was marked as Exhibit 28.

4. Pursuant to Puc 203.08(a), the Commission “shall...issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5....” Pursuant to RSA 91-A:5, IV, “confidential, commercial, or financial information” and documents disclosure of which would constitute an invasion of privacy may be exempt from public disclosure. 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).

5. Under RSA 91-A:5 VI, “[r]ecords pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life” are exempt from public disclosure. Although the maps and plans at issue in this motion have not been “developed by local or state safety officials”, the plans were

nonetheless prepared by AWC as reports or record drawings that would ultimately be reviewed by state regulatory officials. The documents prepared by Omni were prepared for presentation to the Commission in this proceeding and the Commission is a state agency.

6. Presidential Policy Directive 21 (PPD-21): *Critical Infrastructure Security and Resilience* is a federal directive that aims to strengthen and secure critical infrastructure. AWC considers its water system and customer service lines to be critical infrastructure under the Water & Wastewater System Sector of the federal National Infrastructure Protection Plan (NIPP). See, <https://www.dhs.gov/cisa/water-and-wastewater-systems-sector>. Goal 2 of the NIPP-Water and Wastewater Systems Sector-Specific Plan is to “recognize and reduce risk”. See, <https://www.dhs.gov/sites/default/files/publications/nipp-ssp-water-2015-508.pdf>. At the State level, emergency planning for water sector is overseen by the N.H. Department of Environmental Services. N.H. Code Admin. R. Env-Dw 503.21. In particular, record drawings of water system assets are part of a utility’s emergency plan. Env-DW 503.21(b)(11). See, Exhibits 29 and 30.

7. As stated in its first motion for a protective order, AWC believes the balance of privacy interests of AWC and its customers in making sure that facilities are not subjected to a security risk exceed the public’s interest in seeing these plans and maps for purposes of seeing the Commission’s conduct of public business under RSA Chapter 91-A. Protecting the plans and maps would also be consistent with Goal 2 of the Sector Specific Plan by removing publicly available plans from being a security risk.

<https://www.dhs.gov/sites/default/files/publications/nipp-ssp-water-2015-508.pdf>.

8. The Commission has previously balanced the interests of the utility seeking to protect disclosure of utility infrastructure plans against the public’s right to disclosure and has granted protective treatment. The Commission found that the privacy interest at stake would be

invaded and that the public's interest did not warrant disclosure. In *Aquarion Water Company, Inc.*, Order No. 25,863 (Feb. 1, 2016), the Commission protected "infrastructure information" including plans that identify areas of a water utility's distribution system. In *Unitil Energy Systems, Inc.*, Order No. 24,677 (Oct. 6, 2006), the Commission granted confidential treatment of information regarding its electric distribution system that "disclose[d] detailed information as to how the distribution system is designed and configured, revealing key components and their locations [, including] ... planning information as to how the system may be configured in the near future." *Id.* at 14-15, 23. The Commission also protected information locating and identifying "blackstart" units, so-designated, because they are generators capable of starting themselves and producing power to start other generators, and therefore "support essential power supply in New England." *Public Service Co. of N.H.*, Order No. 24,750 at 18, 25 (May 25, 2007). AWC seeks to protect its system infrastructure information for the same public health, security, and economic reasons as raised in these past Commission orders.

9. Pursuant to the Commission's rules, the Commission, Staff, and OCA have had access to these confidential documents and have therefore, been able to perform their statutory reviews and investigations. These documents were also exchanged with the parties for purposes of the hearing and all parties, including the Company and Omni, took care to treat them as confidential during their presentations at the hearing.

10. The Company has contacted the Staff and parties to this docket for their positions and Staff takes no position. The remaining parties did not provide a position as of the time of this filing.

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: March 23, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this supplemental motion for protective order and confidential treatment has been forwarded this day by electronic transmission to the Docket-Related service lists for DW 19-131.

Dated: March 23, 2021

Marcia A. Brown  
Marcia A. Brown