

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) 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 and March 24, 2021, the AWC filed motions requesting protective treatment of maps that had been filed in this docket and/or in Docket No. DW 17-165. This instant motion supplements those requests.

2. Specifically, it has been brought to AWC’s attention that Exhibit 16 and Exhibit 18 in Docket No. DW 19-131 may not be completely covered by the prior motions. AWC seeks to make clear that it requests that any and all maps and plans marked as confidential and either filed or provided as evidence at hearing are protected from public disclosure. AWC also requests that pages 2 and 126 of Exhibit 16 and pages 4 and 5 of Exhibit 18 be considered for confidential treatment. AWC thanks Staff and the Commission’s diligence in this matter.

3. 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....” 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. The Commission’s privacy analysis turns on an analysis of: (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).

4. 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 maps prepared by Omni were prepared for presentation to the Commission in this proceeding and the Commission is a state agency.

5. 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.

6. 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 plans and maps for purposes of seeing the Commission's conduct of public business under RSA Chapter 91-A. Protecting 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>.

7. The Commission has previously 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 depicted in the plans and maps for the same public health, security, and economic reasons as raised in these past Commission orders.

8. Pursuant to the Commission's rules, the Commission, Staff, and OCA have had access to these confidential plans and maps and have therefore, been able to perform their

statutory reviews and investigations. Plans and maps 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.

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: June 16, 2021

By: *Marcia A. Brown*
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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: June 16, 2021

Marcia A. Brown
Marcia A. Brown