

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 20-064

**Emergency Petition of Pennichuck Water Works, Inc. for Approval Under the Federal
Paycheck Protection Program**

**SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT OF PRIVATE EMPLOYEE AND LOAN FORGIVENESS
INFORMATION**

NOW COMES Pennichuck Water Works, Inc. (“PWW” or “Company”), in accordance with N.H. Admin. Rule Puc 203.08, and hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment of the Small Business Administration’s (“SBA”) application for Loan Forgiveness Application Form 3508 Revised January 19, 2021 (“Loan Forgiveness Application”) provided by PWW to the Commission in response to request for this information by Orders No. 26,354 (May 6, 2020), 26, 424 (November 24, 2020) and 26,477 (April 30, 2021). PWW moves to supplement the Motion for Protective Order and Confidential Treatment filed on July 28, 2021 to protect additional information provided in relation to the Loan Forgiveness Application and states the following in support of its motion:

1. PWW filed the Loan Forgiveness Application with TD Bank on June 30, 2021, for Paycheck Protection Program loan forgiveness.

2. On July 28, 2021, pursuant to Orders No. 26,354, 26,424 and 26,477, PWW provided a copy of the Loan Forgiveness Application as a condition of receiving approval of the PPP loans approved in the above-referenced orders by the Commission. The document filed on July 28, 2021, contained confidential business and loan information which is currently pending with TD Bank and the SBA, and subject to a pending Motion for Protective Order and Confidential Treatment.

3. PWW hereby supplements its July 28, 2021 filing to include Schedule A, Table 1 and Table 2 which contains salary, wages, and compensation information of the employees of PWW which is confidential and private information.

4. Pursuant to N.H. Admin. Rule Puc 203.08(a), “the commission shall upon motion 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, or other applicable law....”

5. RSA 91-A:5, IV expressly exempts from the RSA Chapter 91-A public disclosure requirements any “[r]ecords pertaining to ... confidential, commercial, or financial information....and other files whose disclosure would constitute an invasion of privacy.” RSA 91-A:5, IV.

6. The information contained with Schedule A, Table 1 and Table 2 fall within the RSA 91-A:5, IV exemption from disclosure because they are confidential and private, the employees of PWW are not public employees and they have an expectation of privacy with respect to their salary, wage, and compensation information.

7. The Commission employs a multi-part analysis to determine whether certain information qualifies for confidential treatment: (1) whether the information sought is confidential, commercial, or financial information; and (2) whether disclosure of that information would constitute an invasion of privacy. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,208 at 7-8 (March 23, 2011). 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 nondisclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 109 (2005).

8. PWW is seeking a motion for protective treatment of the information in Schedule A, Table 1 and Table 2 because the salary, wage, and compensation information of its employees is private and confidential, and disclosure of such would constitute an invasion of privacy.

9. PWW employees are not public employees and their salary, wage and compensation information is not subject to disclosure. See *United Steel Workers, AFL-CIO v. Nashua Telegraph, et al.*, Superior Court No. 226-2012-CV-0134, Hillsborough Superior Court – Southern District, (Jan. 17, 2013). The Court, looking at a number of factors, determined that Pennichuck and PWW were not public bodies defined in RSA 91-A:1-a, VI; therefore, the Right-to-Know law does not apply to either corporation. See *United Steel Workers, AFL-CIO v. Nashua Telegraph, et al.*, at 9-13, 14. The Court also held that PWW employees have a reasonable expectation of privacy in their salary as private employees. See *Id.* at 14, citing *Professional Firefighters of NH*, 159 N.H. 699, 708 (2010) (salary information generally constitutes private information). Since PWW employees are not public employees and their

salary, wage, and compensation information is private information, they have a privacy interest at stake that should be protected from disclosure by the Commission. PWW also has a legitimate business reason for maintaining and protecting the privacy of its employees because PWW's inability to maintain the confidentiality of such information could affect its ability recruit and retain employees.

10. Finally, the Company has a legitimate business reason for protecting this information because it was submitted with the Loan Forgiveness Application that is still subject to the review and approval process by the TD Bank and SBA to occur in a manner consistent with the lender's and SBA's procedures and practices. Disclosure of this information could impact future negotiations with TD Bank, SBA and other lenders.

11. Based on the foregoing, PWW requests that the Commission grant this motion and issue an order protecting from public disclosure the confidential and private salary, wage, and compensation information of PWW employees found in Schedule A, Tables 1 and 2 because the privacy interests of its employees and PWW's legitimate business reasons outweigh the public's interest in disclosure.

WHEREFORE, Pennichuck Water Works, Inc. respectfully requests the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Grant such other relief as is just and equitable.

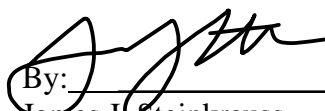
Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorneys,

RATH, YOUNG AND PIGNATELLI, PC

Date: August 11, 2021



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Certificate of Service

I hereby certify that on this 11th day of August, 2021, a copy of this motion has delivered via emailed to the Office of the Consumer Advocate.



James J. Steinkrauss