

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

Docket DW 20-112  
Abenaki Water Company, Inc.

Permanent Rate Proceeding

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**  
**OF FACILITY PLANS**

NOW COMES, Abenaki Water Company, Inc.’s (Abenaki 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 maps, or record drawings, of its water facilities that it is producing to the Commission in response to the Commission’s request for information. In support of its motion, Abenaki states as follows:

1. 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....”
2. The State’s Right-to-Know law, RSA Chapter 91-A, affords two relevant exemptions for protecting Abenaki’s confidential information. First, 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).

3. Second, 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.

4. Although Abenaki's plans at issue in this motion have not been “developed by local or state safety officials”, they have been prepared at the direction of state safety officials. N.H. Code Admin. R. Env-Dw 503.21(b)(11) requires water systems to prepare emergency plans and submit them to the N.H. Department of Environmental Services. Env-Dw 503.21(d), (f), and (g). Abenaki's maps, or ‘record drawings’, are part of Abenaki's emergency plan. The maps being submitted to the Commission as part of the request for information are the same maps used for the emergency plans. The emergency plans required by Env-Dw 503:21 are intended to thwart tampering, sabotage, and damage to the water system. Env-Dw 503.02.<sup>1</sup> Tampering, sabotage, and damage to a water system could result in widespread damage or injury, therefore, the emergency plans and maps Abenaki is mandated to prepare and file with the N.H.

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<sup>1</sup> Env-Dw 503.02 Notification of Impairment.

(a) The owner of a community or non-community, non-transient water system shall notify the department within 24 hours after discovery of any of the following:

(1) Actual or suspected tampering, sabotage, security breach, or any suspicious incident at the water system;  
(2) Damage to or depletion of the source of the supply or water system facilities which impairs the quality or sufficiency of the supply; or  
(3) Interruption of service of a pressure zone or the entire water system due to an extended power outage, line break, or other cause.

Department of Environmental Services would constitute plans developed by state safety officials and would be covered by the exemption under RSA 91-A:5, VI.

5. Further, these plans contain specific detail and show the size of mains and the location of gate valves, distribution mains, curb stops, pressure reducers, service lines, wells, and pressurized water storage tanks. This level of detail is sufficient to raise security concerns. To protect against threats to the system, Abenaki does not publicly disclose maps of its water systems. Knowledge of the specific locations of this critical infrastructure could facilitate a terrorist act or sabotage which could render the system unable to provide water service or unable to provide safe water. Such a water outage or contamination of supply could result in devastating impacts to Abenaki and its customers in terms of property damage and, in the event of contamination, injury or loss of life. Abenaki avers that knowledge of the specific details of the water system, including location of where a customer's service line connects would constitute an invasion of customer privacy. Knowledge of the specific location of Abenaki's infrastructure would constitute an invasion of privacy for Abenaki in that protecting assets from public disclosure is directly related to Goal 2 of the Sector-Specific Plan under the National Infrastructure Protection Plan (NIPP), updated pursuant to Presidential Policy Directive 21 (PPD-21) relative to Critical Infrastructure Security and Resilience. That goal is to "protect, detect, respond to, and recover from all hazards better":

**Table 2: Water and Wastewater Sector Goals and Objectives**

<b>Goal 1</b>	<b>Sustain protection of public health and the environment.</b>
	The Nation relies on sustained availability of safe drinking water and on treatment of wastewater to maintain public health and environmental protection. To protect public and environmental health better, the Water and Wastewater Sector works to ensure the continuity of both drinking water and wastewater services.
<b>Objective 1</b>	Encourage integration of both physical and cyber security concepts into daily business operations at utilities to foster a security culture.
<b>Objective 2</b>	Evaluate and develop surveillance, monitoring, warning, and response capabilities to recognize and address all-hazards risks at Water and Wastewater Sector systems that affect public health and economic viability.
<b>Objective 3</b>	Develop a nationwide laboratory network for water quality protection that integrates Federal and state laboratory resources and uses standardized diagnostic protocols and procedures, or develop a supporting laboratory network capable of analyzing threats to water quality.
<b>Goal 2</b>	<b>Recognize and reduce risk.</b>
	With an improved understanding of the vulnerabilities, threats, and consequences, owners and operators of utilities can continue to thoroughly examine and implement risk-based approaches to protect, detect, respond to, and recover from all hazards better.
<b>Objective 1</b>	Improve identification of vulnerabilities based on knowledge and best available information, with the intent of increasing the Sector's overall protection posture.
<b>Objective 2</b>	Improve identification of potential threats through knowledge base and communications—with the intent of increasing overall protection posture of the Sector.
<b>Objective 3</b>	Identify and refine public health and economic impact consequences of manmade or natural incidents to improve utility risk assessments and enhance the Sector's overall protection posture.
<b>Goal 3</b>	<b>Maintain a resilient infrastructure.</b>
	The Water and Wastewater Sector will investigate how to optimize continuity of operations to ensure the economic vitality of communities and the utilities that serve them. Response and recovery from an incident in the Sector will be crucial to maintaining public health and confidence.
<b>Objective 1</b>	Emphasize continuity of drinking water and wastewater services as it pertains to utility emergency preparedness, response, and recovery planning.

Source: Homeland Security/U.S. EPA, National Infrastructure Protection Plan (NIPP) (2013), Water and Wastewater Systems Sector-Specific Plan (2015).

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

Abenaki believes that under a balancing of privacy interests, the interests of Abenaki and its customers of keeping the water system and service lines non-public and safe from terrorists or sabotage outweigh and exceed the public's interest in seeing the precise location of the water system and its components for purposes of seeing the Commission's conduct of public business under RSA Chapter 91-A.

6. The Commission has previously balanced the interests of the utility seeking to protect disclosure of utility infrastructure plans that show specific locations of specific assets against the public's right to disclosure and has granted protective treatment to similarly detailed system maps. 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 maps 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). Abenaki seeks to protect its system infrastructure information for the same public health, security, and economic reasons as raised in these past Commission orders. Whether the Commission applies RSA 91-A:5, IV and the privacy interest or RSA 91-A:5, VI and the security exemption, Abenaki believes it satisfies both exemptions to warrant an order protecting its detailed system maps from public disclosure.

7. Pursuant to N.H. Admin. R. Puc 203.02 and 203.08, an original and six copies plus one redacted public copy of the motion and affected documents are being filed. Pursuant to the Commission’s rules, the DOE and OCA will be able to access the confidential maps; the maps will not be withheld from other parties in this proceeding so long as they sign non-disclosure agreements to ensure the infrastructure maps will be kept from public disclosure. To the extent similar infrastructure maps are necessary to be filed in the future in this proceeding, Abenaki seeks the same protective treatment of those maps as well.

WHEREFORE, Abenaki Water Company, Inc. 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.

By Its Attorney,

Date: October 7, 2021

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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 lists for DW 20-112.

Dated: October 7, 2021

Marcia A. Brown  
Marcia A. Brown