

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

DW 20-117

HAMPSTEAD AREA WATER COMPANY, INC.

Request for Change in Rates

**OBJECTION OF THE TOWN OF ATKINSON TO MOTION FOR
CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER**

NOW COMES the Town of Atkinson (“Atkinson” or the “Town”), an intervenor in the above-captioned docket, by and through its undersigned attorneys, and, pursuant to N.H. Admin. Rule Puc 203.07(e), respectfully objects to the Motion for Confidential Treatment and Protective Order filed by Hampstead Area Water Company (“HAWC” or the “Company”) in this docket on September 28, 2021 (the “Motion”).¹ In support of this Objection, Atkinson states as follows:

1. The Motion seeks confidential treatment for information about salaries for HAWC employees which the Company provided in response to separate data requests from the Commission Staff (Staff 3-8) and Atkinson (5-38). The Company argues that the information for which it is now seeking confidential treatment is “confidential commercial or financial information that reveals employee pay and salary information and all work for a private employer.” *See* Motion at page 3, paragraph 11. The Company did not request confidential treatment of the information when the responses to the data requests were originally provided (July 1, 2021 for the response to Staff 3-8 and

¹ The Motion was originally filed on September 27, 2021, but a corrected version was filed on September 28, 2021.

September 9, 2021 for the response to Atkinson 5-38) as required by Admin. Rule Puc 203.08(d).

2. Atkinson is a New Hampshire municipality, a body corporate and politic, pursuant to RSA 31:11, and a public body within the meaning of the right to know law (RSA 91-A:1-a, VI), and a governmental body subject to the New Hampshire Constitution, Part 1, Article 8, which requires that government be “open, accessible, accountable and responsive.” The Commission granted intervention to the Town in this docket, noting that the standard for intervention in RSA 541-A:32 had been met. *See* April 9, 2021 letter from Executive Director Howland to the Parties in DW 20-117. Atkinson’s interests in this docket are as a commercial customer and municipal fire protection customer of HAWC that would be adversely affected by the proposed rate increase. *See* Petition of Board of Selectmen on behalf of the Town of Atkinson for Intervention, filed in this docket on February 3, 2021. The Town is also interested in this docket and its outcome as a representative of individual ratepayers who live in the Town.

3. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs the three-step analysis articulated in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. N.H. Public Utilities Commission*, 152 N.H. 106 (2005). Under this analysis the Commission first determines whether there is a privacy interest at stake, “whether the information is confidential, commercial or financial information, ‘and whether disclosure would constitute an invasion of privacy.’” If no privacy interest is at stake, disclosure is warranted. If a privacy interest is implicated, the Commission then assesses the public’s interest in disclosure and whether

disclosure of the requested information would inform the public about the conduct and activities of their government. “Disclosure that informs the public of the conduct and activities of its government is in the public interest.” If it does not, then “disclosure is not warranted.” Finally, the Commission balances the asserted private confidential, commercial or financial interest against the interest of informing the public of the government’s conduct. *Unitil Energy Systems, Inc.*, DE 10-055, Order No. 25,214 (April 26, 2011), p. 35. As the Court noted in the *Lamy* case: “‘To advance the purposes of the Right-to-Know Law, we construe provisions favoring disclosure broadly and exemptions narrowly.’ *City of Nashua*, 141 N.H. at 475. By so doing, we ‘best effectuate the statutory and constitutional objective of facilitating access to all public documents.’ *Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 546 (1997).” 152 N.H. at 108. The *Lamy* Court also noted that the “party resisting disclosure bears a heavy burden to shift the balance towards nondisclosure.” 152 N.H. at 109.

4. In determining whether the Company has made a sufficient case to establish that a privacy interest is at stake, the first determination under the test outlined above, i.e. that the salaries of employees of a public utility constitute confidential, commercial or financial information, it is instructive to look at the New Hampshire Supreme Court’s analysis in *Prof’l Firefighters of N.H. v. Local Gov’t Ctr.*, 159 N.H. 699 (2010), a case cited by the Company in its motion based on the Superior Court Order attached to the Motion for the opposite conclusion than what the Supreme Court in that case actually reaches. In that case the Court determined that the salaries of employees of the Local Government Center, a single organization that owned and managed different subsidiaries that provided services to its members, which were comprised of political

subdivisions, were not exempt from disclosure under RSA 91-A:5, IV. In reaching this decision, the Court noted that specific salary information gives direct insight into the operations of the public body by enabling scrutiny of the wages paid for particular job titles, that it can expose corruption, incompetence, inefficiency, prejudice and favoritism, and that it is necessary to assess whether the entity is being properly and efficiently managed. 159 N.H. at 709. The Town submits that the same analysis applies here, that information about the salaries of employees of a public utility are essential for the transparency of the ratemaking process in order to assess whether the rates that a public utility is requesting, and the rates that are ultimately approved by the Commission, are just and reasonable. We submit that the Commission should reach the same conclusion that the *Prof'l Firefighters of N.H.* Court reached, that the Company, which has the clear and heavy burden in this situation, “has failed to establish that the salaries of its individual employees comprise intimate details that are exempt from disclosure under RSA 91-A:5,IV.” 159 N.H. at 710.

5. Assuming for the purposes of argument that the Commission believes a privacy interest has been implicated for the two data requests and responses at issue here, then it is clear the Company cannot pass the second part of the test. Release of this information will clearly inform the public of the government’s conduct and activities, i.e. the complicated process of evaluating a rate increase requested by a public utility, including all of the operating expenditures that are evaluated as part of the process to establish the rates. If the Commission were to grant the Motion, then the public would only be allowed to see some of the expenses which the Commission evaluates during the ratemaking process. Public disclosure of this information would materially advance the

public's understanding of the Commission and how it operates, as well as the specific ratemaking issues involved with this particular proceeding. Moreover, there are significant questions about whether any harm would occur to HAWC's interests. HAWC has chosen to be a "public utility" within the meaning of RSA 362:2, subject to the regulations established by the Legislature and the Commission, and as such it has certain rights or privileges, like the opportunity to earn a reasonable return on its investment through the rates that the Commission allows it to charge, but also certain responsibilities to its customers, like transparency in how those rates are arrived at. As such the Company does not have the same protections as any other private company. Even if the Company could argue there was harm from revealing this information, which the Town submits it has not made a case for, any such harm is clearly outweighed by the interest in public disclosure. Release of these responses to data requests will help to provide information to customers, not just intervenors who have already seen the information because of the Company's failure to follow the process spelled out in Puc 203.08(d). The Company has thus failed to show by a preponderance of the evidence that there is any basis under the right-to-know analysis for preventing the publication of these responses; it has not met the "heavy burden" of shifting the balance toward nondisclosure.

6. The Town notes that it is aware of a contrary decision rendered by the Commission in 2006, before the Supreme Court issued the *Prof'l Firefighters of N.H* opinion with the detailed standard described above. *See Re Pennichuck Water Works, Inc.* 91 NH PUC 562, 563 (2006). We wish to reemphasize, however, that the Company in the pending case did not seek confidential treatment of the response to data requests as required by the Commission rules when they were provided, which we believe, when

combined with the analysis now available to the Commission from the *Prof'l Firefighters of N.H* Court, distinguishes this case from the 2006 *Pennichuck* case.

7. The right-to-know law, the New Hampshire Constitution, Supreme Court precedent, and the interests of customers of public utilities all support a denial of the Motion.

WHEREFORE, the Town of Atkinson respectfully requests that this honorable Commission:

A. Issue an order denying the Company's request for confidential treatment of the responses to Staff 3-8 and Atkinson 5-38; and

B. Grant such additional relief as it deems appropriate.

Respectfully submitted,

Town of Atkinson, New Hampshire

By Its Attorneys



Douglas L. Patch
Orr & Reno, P.A.
45 S. Main St.
PO Box 3550
Concord, N.H. 03302-3550
(603) 223-9161
dpatch@orr-reno.com

Dated: October 6, 2021

Certificate of Service

I hereby certify that a copy of the foregoing Appearance has on this 6th day of October 2021 been sent by email to the service list in DW 20-117.

By:


Douglas L. Patch