

**STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

Aquarion Water Company of New Hampshire, Inc.

**DOCKET NO. DW 20-184**

NOTICE OF INTENT TO FILE RATE SCHEDULES

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

Aquarion Water Company of New Hampshire, Inc. (“Aquarion” or the “Company”) hereby requests that the New Hampshire Public Utilities Commission (“Commission”) grant protection from public disclosure of certain confidential, sensitive and proprietary information submitted in this docket pursuant to Puc 203.08 and RSA 91-A:5. Specifically, the Company requests that the Commission protect from public disclosure certain information redacted from the documentation provided in response to Puc 1604.01(a)(15), which requires that the Company provide “Copies of all officer and executive incentive plans.” As explained below, this information represents confidential commercial and financial information which should not be publicly disclosed. In support of this motion, Aquarion states as follows:

**I. LEGAL STANDARD**

Puc 203.08(a) states that 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.” The motion is to contain: “(1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought; (2) Specific reference to the statutory or common law support for confidentiality; and (3) A detailed

statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.” Puc 203.08(b).

RSA 91-A:5, IV exempts certain governmental records from public disclosure, including “[r]ecords pertaining to internal personnel practices; confidential, commercial, or financial information . . . ; and other files whose disclosure would constitute invasion of privacy.” In determining whether documents are entitled to exemption pursuant to RSA 91-A:5, IV, the Commission applies a three-step analysis to determine whether information should be protected from public disclosure. *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008); *see also Public Service Company of New Hampshire*, Order No. 25,313 (December 30, 2011) at 11-12. The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If such an interest is at stake, the second step is to determine if there is a public interest in disclosure. The Commission has stated that disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. If both steps are met, the Commission balances the privacy interest with the public interest to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 (November 9, 2010) at 3-4.

## **II. DESCRIPTION OF CONFIDENTIAL INFORMATION**

Consistent with the Commission’s requirement, in its filing requirements documents, Aquarion has provided a copy of its presently effective Employee Incentive Plan. That plan details the financial and operational targets and goals for the Company, the weighting and analysis of those targets and goals in determining incentives, and the application of the performance assessment to Company employees. This information is confidential information of

the Company that is not disclosed publicly, and is not, in fact, widely distributed even within the Company. As explained below in Section III, there is a privacy interest at stake in this confidential information where the privacy interest substantially outweighs any public interest in disclosure. In addition, public disclosure of the information is not necessary to inform the public of the conduct and activities of its government, and thus disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5.

### **III. DISCUSSION**

With respect to the privacy interest, the Company has a clear privacy interest in maintaining the confidentiality of its incentive plan. The Company regularly competes to attract and retain qualified and capable employees. The Company's ability to offer incentives to certain employees based upon the performance of the employee as well as the Company is a meaningful consideration in the Company to both attract and retain those employees. Making the exact terms and conditions of such a plan public will allow others to know and understand the Company's incentive structure and to undercut the Company's objectives with respect to its workforce.

Moreover, the incentive plan details various goals and targets that are internal to the Company and which are not shared publicly. Public disclosure of this information would cause competitive harm to Aquarion, whose competitors would gain insight into the Company's projections of potential earnings. Disclosure would also provide investors with non-public information regarding the relationship between the Company's actual financial condition and management's view of the Company's potential performance. Accordingly, the Company has a substantial interest in the privacy of the incentive plan information.

With respect to any public interest, in Aquarion's assessment, such interest is small. The various materials and information provided with the Company's filing provide ample information on the financial condition and performance of the Company as well as both general and specific compensation information for the Company's employees. Accordingly, there is significant information about the actual expenses of the Company, including those pertaining to employee compensation, and there is little additional value to be obtained from disclosing the specific terms of incentive plan itself. Moreover, disclosing the incentive plan will do little, if anything, to inform the public about the conduct of the Commission.

In weighing the relevant interests, the Company's interest in confidential treatment outweighs that of any public interest in disclosure. The potential for competitive harm, coupled with disclosure of non-public financial information, substantiates that the Company has a significant privacy interest as compared to only a minimal public one. Accordingly, disclosure of the Company's incentive plan information is not warranted.

For the above reasons, the Company respectfully requests that the Commission grant this motion for protective order.

**AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.**



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Dated: December 18, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.



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Matthew J. Fossum

December 18, 2020