

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES  
COMMISSION**

**DW 20-184**

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

**Request for Change in Rates**

**Order on Motion for Protective Order  
and Confidential Treatment**

**O R D E R N O. 26,935**

**January 19, 2024**

This order grants the Motion for Protective Order and Confidential Treatment filed by the Petitioner on December 18, 2020 and March 31, 2023<sup>1</sup>.

**I. PROCEDURAL HISTORY**

On December 18, 2020, Aquarion Water Company of New Hampshire, Inc. (“Aquarion” or “the Company”) filed a petition for change in rates (“Petition”), requesting that the New Hampshire Public Utilities Commission (“Commission”) approve and authorize a temporary and permanent rate change. The Company contemporaneously filed a motion for protective order and confidential treatment of employee incentive plans provided to the Commission in the Petition, the motion is unopposed. Aquarion filed a second motion for confidential treatment on March 31, 2023. Aquarion’s March 31, 2023 motion requests a protective order and confidential treatment for legal invoices and information pertaining to its vendors contract pricing billing and bank account information. The second motion is unopposed.

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<sup>1</sup> Docket DW 20-184 reflects a duplicate filing of the March 31, 2023 motion for confidential treatment occurred on June 9, 2023.

The Petition, motions, and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-184.html>.

## **II. POSITION OF THE COMPANY**

Aquarion requested protective orders applicable to three different categories of information. In support of these requests, Aquarion identified a legal basis for confidential treatment of each category of information and identified what harm would result if the information were to be publicly disclosed.

The first category of information is employee incentive plans. The plans detail the financial and operational targets and goals for the Company, the weighting and analysis of those targets and goals for determining incentives, and the application of the performance assessment to Company employees. Aquarion argued that protective treatment is appropriate under RSA 91-A:5, IV, because these plans allow the Company to compete and attract qualified employees and the Company has a substantial interest in the privacy of the incentive plan information. Aquarion asserts that the public interest in disclosure of the incentive plan is small.

The second category of information Aquarion sought confidential treatment for is information pertaining to the bidding processes and resulting contracts for the various third-party vendors hired by Aquarion. Aquarion argued that protective treatment is appropriate under RSA 91-A:5, IV, because the contract pricing and billing information contain banking and account information that are highly sensitive and confidential in nature. Disclosure would put the vendors accounts at risk for fraud and would make it difficult for Aquarion to retain sufficient trust and credibility to engage vendors in future business dealings. Furthermore, disclosure of

the negotiated prices would cause competitive harm to the vendors. Because the company does not seek to protect the total amount paid to its vendors the Company argued there is no public harm.

Finally, Aquarion is seeking confidential treatment of outside legal counsel, Keegan Werlin, invoices. Aquarion asserts that the invoices contain information that is confidential and exempt from disclosure under the attorney-client privilege and work product doctrine.

### **III. COMMISSION ANALYSIS**

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental agencies or “public bodies” such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5.

RSA 91-A:5, IV exempts several categories of information, including records pertaining to confidential, commercial, or financial information. The party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public’s interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof’l Firefighters of N.H. v. Local Gov’t Ctr.*, 159 N.H. 699, 707 (2010), and *N.H. Housing Fin. Auth.*, 142 NH 540 at 552, 555-59 (1997)). The New Hampshire Supreme Court and the Commission each apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 NH 375, 382–83 (2008).

The Commission’s rule on requests for confidential treatment reflects the three-step balancing test required by New Hampshire case law. See N.H. Code Admin. Rules Puc 203.08; *see also, e.g., Unitil Energy Systems, Inc.*, Order No. 25,214 (April

26, 2011) at 35. The rule requires the movant to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b). The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, 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. *Id.*

In both its December 18, 2020 motion filed with its rate case petition and its and March 31, 2023 motion filed with its rate expense request, Aquarion asserts that information regarding its compensation packages to employees, and information pertaining to its vendors, constitutes confidential, commercial, or financial information under RSA 91-A:5, IV. The Commission has routinely protected as confidential similar detailed information regarding employee compensation. *See, e.g., Pennichuck Water Works, Inc., Order No. 24,701 at 2 (November 22, 2006); Pennichuck Water Works, Inc., Order No. 26,383 (July 24, 2020) at 19; and Abenaki Water Company-Rosebrook, Order No. 26,696 (October 5, 2022).*

We agree with Aquarion that the information contained within the applicable filings in this docket constitutes confidential and sensitive commercial or financial information under RSA 91-A:5, IV, and that Aquarion has a privacy interest in protecting the details of employee incentive package and their vendor contracts and vendor billing. We therefore conclude that Aquarion's interest in nondisclosure of the information identified in its motions outweighs the public's interest in disclosure of

that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by Aquarion's privacy interests in information that, if disclosed, could pose legitimate financial harm to or privacy risk to Aquarion or its personnel and consultants, including the Company's competitive position in hiring employees and retaining experts in aid of its regulatory filings.

Concerning Aquarion's request to for confidential treatment of its legal billing, RSA 91-A:5, XII specifically exempt records protected under the attorney-client privilege or the attorney work product doctrine. Aquarion's legal billing it seeks to remain confidential includes information that is protected under the attorney-client privilege. Because this document is exempt from disclosure, an analysis under RSA 91-A:5, IV is unnecessary. It is found that the legal bills include attorney client work product and are therefore exempt.

Accordingly, pursuant to Puc 203.08(a), we grant Aquarion's motions for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

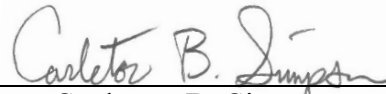
**Based on the foregoing, it is hereby**

**ORDERED**, that the Petitioner's December 18, 2020 and March 31, 2023 Motion for Protective Order and Confidential Treatment is **GRANTED**.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of January, 2024.



Daniel C. Goldner  
Chairman



Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 20-184

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