

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Lakes Region Water Company, Inc.

Docket No. 20 – 187

MOTION FOR CONFIDENTIAL TREATMENT

NOW COMES Lakes Region Water Co., Inc., (“Lakes Region”) and moves for confidential treatment of legal invoices that are “protected under the attorney-client privilege or the attorney work product doctrine” pursuant to Rule Puc 203.08 and RSA 91-A:5, XII as follows:

1. Commission Rule 203.08 (a) provides for confidential treatment of documents “upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted pursuant to (b) below.” Under Rule 203.08 (b), a motion seeking confidential treatment is required 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.

2. The New Hampshire Supreme Court and the Commission 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); *Abenaki Water Company, Inc.*, Order No. 25,840

(November 13, 2015) at 2. Under the balancing test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. *See, e.g., Order No. 25,840* at 2. 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.*

3. In 2021, the Legislature amended RSA 91-A:5 by the addition of subsection XII which expressly provides that: “Records protected under the attorney-client privilege or the attorney work product doctrine” are exempt from public disclosure. *RSA 91-A:5, XII; Laws of 2021, Chapter 162:2*. As a result, in the absence of a waiver of privilege by public disclosure, bills containing descriptions of legal services are considered confidential and exempt from disclosure under RSA 91-A. *See also Hampton Police Ass'n, Inc. v. Town of Hampton*, 162 N.H. 7, 16 (2011) (billing records that reveal “the specific nature of the services provided” are exempt from disclosure).

4. **Specific portions of documents, or a detailed description of the types of information for which confidentiality is sought.** Lakes Region’s request for approval of rate case expenses includes descriptions of legal services provided that include detailed descriptions of the specific nature of the legal services provided. Lakes Region maintains its bills for legal services as privileged and confidential and does not and has not disclosed these documents.

5. **Specific reference to the statutory or common law support for confidentiality.** As noted above, this information is exempt from disclosure under RSA

91-A:5, IV and the recent addition of RSA 91-A:5, XII and as explained in the *Hampton Police Association, supra*, 162 N.H. at 16.

6. **A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.** In the absence of confidentiality, Lakes Region's legal counsel would be ethically required by the duty of confidentiality under Rule 1.6 of the Rules of Professional Conduct to provide only generalized descriptions in order to avoid disclosure of confidential nature of the legal services provided. This would make it very difficult for Lakes Region to meaningfully review bills for legal services in order to track the costs of services provided. It would also frustrate the Commission's and the Department's ability to verify the reasonableness of costs incurred. Confidentiality of this information therefore serves the Company's goals of controlling costs and the Commission's goal of ensuring that rates approved are just and reasonable under RSA 378.

7. As a result, Lakes Region has prepared a public – redacted copy of the invoices included in support of its request for recovery of rate case expenses and has provided an unredacted copy to the Commission and to the Department of Energy marked as confidential pursuant to Rule Puc 203.08.

WHEREFORE Lakes Region Water Co., Inc., respectfully requests that the Commission: (a) grant this motion; (b) order that the description of legal services be treated as confidential information pursuant to RSA 91-A:5, IV & XII; and (c) grant such other relief as justice may require.

Respectfully submitted,

LAKES REGION WATER CO., INC.

By its Counsel,

NH WATER LAW



Dated: July 28, 2023

Justin C. Richardson
NHBA #12148
586 Woodbury Ave
Portsmouth, NH 03801
(603) 591-1241
justin@nhwaterlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service list for this proceeding.



Justin C. Richardson