

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

Abenaki Water Company and Aquarion Company
Request for Approval of Acquisition

Docket No. DW 21- 090

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT OF
DISCOVERY RESPONSES**

Abenaki Water Company (“Abenaki”) and Aquarion Company (“Aquarion”) (together, the “Joint Petitioners”), hereby request 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 Joint Petitioners request that the Commission protect from public disclosure certain information contained in the following discovery responses and attachments to discovery responses:

- a. The response to OCA 1-1, Attachment 1 providing employee hiring dates and employment status;
- b. The response to OCA 1-2, Attachment 3 providing Aquarion’s 2020 Audited Financial Statements and Aquarion and NESCC’s present and pro forma financial as filed on a confidential basis with the Connecticut Public Utilities Regulatory Authority (“PURA”);
- c. The response to OCA 1-8, Attachments 6 through 9 providing maps for each of Abenaki’s water systems;
- d. The response to OCA 2-3 providing employee compensation information; and
- e. The response to Staff 2-2, Attachments 1 and 2 providing updated versions of OCA 1-8, Attachments 6 and 8.¹

(collectively, the “Confidential Documents”).

As explained below, the Confidential Documents contain confidential commercial and financial information; non-public water system critical infrastructure information; and employee

¹ Staff 2-2, Attachments 1 and 2 were provided to improve the clarity of the documents but there were no substantive changes from the versions provided as OCA 1-8, Attachments 6 and 8.

personnel information the disclosure of which would constitute an invasion of privacy. In support of this motion, the Joint Petitioners state 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 shall 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 personnel . . . 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.

Further, the Commission has protected infrastructure information from disclosure pursuant to RSA 91-A:5, IV on security grounds when the information contained sufficient detail to constitute a security risk and that security risk outweighed the public's interest in disclosure. *Public Service Company of New Hampshire*, Order 26,350 (Apr. 22, 2020) at 9 (citing *Unitil Energy Systems, Inc.*, Order No. 24,677 (Oct. 6, 2006) at 14-15, 23, granting motion for confidential treatment of information regarding the electric distribution system that “disclose[s] 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”).

II. DISCUSSION

The Confidential Documents contain information that falls into three categories of confidential information. None of the information for which the Joint Petitioners seek protective treatment is publicly available. The legal basis for confidential treatment of the Confidential Documents is set forth below.

a. Employee Information

The response to OCA, Attachment 1 and the response to OCA 3-2 provide confidential employee information (hiring dates, employment status, and compensation) that constitute confidential personnel information protected by RSA 91-A:5, IV (“Records pertaining to internal personnel practices [and] personnel... files whose disclosure would constitute invasion of privacy”). Disclosure of employee information has been well established to constitute an invasion of privacy. *Public Service Company of New Hampshire*, Order No. 26,350 at 13 (April 22, 2020) (citing *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 477 (1996)). The disclosure of

individual employee names does not serve to inform the public about the Commission's regulatory activities regarding the Company, and therefore, the public's interest in disclosure of employee names is more minimal than the privacy interests of the individual employees. *Public Service Company of New Hampshire*, Order No. 26,350 (April 22, 2020) at 13. Based on this precedent, the Commission should protect the hiring dates, employment status and compensation information for the employees identified in the Confidential Documents.

b. Confidential Commercial and Financial Information

The response to OCA 1-2, Attachment 3 provides commercial and financial information that is confidential information protected by RSA 91-A:5, IV. This information was filed with the Connecticut PURA pursuant to a motion for protective treatment.² The information contained in this attachment is maintained as confidential information that is considered highly valuable to the marketplace. Disclosure of this non-public financial data would cause harm and place Aquarion and/or New England Service Company at a competitive disadvantage.

In the Commission's analysis, the privacy interests of the Joint Petitioners outweigh the public interest. If the Joint Petitioners' financial information contained in OCA 1-2, Attachment 3 were disclosed, the Joint Petitioners would have difficulty negotiating for the procurement of necessary services, materials and supplies from vendors in the future at the lowest cost, which would ultimately harm the Joint Petitioners' customers through higher prices for service. As such, any public interest in this information is substantially outweighed by the Joint Petitioners' privacy interest and the potential harm that would be caused by release of the information.

c. Confidential Infrastructure Information

The response to OCA 1-8, Attachments 6 through 9, and the response to Staff 2-2,

² The motion for protective treatment remains pending before Connecticut PURA. The Joint Petitioners respectfully request that the Commission defer to PURA's decision on this motion.

Attachments 1 and 2 provide confidential infrastructure information that is protected by RSA 91-A:5, IV. *See Aquarion Water Co. of New Hampshire, Inc.*, Order No. 25,863, at 1 (February 2, 2016). This information is also protected by RSA 91-A:5, VI as it pertains to “matters relating to the preparation for and the carrying out of all emergency functions... 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.” *See Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2006) (granting 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’”). The maps provided in response to OCA 1-8 and Staff 2-2 contain information that should be protected from disclosure because these maps provide specific details about Abenaki’s infrastructure; keeping this information confidential is critical to the safe and reliable operation of the water distribution system in Abenaki’s service territory and is necessary to keep the general public safe.

III. Conclusion

Based on the foregoing, the Joint Petitioners and their employees have privacy interests at stake that would be invaded by disclosure of the Confidential Documents. In addition, the disclosure of the Confidential Documents is not necessary to inform the public of the conduct and activities of its government and would not serve that purpose, and therefore disclosure is not warranted. *See Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. On balance, the harm that would result from public disclosure is substantially outweighed by the need for confidential treatment.

For the above reasons, the Joint Petitioners respectfully request that the Commission grant this motion for protective order.

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Respectfully submitted as of June 23, 2021, by

AQUARION COMPANY

By its attorneys,



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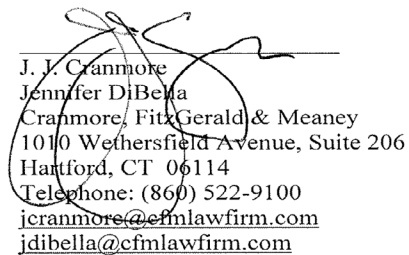


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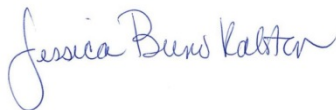
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Certificate of Service

I hereby certify that on June 23, 2021, a copy of this motion has been electronically forwarded to the service list in this docket.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style with a large initial 'J'.

Jessica Buno Ralston