

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

DW 21-115

Pennichuck Water Works, Inc.

Petition for Approval of Special Contract with Anheuser-Busch, LLC

Order on Motion for Protective Order and Confidential Treatment

O R D E R N O. 26,708

October 19, 2022

In this order the Commission grants, pursuant to N.H. RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08, a motion for a protective order and confidential treatment of certain customer account information filed by Pennichuck Water Works, Inc. (PWW, or the Company) in Docket No. DW 21-115.

I. PROCEDURAL HISTORY

On July 1, 2022, the Commission issued Order No. 26,647, on a *nisi* basis effective August 1, 2022, approving a fifth special contract (Fifth Contract) between PWW and Anheuser-Busch, LLC (AB), as amended by a settlement agreement (Settlement) reached between PWW and the NH Department of Energy (DOE). Order No. 26,647 also directed PWW to file, for Commission and DOE review, a reconciliation of the difference between the rates charged to AB under the temporarily extended fourth special contract¹ and the Fifth Contract, as amended, for the billing period July 1, 2021 to August 1, 2022.

On October 3, 2022, PWW filed a motion for protective order and confidential

¹ See Commission Order No. 26,496 issued in this proceeding on July 7, 2021, approving the extension of Special Contract No. 4.

treatment (Motion) regarding certain customer account information provided in response to an information request from the Commission in this proceeding. In its Motion, PWW stated that it had provided copies of bills that had been issued to AB in 2021 and 2022 during the applicable reconciliation period. PWW posited that the portions of the bills marked as confidential contain sensitive customer account information that PWW and AB do not disclose and in which AB has a privacy interest. Motion at ¶5.

No objections or comments were filed in response to PWW's motion.

The petition, motion, 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:

www.puc.nh.gov/Regulatory/Docketbk/2021/21-115.html.

II. 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 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)).

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); *Abenaki Water Company*, 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. 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.*

In its October 3, 2022 motion, PWW asserted that the Commission has historically found customer account information worthy of protection under the applicable balancing test. The Company further argued that “disclosure of the full account information could lead to a breach of privacy or make the accounts more vulnerable to cyber attack.” Motion at ¶6. Thus, PWW argues, the privacy interests of both AB and PWW in the full account number outweighs the public’s interest in that number.

We concur with PWW that the specific information at issue constitutes confidential, commercial information under RSA 91-A:5, IV, and that AB has a privacy interest in protecting sensitive details of its account information. We further note that individual customer data, including account numbers, is protected from disclosure without the express consent of the customer under RSA 363:37 and 363:38. Accordingly, we find that any public interest in the disclosure of the specific information that PWW seeks to protect is outweighed by AB’s privacy interest in that information.


Accordingly, we grant the motion for protective order and confidential


treatment. Consistent with past practice, 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 in light of RSA 91-A, should circumstances so warrant.


Based upon the foregoing, it is hereby

ORDERED, that Pennichuck Water Works, Inc.'s motion for a protective order and confidential treatment of specific customer account information submitted in Docket No. DW 21-115 is **GRANTED**, as set forth herein above.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of October, 2022.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 21-115

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