

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-029

Pennichuck Water Works, Inc.
Petition to Approve Special Contract with Town of Hudson

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
OF PROPRIETARY INFORMATION

NOW COMES, Pennichuck Water Works, Inc. (PWW), in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, and hereby moves the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment and issue an appropriate order to protect from public disclosure confidential commercial information and work product contained in the Company's live cost of service study. In support of its motion, PWW states as follows:

1. Contemporaneous with this motion, PWW is filing a settlement agreement that includes as an attachment a cost of service study conducted by Raftelis Financial Consultants (Raftelis).
2. In other dockets pertaining to PWW's request for approval of special contracts, the Commission has expressed a desire to receive the live workbooks of such cost of service studies. Therefore, PWW is providing the live workbook to assist the Commission in its review.
3. Raftelis considers the live formulas contained in the working model of its study to be proprietary and confidential, its work product, and a trade secret. Raftelis has a privacy interest in its proprietary software. Raftelis does not publicly disclose its software. Raftelis states disclosure of the live formulas in its working cost of service model would put it at a competitive disadvantage because it would give competitors the opportunity to use the methodologies and processes developed by Raftelis for their own financial gain. PWW states

that disclosure of the proprietary software could make it harder for rate-regulated utilities to obtain such studies. For these reasons, PWW asserts that Raftelis' commercial and financial interests with respect to this information significantly outweighs the public's interest in disclosure of Raftelis' software.

4. Pursuant to N.H. Admin. Rule Puc 203.08(a), "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...."

5. RSA 91-A:5, IV expressly exempts from the RSA Chapter 91-A public disclosure requirements any "records pertaining to ... confidential, commercial or financial information. . . ." RSA 91-A:5, IV.

6. The Commission employs a multi-part analysis to determine whether certain information qualifies for confidential treatment: (1) whether the information sought is confidential, commercial, or financial information; and (2) whether disclosure of that information would constitute an invasion of privacy. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,208 at 7-8 (March 23, 2011). An invasion of privacy analysis, in turn, requires an evaluation of three factors: (1) whether there is a privacy interest at stake that would be invaded by disclosure; (2) whether there is a public interest in disclosure; and (3) a balance of the public's interest in disclosure and the interests in nondisclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 109 (2005).

7. The Commission has considered these competing interests and has provided protection to similar live proprietary models of consultants or vendors used by regulated utilities. See most recently, *Pennichuck Water Works, Inc.*, Docket No. DW 22-032, Order No. 26,711

(October 24, 2022). See also *Unitil Energy Systems, Inc.*, Docket No. DE 05-178, Order No. 24,677 (October 6, 2006); *Norther Utilities, Inc.*, Docket No. DG 11-069, Order No. 25,251 (July 18, 2011). Specifically, in granting the protection, the Commission concluded that a regulated utilities' consultant's interest in keeping its proprietary software and work product protected outweighs the public's interest in disclosure of the same. Because the Commission has previously protected regulated utilities' consultant's live working models in the past, PWW respectfully requests that the Commission extend protective treatment to Raftelis' working model.

8. In compliance with Puc 203.08, PWW is submitting a public PDF version in addition to the confidential working Excel version. The file name of the PDF version references that it is PUBLIC; the file name of the Excel version references that it is CONFIDENTIAL. This labeling was done because, when printed, none of the formulas are printed and, therefore, there is nothing to redact on the physical hardcopies of the filings.

9. PWW contacted the Department of Energy (Department), Town of Hudson, and the Office of the Consumer Advocate (OCA) in advance of this filing to solicit positions on the relief requested. The Department and Town of Hudson responded that they take no position. PWW had not yet heard back from the OCA by the time of this filing.

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WHEREFORE, Pennichuck Water Works, Inc. respectfully requests the Commission:

- A. Grant protective treatment of Raftelis' working model; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorney,

N.H. Brown Law, PLLC

Date: November 14, 2022

By: *Marcia A. Brown*
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Certificate of Service

I hereby certify that a copy of this motion has been emailed to the Docket-Related Service List for this proceeding.

Date: November 14, 2022

Marcia A. Brown
Marcia A. Brown, Esq.