

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-032

Pennichuck Water Works, Inc.
Permanent Rate Proceeding

SECOND SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER
AND CONFIDENTIAL TREATMENT

NOW COMES, Pennichuck Water Works, Inc. (PWW), in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, hereby moves the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment and issue an appropriate order to protect from public disclosure certain confidential documentation of its rate case expenses. In support of its motion, PWW states as follows:

1. On October 24, 2022, in Order No. 26,711, the Commission approved PWW's motion for confidential treatment and protective order concerning certain officer and director compensation, salary, dates of employment, and job titles of salaried employees (Motion 1) and approved PWW's motion for confidential treatment of proprietary information in live Excel workbooks provided to the Commission (Motion 2).

2. Subsequent to that Order, on May 10, 2023, PWW filed a supplemental motion for confidential treatment and protective order for confidential compensation information provided in data responses that were being submitted as Hearing Exhibits 2 and 5. The Commission acknowledged the pending motion at hearing. See Hearing Transcript of May 31, 2023 at 5, lines 21-22. The Commission's ruling on this motion is still pending.

3. PWW hereby files this second supplemental motion for confidential rate case expense documentation that is being filed contemporaneously with this motion. Additionally,

PWW requests that the Commission extend the protective order to any discovery conducted on the confidential rate case expense documentation in which the discovery directly discusses the confidential documentation. Therefore, there are two categories of rate case expense documentation: the initial confidential redacted rate case documentation being filed with PWW's request for its rate case expense surcharge; and any subsequent redacted discovery requests and responses concerning the same, should discovery be conducted. PWW asks for the extension of protection so as to avoid the need for an additional supplemental motion for protective treatment post discovery. Redactions will make clear which discovery responses, if any, concern the confidential rate case expenses.

4. Pursuant to N.H. Code Admin. Rule Puc 201.04, the confidential information in the confidential version of the rate case expense documentation has been grey-shaded and "confidential" appears at the top of the affected pages. In the public version, the confidential information has been blacked-out and "redacted" appears at the top of the affected pages.

5. 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...."

6. RSA 91-A:5, IV expressly exempts from the RSA Chapter 91-A public disclosure requirements any "records pertaining to internal personnel practices [and] confidential, commercial or financial information. . . ." RSA 91-A:5, IV.

7. The New Hampshire Supreme Court and the Commission employ 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). See also *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008). 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). 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 of these 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. *Lambert*, 157 N.H. at 383.

8. The Commission has previously balanced the interest a utility and its service providers have in the confidentiality of legal fees against the public's interest in the disclosure of such information and has determined that the former interest outweighed the latter and that the exemption under RSA 91-A:5, IV applies to information concerning how much law firms charge utilities for legal services. See, e.g., *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11-12 (January 15, 2010). *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 at 10 (April 30, 2007) (The Commission stated that disclosure of information concerning legal billing rates of attorneys could “detrimentally impact” the competitive position of those attorneys in future negotiations. *Id.* at 9). *Unitil Energy Systems, Inc.*, DE 05-178, Order

No. 24,742 at 3-5 (April 13, 2007). PWW requests the Commission make a similar balance finding in favor of protecting PWW's legal vendor's derivation of its legal fees.

9. Additionally, while the public has an interest in rate case expenses, that interest is diminished as to the confidential information in that the total amount paid by PWW for legal services has been disclosed, along with the remainder of its rate case expenses. Therefore, even if the Commission protects from public disclosure the specific hourly rates and fee structure of PWW's attorneys and other vendors, the public will still have access to the totals of these expenses. Full disclosure of the fees will be provided to the Commission, the Department of Energy (Department) staff, and the Office of the Consumer Advocate (OCA) where the details of the rate case expenses will be subject to investigation and scrutiny. This scrutiny will give the public confidence that the detailed confidential information has been audited. Further, the Company sought competitive quotes and selected the lowest responsive vendor to provide the services sought.

10. Based on the foregoing, PWW requests that the Commission issue a protective order granting this motion and protecting from public disclosure the confidential rate case expense documentation identified in this motion.

11. PWW contacted the Department and the OCA for positions. The Department assents to the relief requested. PWW did not hear from OCA by the time of this filing.

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

- A. Grant this Motion; 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: August 28, 2023

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: August 28, 2023

Marcia A. Brown
Marcia A. Brown, Esq.