

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

DW 22-040

Pennichuck Water Works, Inc.

**Petition for Approval of Amendments to Special Contract
with Pennichuck East Utility, Inc.**

Order on Motion for Protective Order and Confidential Treatment

O R D E R N O. 26,727

November 18, 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 protective order and confidential treatment of certain proprietary information filed by Pennichuck Water Works, Inc. (PWW or the Company) in this docket.

I. PROCEDURAL HISTORY

PWW filed a petition (Petition) for amendments to its current special contract with Pennichuck East Utility, Inc. (PEU) on June 28, 2022. A prehearing conference was held in this proceeding on September 28, 2022. On October 5, 2022, pursuant to the prehearing conference, the Commission issued a record request (RR-1) for a 'live' model of the cost-of-service study on which the Company had based its June 28, 2022 filing. On October 12, 2022, PWW filed a response to RR-1 with a motion for protective order and confidential treatment (Motion) regarding certain proprietary software information and work product related to a cost-of-service study prepared by its consultant, Raftelis Financial Consultants (Raftelis), and provided in support of the Petition. According to PWW, the New Hampshire Department of Energy (DOE) took no position on the Motion, and the Office of the Consumer Advocate did not

respond prior to the filing of the Motion. No further filings were made by any party on the Motion.

The Motion and all 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/2022/22-040.html.

II. Motion for Protective Order and Confidential Treatment

In its Motion, PWW argued that Raftelis considers the live formulae contained in the working model of the cost-of-service study provided in response to RR-1 to be proprietary and confidential, and a work product and trade secret of Raftelis, who was retained by PWW to conduct the study. According to PWW, Raftelis has a privacy interest in its proprietary software, which it does not publicly disclose, and that disclosure of the live formulae would put it at a competitive disadvantage, as it would give competitors the opportunity to use the methodologies and processes developed by Raftelis for their own financial gain. PWW added that disclosure of Raftelis's proprietary software could make it harder for rate-regulated utilities to obtain such studies, and that Raftelis's commercial and financial interests outweigh the public's interest in disclosure.

III. 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, 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 (citing *Pennichuck East Utility, Inc.*, Order No. 25,758 at 4 (January 21, 2015)). 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 the Motion filed with its response to the Commission's record request, RR-1, PWW asserted that information pertaining to its consultant's proprietary formulae used to develop a cost-of-service study for the Company, constitutes confidential, commercial, or financial information under RSA 91-A:5, IV.

The Commission has routinely protected as confidential similar proprietary business models and software formulae used in support of utility rate filings in the past. *See, e.g.*, *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,208 (March 23, 2011); *Northern Utilities, Inc.*, Order No. 25,251 (July 18, 2011); *Abenaki Water Company*, Order No. 25,840 (November 13, 2015); *Liberty Utilities (Granite State*

Electric) Corp. d/b/a Liberty Utilities, Order No. 26,376 (June 30, 2020); and Pennichuck Water Works, Inc., Order No. 26,711 (October 24, 2022).

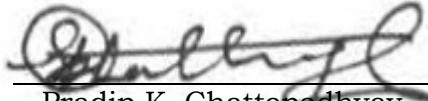
We agree with PWW that the information contained within its filing in this docket constitutes confidential and sensitive commercial or financial information under RSA 91-A:5, IV, and that PWW has a privacy interest in protecting the proprietary software of its consultant. We therefore conclude that the interest in nondisclosure of the information identified in PWW's Motion outweighs the public's interest in disclosure of that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by PWW's privacy interests in information that, if disclosed, could pose legitimate financial harm or privacy risk to PWW, including the retention of experts in aid of future regulatory filings.

Accordingly, pursuant to Puc 203.08(a), we grant PWW's motion for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), 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 under RSA 91-A, should circumstances so warrant.

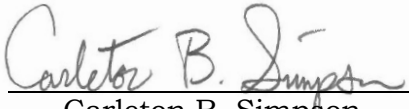
Based upon the foregoing, it is hereby

ORDERED, that Pennichuck Water Works, Inc.'s motion for confidential treatment and a protective order for certain proprietary software information submitted in Docket No. DW 22-040 is **GRANTED**, as set forth herein, above.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 2022.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

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