

TAB 4

Motion for Protective Order and Confidential Treatment

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 23-088

Pennichuck Water Works, Inc.
Pennichuck East Utility, Inc.
Pittsfield Aqueduct Company, Inc.

Request for Change in Rates

**JOINT MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
OF COMPENSATION, PAYROLL INFORMATION,
AND PROPRIETARY COST OF SERVICE MODEL**

NOW COMES, Pennichuck Water Works, Inc. (“PWW”), Pennichuck East Utility, Inc. (“PEU”), and Pittsfield Aqueduct Company, Inc. (“PAC”) (together, “the Companies”), in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, and hereby move the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment and issue an appropriate order to protect from public disclosure certain confidential compensation and payroll information and live cost of service models provided by the Companies in the instant rate case filing. In support of this motion, the Companies state as follows:

1. PWW has instituted a consolidated single tariff rate case proceeding to include the customers of PEU and PAC, which requires the filing of contents and documents pursuant to N.H. Admin. Rule Puc PART 1604. The Companies deem as confidential some of the information provided.

2. In particular, N.H. Admin. Rule Puc 1604.01(a)(14) (officer and director compensation); 1604.07(a)(5) and Puc 1604.07(j) (Schedule 1B-Payroll) require the provision of compensation and payroll data for the test period. This information is provided at Tab 11 (see,

Schedule 1B Support page 2, 3, and 4) and Tab 28 (Officer and Director Compensation) of the rate case filing.

3. As part of the request to charge PWW, PEU, and PAC's customers under a consolidated single tariff, the Companies are providing a cost of service study at Tab 10, the live proprietary model of which will be provided to the Commission, Department of Energy, and Office of the Consumer Advocate to assist in their analysis of the cost of service study.

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 internal personnel practices [and] 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, *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, the Companies respectfully request that the Commission extend protective treatment to Concentric Energy Advisors, Inc.'s live working model of its cost of service study provided in this case.

8. With respect to Puc 1604.01(a)(14) (Officer and Director Compensation) at Tab 28, the Companies seek to protect from public disclosure certain officer and director compensation that is not publicly reported. Compensation data is only publicly disclosed in the Proxy Statement for the Pennichuck Corporation Annual Meeting and as such, only the Chief Executive Officer's (CEO) and Chief Operating Officer's (COO) compensation is disclosed. The remaining officer and director information is not publicly disclosed. For this reason, the non-CEO and COO compensation information falls within the RSA 91-A:5, IV exemption because the information relates to internal personnel practices and is confidential financial information. Disclosing this information would result in an unwarranted invasion of the personal privacy of the officers and directors involved. The Companies do not otherwise publicly disclose this salary or compensation for the other officers and directors. The Companies aver that the subject officers and directors maintain their interests in the privacy of their compensation

information and that those interests are not outweighed by the public's interest in the data. The Commission has previously concluded that such officers and directors have a privacy interest in their personally identifiable financial information and that the subject officers and director's privacy interest outweighed the public's right to the data. See, *EnergyNorth Natural Gas d/b/a National Grid NH*, Docket No. DG 10-017, Order No. 25,119 at 11 (June 25, 2010). See also, *Pennichuck Water Works, Inc.*, Docket No. DW 22-032, Order No. 26,711 (October 24, 2022).

9. With respect to Puc 1604.07(a)(5) and Puc 1604.07(j) (Schedule 1B Support - Payroll), located at Tab 11, the Companies seek to protect from public disclosure salary, dates of employment, and job titles of its non-CEO and COO for the reasons stated for compensation data at Tab 28. The subject employee payroll information falls within the RSA 91-A:5, IV exemption because the information relates to internal personnel practices, is confidential financial information, and that its employees have a privacy interest in their pay data. "The privacy interest at stake concerns the individual's control of information about his or her person." Lamy, 152 N.H. at 110. The Companies do not make this information public because release of this information to the public could result in the identification of employees and their wages and this would invade the privacy of the employees. Disclosure would also cause competitive harm to the Companies because it would make it more difficult to attract or retain qualified employees. The Commission has previously concluded that a privacy interest in non-officer payroll information exists and that the interest would be invaded by disclosure to the public. See *EnergyNorth Natural Gas, Inc.*, DG 10-017, Order No. 25,119 at 8 (June 25, 2010). Further, the Commission has previously granted protective treatment to such data: "[i]t is a longstanding practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers." *Pennichuck Water Works, Inc.*, DW 06-073, Order No.

24,701 at 2 (November 22, 2006); *Pennichuck Water Works, Inc.*, DW 19-084, Order No. 26,383 (July 24, 2020) at 19; and *Pennichuck Water Works, Inc.*, DW 22-032, Order No. 26,711 (October 24, 2022).

10. Because the Commission has previously protected both types of compensation and salary data, the Companies respectfully request that the Commission extend protective treatment to the Companies' similar compensation and salary data in its rate case filing.

11. Pursuant to N.H. Admin. Rule Puc 203.08(f) and the Commission's temporary electronic filing requirements dated March 17, 2020, PWW is filing with the Commission a confidential version of the rate filing. The information sought to be protected at Tabs 11 and 28 is grey-shaded and "confidential" is noted on the affected pages. The Companies are also filing a redacted, public copy that contains blacked-out information and "redacted" on the affected pages. Due to the nature of the live cost of service Excel workbook at Tab 10, it is confidential in its entirety and therefore the file name is noted "confidential" and "redacted".

12. Based on the foregoing, the Companies request that the Commission issue a protective order granting this motion and protecting from public disclosure the confidential compensation and payroll information and live working model of the cost of service study identified in this motion.

13. The Companies contacted the Department of Energy (Department) and the Office of the Consumer Advocate (OCA). The Department did not respond by the time of this filing. The OCA objected to the relief requested.

<REMAINDER OF PAGE BLANK>

WHEREFORE, the Companies respectfully request the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment of Compensation and Payroll Information and the live working model of the cost of service study; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.
PENNICHUCK EAST UTILITY, INC.
PITTSFIELD AQUEDUCT COMPANY, INC.

By their Attorney,

N.H. Brown Law, PLLC

Date: November 21, 2023

By: *Marcia A. Brown*
Marcia A. Brown, Esq.
NH Brown Law, PLLC
20 Noble Street
Somersworth, NH 03878
(603) 219-4911

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 21, 2023

Marcia A. Brown
Marcia A. Brown, Esq.