

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

DW 17-165

ABENAKI WATER COMPANY - ROSEBROOK

Request for Change in Rates

DW 19-131

OMNI MOUNT WASHINGTON, LLC

**Complaint by Omni Mount Washington Hotel, LLC
against Abenaki Water Company, Inc.**

Order on Motions for Protective Order and Confidential Treatment

O R D E R N O. 26,696

October 5, 2022

In this order the Commission grants motions for a protective order and confidential treatment of certain information regarding employee-specific compensation and identification, attorney billing, and system maps and related infrastructure information filed by Abenaki Water Company (Abenaki) pursuant to NH RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08 in Docket Nos. DW 17-165 and DW 19-131.

I. PROCEDURAL HISTORY

On December 7, 2017, Abenaki Water Company, Inc. (Abenaki), now a subsidiary of Aquarion Water Company, Inc. (Aquarion, or the Company),¹ filed a petition (Petition) in Docket No. DW 17-165 asking the Commission to approve a change in rates for its Rosebrook water system in Bretton Woods, NH. On July 24, 2019, the Omni Mount Washington Hotel, LLC (Omni) in Bretton Woods filed a

¹ See Commission Order No. 26,549, issued on November 12, 2021, in Docket DW 21-090, finding Aquarion's acquisition of Abenaki to be in the public interest.

complaint against Abenaki in Docket No. DW 19-131 concerning a water main break in the Rosebrook system.

In the DW 17-165 and DW 19-131 proceedings, Abenaki submitted a total of three motions, including supplemental motions, filed in one or both dockets for confidential treatment or protective orders regarding detailed drawings, maps, and facility plans related to its Rosebrook water system, and four motions, including amended and supplemental motions, filed in Docket No. DW 17-165 for confidential treatment or protective orders regarding rate case expense filings, including information related to compensation and personal data of Abenaki employees and attorney billing.² Abenaki stated its intent to enter into non-disclosure agreements with certain intervenors to permit access to the system maps, plans, and related drawings in Docket No. DW 17-165. October 2019 Motion at ¶8–9, filed concurrently in Docket Nos. DW 19-131 and DW 17-165. At the prehearing conference held on January 6, 2020, in DW 19-131, Omni supported Abenaki’s October 2019 Motion. Tr. at 4. In that motion, Abenaki noted that the Office of the Consumer Advocate objected to the Company’s request for confidential treatment at the time of filing.

On August 22, 2022, Abenaki filed a letter dated August 19, 2022, confirming the motions that remained outstanding in Docket Nos. DW 17-165 and DW 19-131. On August 23, 2022, the NH Department of Energy (DOE), a party-participant in both the DW 17-165 and DW 19-131 proceedings, filed a letter stating that it does not object to any of the motions for confidential treatment or protective orders listed in the Company’s August 19, 2022, letter. No other objections or comments in response

² On October 1, 2019, Abenaki filed a Motion for Protective Order *Nunc Pro Tunc* and Confidential Treatment (dated September 30, 2019) for facility plans pertaining to information attached to Omni’s complaint in Docket DW 19-131 (October 2019 Motion). The Company supplemented its motion on March 24, 2021 (dated March 23, 2021) and June 16, 2021.

to Abenaki's August 19, 2022, letter requesting Commission approval of the motions were filed in either docket.

The petitions, motions, objections, 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:

<https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-165.html> and

<https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-131.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 to internal personnel practices; confidential, commercial, or financial information; and personnel files. In each instance, 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 at 2 (November 13, 2015). 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.*

A. Attorney Billing and Employee Compensation Information

In its motions concerning rate case expenses submitted in Docket No. DW 19-131, Abenaki argued that invoices from its attorneys contained confidential and competitively sensitive hourly billing rate information, and private, non-officer employee-specific compensation information and taxpayer identification information that the Company does not disclose to the public. Abenaki stated that its practice is to provide the total amount paid for legal services, along with a description of those services, as well as total expenses incurred to pay non-officer employees, and that its practice is to maintain such information in confidence. Abenaki argued that disclosure would constitute an invasion of privacy to those employees and could undermine Abenaki's ability to hire and retain employees, thereby resulting in competitive harm to the Company.

The Commission generally has protected as confidential detailed information about individual utility employee compensation information, including attorney billing, as unlikely to inform the public of the Commission's regulatory activities. *See, e.g., Liberty Utilities (Granite State Electric Corp.) d/b/a Liberty Utilities*, Order No. 26,376 (June 30, 2020).

Here, the public has an interest in understanding how the various expenses of a regulated utility such as Abenaki are incurred. Nonetheless, when weighed against the privacy interest in protecting salary and compensation information of employees, we

find the balance favors non-disclosure of the identified information. See Order No. 26,376 (June 30, 2020) (protecting employee compensation, the disclosure of which may cause harm to competitive position of a utility).

Abenaki argues that attorney billing rates are “confidential, commercial, or financial information” and that confidential treatment of that information would be consistent with RSA 91-A and prior Commission orders. The Commission has previously held such hourly billing rate information exempt from disclosure. See, e.g., *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,586 at 4–5 (October 22, 2013) (citing *Unitil Energy Systems, Inc.*, Order No. 24,746 (2007)); and DW 17-128 *Pennichuck East Utility, Inc.*, Order No. 26,222 (February 26, 2019). We find that disclosure of billing rates could result in a competitive disadvantage to attorneys hired by Abenaki. Further, there is no indication that disclosure of the information would inform the public about the workings of the Commission. Abenaki has provided total invoice amounts from its attorney to inform the public of its expenses and we deem this sufficient for purposes of informing the public. We therefore grant the Company’s motion with respect to the employee compensation and attorney billing information.

B. Details of Abenaki Water System and Infrastructure Facilities

In its August 19, 2022, letter filed concurrently in Docket Nos. DW 17-165 and DW 19-131, Aquarion, on behalf of Abenaki, further asserted that certain information regarding its water system and infrastructure facilities provided to parties through discovery and relied upon by the Commission in these proceedings constitutes confidential, commercial, or financial information under RSA 91-A:5, IV.

Here, too, the Commission routinely protects as confidential detailed information regarding utility infrastructure and specific internal operational and

financial information. *See, e.g., New Hampshire Regulated Utilities*, Order No. 25,457 at 8 (January 18, 2013) (concerning the October 2011 snowstorm and requests for confidential treatment of system information); *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,863 at 2 (February 1, 2016) (granting confidential treatment for utility system diagrams and system circuit maps); *Unitil Energy Systems, Inc.*, Order No. 24,677 (Oct. 6, 2006) at 14–15, 23 (granting confidential treatment of electric distribution system information that “disclose[d] detailed information as to how the distribution system is designed and configured, revealing key components and their locations”).

We agree with Abenaki that the information contained within the applicable filings in Docket Nos. DW 17-165 and DW 19-131 constitutes confidential, commercial information under RSA 91-A:5, IV. Abenaki has a privacy interest in protecting the details of its water system infrastructure. Given the general interest in protecting the integrity of utility systems from potential harm or disruption, we conclude that Aquarion Water Company’s interest on behalf of Abenaki Water Company in nondisclosure of the information identified in its motions outweighs the public’s interest in disclosure of that information. Accordingly, although the public may have an interest in information concerning Abenaki’s system infrastructure to aid in its understanding of the Commission’s analysis of the issues presented in these proceedings, we find that the public’s interest in disclosure of the detailed plans and maps in this case is outweighed by Abenaki’s privacy interest in information that, if disclosed, could result in commercial harm, or pose legitimate public safety and security risks.

Accordingly, we grant the motions for 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 Aquarion Water Company's motions on behalf of Abenaki Water Company for protective orders or confidential treatment of information submitted in Docket Nos. DW 17-165 and DW 19-131 to inform the Commission of Abenaki's system requirements and certain costs of operations and adjudication are GRANTED, as set forth herein above.

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



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket# : 17-165

Printed: 10/6/2022

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Service List - Docket Related

Docket# : 19-131

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