

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

DW 21-090

Abenaki Water Company and Aquarion Company

Request for Approval of Acquisition

Order on Motion for Protective Order and Confidential Treatment

O R D E R N O. 26,791

March 29, 2023

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 a protective order and confidential treatment of certain personnel, financial, and system infrastructure information, filed jointly by Abenaki Water Company (Abenaki) and Aquarion Company (Aquarion) (together, the Petitioners) in Docket No. DW 21-090.

I. PROCEDURAL HISTORY

On June 23, 2021, the Petitioners jointly¹ filed a motion for a protective order and confidential treatment (Motion) of certain information provided in response to discovery requests in this docket. In their Motion, the Petitioners identify discovery responses that contain confidential commercial and financial information; non-public critical system infrastructure information; and employee personnel information, the disclosure of which they assert would constitute an invasion of privacy. Motion at 1-2. No objections or comments were filed in response. Later in this proceeding, the Petitioners filed a second motion for confidential treatment regarding certain

¹ Abenaki is now a subsidiary of Aquarion. See Commission Order No. 26,549 (November 12, 2021), finding Aquarion's acquisition of Abenaki to be in the public interest.

infrastructure information, including maps and As-Built plans of Abenaki's system and facilities. That motion was addressed in Order No. 26,706, issued on October 18, 2022. To the extent there may be any overlap in the information addressed in Order No. 26,706 and the present order, this order does not conflict with the earlier findings.

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/2021/21-090.html.

II. MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

A. Employee Information

The Petitioners assert that certain employee information provided through discovery² concerning hiring dates, employment status, and compensation constitutes confidential personnel information protected by RSA 91-A:5, IV ("Records pertaining to internal personnel practices [and] personnel . . . files whose disclosure would constitute invasion of privacy"), and disclosure of that information would not serve to inform the public about the Commission's regulatory activities pertaining to the Petitioners. The Petitioners further assert that the public's interest in disclosure of employee names is more minimal than the privacy interests of the individual employees, citing *Public Service Company of New Hampshire*, Order No. 26,350 at 13 (April 22, 2020) (citing *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 477 (1996)). Accordingly, the Petitioners argue that the Commission should protect that information.

² Specifically, information provided in response to data requests OCA 1-1, Attachment 1 (providing employee hiring dates and employment status) and OCA 2-3 (providing employee compensation information).

B. Commercial/Financial Information

The Petitioners also assert that certain commercial and financial information included in financial reports and pro forma statements provided through discovery³ is considered highly valuable in the marketplace and constitutes confidential information protected by RSA 91-A:5, IV. The Petitioners argue that disclosure of the identified non-public financial data would cause harm by placing Aquarion and/or Abenaki at a competitive disadvantage in the marketplace.

C. Infrastructure Information

Finally, the Petitioners argue that their discovery responses pertaining to confidential system infrastructure information⁴ are protected by RSA 91-A:5, IV as they pertain to “matters relating to the preparation for and the carrying out of all emergency functions....” The Petitioners assert that maps provided for each of Abenaki’s water systems should be protected because they disclose specific details about Abenaki’s infrastructure, and that keeping such information confidential is critical to the safe and reliable operation of Abenaki’s system and necessary for public safety.

III. LEGAL STANDARD

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 confidential, commercial, or financial information, and personnel files whose disclosure would constitute an invasion of

³ Discovery responses included Aquarion’s 2020 Audited Financial Statements and current and pro forma financials filed on a confidential basis with the Connecticut Public Utilities Regulatory Authority.

⁴ Specifically, information provided in response to OCA 1-2, Attachment 3 and Staff 2-2, Attachments 1 and 2 (providing updated responses to OCA 1-8, Attachments 6 and 8, including maps for each of Abenaki’s water systems).

privacy. RSA 91-A:5, VI exempts records pertaining to the preparation for and carrying out of emergency functions developed by local and state safety officials.

A party seeking protection of information under RSA 91-A:5, IV must show 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 has instituted 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 and is exempt from disclosure. *Lambert v. Belknap County Convention*, 157 NH 375, 382–83 (2008). Under this test, the first step is to determine whether the information involves a privacy interest. *Id.* The second step is to determine whether there is a public interest in disclosure. Finally, one must balance the competing interests and decide 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.*

IV. COMMISSION ANALYSIS

The Commission routinely protects detailed information regarding utility infrastructure and specific internal operational and financial information. *See, e.g., New Hampshire Regulated Utilities*, Order No. 25,457 at 7 (January 18, 2013) (October 2011 snow storm and requests for confidential treatment of system information); *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,863 at 2 (February 1, 2016) (confidential treatment for infrastructure information); *Unitil Energy Systems, Inc.*, Order No. 24,677 (October 6, 2006) at 14–15 (confidential treatment of . . . system

information that “disclose[d] detailed information as to how the distribution system is designed and configured, revealing key components and their locations”).

We find that the information contained in the applicable discovery responses filed in this proceeding constitutes confidential, commercial and/or financial information pursuant to RSA 91-A:5, IV. Aquarion and Abenaki each have a privacy interest in protecting the details of Abenaki’s water system infrastructure, as well as the detailed financial and personnel information provided through discovery. As we stated recently in a separate proceeding regarding similar, detailed information pertaining to Abenaki’s system infrastructure, given the general interest in protecting the integrity of utility systems from potential harm or disruption, we conclude that the Petitioners’ interest in nondisclosure outweighs the public’s interest in disclosure of that information. *See DW 17-165 Abenaki Water Company – Rosebrook and DW 19-131 Omni Mount Washington, LLC, Order No. 26,696 (October 5, 2022) at 6.*

Accordingly, although the public may have an interest in the detailed information concerning the Petitioners’ systems and operations to aid in its understanding of the Commission’s analysis of the issues presented in this proceeding, we find that the public’s interest is outweighed by the Petitioners’ privacy interest in information that, if disclosed, could pose legitimate financial, as well as public safety and security risks.

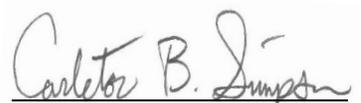
We therefore grant the motion. Consistent with past practice, the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order pursuant to RSA Chapter 91-A, should circumstances so warrant.

Based upon the above, it is

ORDERED, that the motion filed by Aquarion Water Company and Abenaki Water Company for a protective order and confidential treatment of certain information submitted in Docket No. DW 21-090 is **GRANTED**, as set forth herein above.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of March, 2023.


Daniel C. Goldner
Chairman


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 21-090

Printed: 3/29/2023

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