

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

RE: PENNICHUCK WATER WORKS, INC.  
DOCKET NO. DW 10-091

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

Pennichuck Water Works, Inc. ("Pennichuck" or the "Company"), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the "Commission") to grant confidential treatment to certain hourly billing rate information provided to the Commission staff ("Staff") and Office of Consumer Advocate ("OCA") in the above-captioned docket. In support of its motion, Pennichuck states as follows:

1. On June 20, 2011, Pennichuck submitted its rate case expense in the above-referenced docket, including supporting invoices, to the Staff and OCA as part of the rate case expense discovery process. The supporting invoices comprised, among other items, invoices from Pennichuck's attorneys, McLane, Graf, Raulerson, and Middleton Professional Association, and Pennichuck's consultants, AUS Consultants and Guastella Associates, that contain confidential and competitively sensitive hourly billing rate information.
2. In its cover letter submitting the rate case expense and invoices, Pennichuck indicated that some of the invoices contain confidential and proprietary rate information, and that the Company intended to file a motion for protective treatment pursuant to Puc 203.08.
3. Disclosure of this hourly billing rate information will cause competitive harm to Pennichuck's attorneys and consultants. The information is not publicly available, and disclosing it would put Pennichuck's attorneys and consultants at a competitive disadvantage by divulging to their competitors the rates they charge for their services. For example, the McLane

Law Firm has numerous competitors within and beyond New Hampshire for legal work, and disclosure of the firm's hourly billing rates for attorney services would harm its competitive position when bidding or negotiating for business in the future.

4. Accompanying this motion are redacted and confidential copies of the information referred to above. Pennichuck prepared these redacted and confidential materials in accordance with Interim Rule Puc 201.04(b)(2)b and (c)(2)(b). In doing so, Pennichuck redacted only information that would allow a reader to determine the billing rates of the Company's attorneys and consultants, including hourly rates and the number of hours worked. Pennichuck is not seeking confidential treatment of any of the amounts billed by the attorneys and consultants (i.e., neither for individual billing entries on a given day or for the total amounts on any bills), and therefore the dollar amounts will remain publicly available if the Commission grants this motion.

5. RSA 91-A:5, IV states, in relevant part, that records pertaining to "confidential, commercial, or financial information" are exempt from public disclosure when such disclosure would constitute an invasion of privacy. The Commission has routinely recognized that this exemption applies to hourly billing rate information. *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); *Unitil Energy Systems, Inc.*, DE 05-178, Order No. 24,742 at 3-5 (April 13, 2007). Specifically, the Commission has balanced the interest that a utility and its service providers have in the confidentiality of hourly billing information against the public's interest in the disclosure of such information and determined that the former interest outweighs the latter. *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).

6. The Commission has specifically granted confidential treatment to attorney billing rates in prior cases due to the commercially sensitive nature of the information. In *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 (April 30, 2007), the Commission considered the movant's argument that disclosure of the hourly billing rates of its outside attorneys could "detrimentally impact" the competitive position of those attorneys in future negotiations. *Id.* at 9. The Commission agreed, recognizing that "the public's interest in review of this financial, commercially sensitive information" is insufficient to "outweigh the benefit derived from maintaining the confidentiality of such information." *Id.* at 10; *see also EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11 (January 15, 2010)(finding the company's contention that disclosure of billing rates would cause harm to attorneys and consultants "credible" and concluding that the company's interest in confidentiality outweighed the interest of the public in disclosure).

7. The McLane Law Firm also routinely competes for work of the nature performed in this case in Massachusetts, and the Massachusetts Department of Public Utilities has protected the billing rates of outside consultants, including attorneys, from public disclosure because such information constitutes "confidential, competitively sensitive, or proprietary" information under G.L. c. 25 § 5D. *Petition of Massachusetts Electric Company and Nantucket Electric Company*, D.P.U. 09-39, Hearing Office Ruling on Motions for Confidential Treatment at 3, 5 (April 15, 2010).

8. Furthermore, as noted above, Pennichuck is seeking the narrowest protection possible by requesting confidential treatment only for information that would allow a reader to

determine the billing rates of the Company's attorneys and consultants, leaving the dollar amounts billed by the attorneys and consultants publicly available. The Commission has granted confidential treatment to attorney and consultant billing rates when such aggregate cost information is publicly disclosed. *See, e.g., Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 at 10 (April 30, 2007); *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 12 (January 15, 2010).

9. As noted in paragraph 2, Pennichuck indicated in its cover letter submitting rate case expense and invoices that it intended to file a motion for protective treatment pursuant to Puc 203.08. Although the rule provides that such a motion should be submitted "at or before the commencement of the hearing in such proceedings," it does not prescribe or contemplate a time period for those instances where confidential information is submitted as part of discovery that occurs following a hearing. Puc 203.08(d)(2). The Company believes that the purpose and intent of Puc 203.08(d)(2) is satisfied in this instance because this motion is being filed prior the Commission's issuing an order related to the rate case expense phase of this proceeding. (It is not clear at this time whether a hearing will be held regarding rate case expense, although that has not typically occurred in other rate cases before the Commission.) If the Commission determines that a waiver of the timing requirement in Puc 203.08 is required in this instance, then Pennichuck respectfully requests that the Commission waive that aspect of the rule in order to allow the filing of this motion prior to issuance of a Commission order relating to rate case expense, the issue that necessitated the disclosure of the information that is the subject of the motion.

10. Pursuant to Puc 201.05(a) the Commission may waive any of its rules if "(1) [t]he waiver serves the public interest; and (2) [t]he waiver will not disrupt the orderly and

efficient resolution of matters before the commission.” The Commission has held that, in determining public interest under Puc 201.05, the Commission is to consider whether compliance with the rule would be onerous or inapplicable given the circumstances or whether the purpose of the rule would be satisfied by an alternative method proposed. *See EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,119 (June 25, 2010). In this case, because the discovery material at issue was provided after the hearing on the merits and a further hearing may not be held, the requirement that motions be submitted at or prior to the hearing appears to be inapplicable. Furthermore, the purpose of the rule will be satisfied by permitting Pennichuck to submit this motion for confidential treatment because this proceeding remains open while the Commission considers the Company’s request for recovery of rate case expense, and neither the general public nor any party to this proceeding is prejudiced by submitting the motion at this time.

11. For the reasons stated above, Pennichuck requests that the Commission issue a protective order granting this motion and protecting from public disclosure the confidential commercial information described above. The protective order should also be extended to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, Pennichuck respectfully requests that the Commission:

- A. Issue an order protecting the information described above; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

Pennichuck Water Works, Inc.

By Its Attorneys

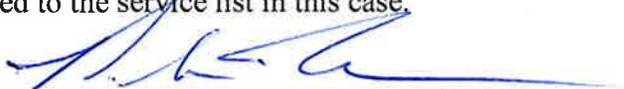
MCLANE, GRAF, RAULERSON &  
MIDDLETON, P.A.

Dated: August 16, 2011

By:   
Steven V. Camerino, Esq.  
Patrick H. Taylor, Esq.  
11 South Main Street, Suite 500  
Concord, NH 03301  
Telephone (603) 226-0400  
Email: steven.camerino@mclane.com

**Certificate of Service**

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been electronically served and mailed to the service list in this case.

  
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Patrick H. Taylor, Esq.