

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Re: City of Nashua Acquisition of Pennichuck Corporation

DOCKET DW 11-026

**MOTION FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION
RESPONSIVE TO DATA REQUESTS OCA 1-28 AND OCA 2-4**

Pennichuck Corporation (“Pennichuck”) hereby moves the New Hampshire Public Utilities Commission (the “Commission”) pursuant to Puc 203.08 to grant the following confidential information protective treatment in the above captioned proceeding: (i) non-officer employee compensation information Pennichuck provided in its response to Data Request OCA 1-28 and (ii) forward-looking financial information Pennichuck provided in its response to Data Request OCA 2-4. With respect to the forward-looking financial information, Pennichuck requests protective treatment only through and until the closing on the City of Nashua and Pennichuck merger. In support of this motion, Pennichuck states as follows:

1. On March 25, 2011 and in connection with the Joint Petition for Approval of the Acquisition of Pennichuck Corporation by the City of Nashua (the “Joint Petition”), the Office of Consumer Advocate (“OCA”) propounded its first set of data requests on the Joint Petitioners -- the City of Nashua (the “City”), Pennichuck and Pennichuck affiliates who are intervenors in this proceeding.

2. On April 22, 2011, the OCA propounded its second set of data requests on the Joint Petitioners.

3. Certain data requests issued by the OCA included requests for confidential and commercially sensitive financial information. Specifically, Data Request OCA 1-28 sought compensation information relating to Pennichuck employees receiving cash or other

consideration upon approval and/or consummation of the merger between the City and Pennichuck. Data Request OCA 2-4 sought Pennichuck's financial projections for the years 2012 through 2014, including projections considering the City's ownership of Pennichuck.

4. Pennichuck provided responses to Data Requests OCA 1-28 and OCA 2-4 to the OCA during the discovery phase of this proceeding, but asserted confidentiality with regard to a portion of the information provided.

5. On October 25, 2011, the Commission held a hearing on the Joint Petition, during which the Commission granted Pennichuck leave to submit this motion within one week of the hearing.

6. RSA 91-A:5, IV expressly exempts from public disclosure any "records pertaining to internal personnel practices [and] confidential, commercial or financial information. . . ." NH RSA 91-A:5, IV. The Commission's decision to protect such information involves "a balancing of the benefits of disclosure to the public against the benefits of nondisclosure to the utility." *Public Service Company of New Hampshire*, 79 NH PUC 379, 379 (1994) (citing *New England Telephone and Telegraph Company, Inc.*, 74 NH PUC 307 (1989)) (internal quotation marks omitted). As set forth in more detail below, Pennichuck's responses to Data Requests OCA 1-28 and OCA 2-4 contain confidential non-officer employee compensation information and forward-looking financial data that require protective treatment and fall under the exemption set forth in RSA 91-A:5, IV.

7. Non-officer employee compensation is exempt under RSA 91-A:5, IV. "It is a long-standing practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers." *Pennichuck Water Works, Inc.*, 91 NH PUC 562, 562 (2006) (citing *Union Telephone Co*, 81 NH PUC 525, 526 (1996) and *Pennichuck*

Water Works, Inc., 86 NH PUC 764, 765 (2001)). It is sufficient that the utility maintains the privacy of its non-officer employee compensation information for RSA 91-A:5, IV to apply. See *Pennichuck Water Works, Inc.*, 91 PUC at 562. Pennichuck's response to Data Request OCA 1-28 includes confidential stock option information relating to its non-officer employees, including the identities of relevant employees, total number of options held by each employee and total net value at the merger/consolidation price. This information falls squarely within the RSA 91-A:5, IV exemption because it is compensation information relating to Pennichuck's non-officer employees and private information that Pennichuck maintains in confidence and does not otherwise release to the public.

8. The disclosure of non-officer employee compensation data will not provide the public with any meaningful additional information regarding the Commission's review of the matters at issue in this proceeding or otherwise advance any significant public interest. On the other hand, releasing such compensation information to the public would violate the reasonable privacy expectations of its employees and could be disruptive to the relations among Pennichuck employees and Pennichuck and its employees and undermine Pennichuck's ability to hire and retain employees. These potential consequences would cause harm to Pennichuck's competitive position. See *Pennichuck Water Works, Inc.*, 91 NH PUC at 562; *Pennichuck Water Works, Inc.*, 86 NH PUC at 764-75. Thus, any minimal benefit to the public arising from Pennichuck's public disclosure of its stock option and compensation information is outweighed by the significant benefits of nondisclosure of the information -- namely, maintaining the privacy of Pennichuck non-officer employees, protecting Pennichuck's competitive position and avoiding other potential harms caused by public disclosure. Accordingly, the Commission should grant

protective treatment of the confidential information provided in Pennichuck's response to Data Request OCA 1-28.

9. RSA 91-A:5, IV exempts confidential financial information from the public disclosure requirement, and the Commission has previously ruled that forward-looking financial information and projections are among the information protected by the exemption. *See City of Nashua*, 91 NH PUC 33 (2006) (forward-looking financial information granted confidential treatment). Pennichuck's response to Data Request OCA 2-4 includes forward-looking financial information, including information relating to its budget, operating expenses, revenue and balance sheets, for the future period in 2011 and for years 2012 through 2014. Pennichuck does not release this information to the public because it is material non-public information of a publicly traded entity, which release could potentially mislead and harm the investing public. *See City of Nashua*, 91 NH PUC at 33 (potential harms of disclosing forward-looking financial information to the public include harm to the utilities' investors). While the public may have an interest in accessing the forward-looking financial information and projections at issue, that interest is outweighed by the significant potential harm disclosure would cause to the investing public upon disclosure. Accordingly, the Commission should grant protective treatment of the confidential information provided in Pennichuck's response to Data Request OCA 2-4.

10. As noted earlier, Pennichuck seeks protective treatment of the forward-looking information provided in its response to Data Request OCA 2-4 only through and until the conclusion of the closing on the City and Pennichuck merger. This request for limited protective treatment is intended to correspond with the remaining period when Pennichuck will be publicly traded and is consistent with the City's commitment to subject Pennichuck to the New Hampshire Right-to-Know Law upon taking ownership of Pennichuck.

11. Pennichuck requests that copying, duplication, dissemination or disclosure in any form should be prohibited, except for use in this proceeding as part of a closed record or subject to similar protections. 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 a protective order to prohibit disclosure of Pennichuck's confidential information submitted in response to Data Requests OCA 1-28 and OCA 2-4 as described herein; and
- B. Grant such other relief as is just and equitable.

Dated: October 31, 2011

Respectfully submitted,

PENNICHUCK CORPORATION

By Its Attorneys,

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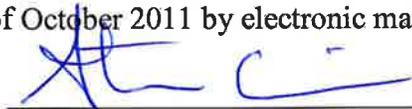
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion has been forwarded to the parties on the service list this 31st day of October 2011 by electronic mail.



Steven V. Camerino