

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DW 10-141
Lakes Region Water Company, Inc.

MOTION FOR CONFIDENTIAL TREATMENT

NOW COMES the Lakes Region Water Company by and through Upton & Hatfield, LLP and moves for confidential treatment as follows:

1. Lakes Region Water Company files this motion for confidential treatment of description of legal services included in the Company's documentation of its rate cases expenses. The Company requests confidential treatment as this information is maintained as confidential and has not been disclosed to the public under RSA 91-A:5, IV and PUC Rule 203.08.

2. The Commission will note that the Company has redacted information that is privileged from its confidential filing. RSA 541-A:33, II, provides that agencies "shall give effect to the privilege recognized by law." The lawyer-client privilege established by NH Rule of Evidence 502 and by the Common Law is a privilege recognized by law. Rule 502(b) provides:

(b) *General Rule of Privilege.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or his or her representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) by the client or the client's representative or the client's lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

3. The lawyer-client privilege applies in all legal proceedings. NH Rule of Evidence 1101(b) & (c); RSA 541-A:33, II; *Prof. Fire Fighters v. Local Government Center*, ___ N.H. ___ (May 11, 2012).

4. As part of their representation of Lakes Region Water Company, Upton & Hatfield, LLP and Shaheen & Gordon, PA prepared billing statements that include summaries that, if disclosed, would reveal litigation strategy and the nature of the legal services provided. In the case of *Hampton Police Assoc. v. Hampton*, 162 N.H. 7 (2011), the New Hampshire Supreme Court found such information to be privileged, stating:

We hold, however, that the attorney-client privilege *may* apply to information in a billing record that reveals “the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law.” *Clarke*, 974 F.2d at 129; *see Chaudhry*, 174 F.3d at 402; *In re Gibco, Inc.*, 185 F.R.D. 296, 299 (D.Colo.1997); *Maxima*, 641 A.2d at 984; *Hewes v. Langston*, 853 So.2d 1237, 1248-49 (Miss.2003) (billing statements that provided “an hour-by-hour rendition of the work performed for a client,” including identifying, by name, the people with whom the attorney talked, the topics they discussed, the subjects the attorney researched and the papers he reviewed “necessarily reveal[ed] strategies, confidential communications, and the thought processes behind the representation” and were privileged from disclosure).

5. Disclosure of privileged information generally waives the privilege. Rule 502(a)(5). As a result, the Company has redacted limited portions of the legal descriptions that, if disclosed, would undermine the confidential nature of legal services.

6. However, Lakes Region Water Company recognizes that redaction of all privileged information would impair the Commission Staff’s ability to verify the rate case expenses to be recovered. Therefore, the Company has generally limited its redactions and requests its submissions be treated as confidential information under RSA 91-A:5, IV

and the Supreme Court's decision in the *Prof. Firefighters* case, *supra*, which recognized such information as confidential under RSA 91-A:5, IV.

7. To the extent a party desires to review information designated as confidential, Lakes Region requests that the Commission grant this motion and order that confidential information be provided subject to the Acknowledgment of Confidential Information as set forth in Exhibit A. The Company will then provide copies of its confidential filing subject to the terms specified therein.

8. To the extent that a party seeks disclosure of redacted privileged information, Lakes Region Water Company requests that the Commission designate legal counsel to review *in camera* the entry and advise the Commission accordingly.

WHEREFORE, the Lakes Region Water Company respectfully requests that the Commission:

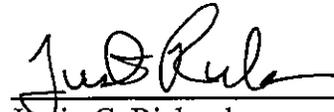
- A. Grant this Motion for Confidential Treatment and Protective Order; and
- B. Grant such other relief as justice may require.

Respectfully submitted,

**LAKES REGION WATER
COMPANY, INC.**

By its Counsel,

UPTON & HATFIELD, LLP



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Dated: August 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service list for DW 10-141.



Justin C. Richardson

EXHIBIT A

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

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ACKNOWLEDGEMENT OF CONFIDENTIAL INFORMATION

1. I acknowledge receipt of information that Lakes Region Water Company has designated as confidential and that my use of such information is governed hereby.

2. I hereby confirm and reiterate that:
 - A. I will maintain the confidentiality of the Confidential Information. I will use, store and maintain such information so as to safeguard against the disclosure of such Confidential Information.

 - B. I will use any Confidential Information imparted to me only for the purpose of the above proceeding. Use of such Confidential Information in the proceeding shall be governed by the Commission's Rules.

 - C. At the conclusion of the proceedings, I will return or destroy all Confidential Information and all documents containing such Confidential Information and certify the same to Lakes Region Water Company.

 - D. I agree that my obligation to maintain the confidentiality of Confidential Information provided to me is subject to the continuing jurisdiction of the New Hampshire Public Utilities Commission. I further recognize and agree that this Acknowledgment may be enforced by the Commission or by Petition to the Merrimack or Carroll County Superior Court.

Signature: _____
Name: _____
Home Address: _____
Employer: _____
Position: _____
Employer's Address: _____
Date: _____