

TAB 4

Motion for Protective Order and Confidential Treatment

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 19-084

Pennichuck Water Works, Inc.
Rate Proceeding

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
OF COMPENSATION AND PAYROLL INFORMATION**

NOW COMES, Pennichuck Water Works, Inc. (“PWW”), in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment and issue an appropriate order to protect from public disclosure certain confidential payroll information provided by PWW in its instant rate case filing. In support of its motion, PWW states as follows:

1. PWW has instituted a rate case proceeding which requires it to provide contents and documents pursuant to N.H. Admin. Rule Puc PART 1604. PWW deems some of the information provided to be confidential.

2. In particular, N.H. Admin. Rule Puc 1604.01(a)(14) (officer and director compensation); 1604.07(a)(5) and Puc 1604.07(j) (Schedule 1B-Payroll) require PWW to provide compensation and payroll data for the test period. PWW is providing the information at Tabs 11 and 28 of its rate case filing.

3. Pursuant to N.H. Admin. Rule Puc 203.08(a), “the commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law....”

4. RSA 91-A:5, IV expressly exempts from the RSA Chapter 91-A public disclosure requirements any “records pertaining to internal personnel practices [and] confidential, commercial or financial information. . . .” RSA 91-A:5, IV.

5. The Commission employs a multi-part analysis to determine whether certain information qualifies for confidential treatment: (1) whether the information sought is confidential, commercial, or financial information; and (2) whether disclosure of that information would constitute an invasion of privacy. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,208 at 7-8 (March 23, 2011). An invasion of privacy analysis, in turn, requires an evaluation of three factors: (1) whether there is a privacy interest at stake that would be invaded by disclosure; (2) whether there is a public interest in disclosure; and (3) a balance of the public’s interest in disclosure and the interests in nondisclosure. *Lamy v. N.H. Pub. Util. Comm’n*, 152 N.H. 106, 109 (2005).

6. With respect to Puc 1604.01(a)(14) (officer and director compensation) at Tab 28, PWW seeks to protect from public disclosure certain officer and director compensation that is not reported in PWW’s Annual Report. The subject compensation information falls within the RSA 91-A:5, IV exemption because the information relates to internal personnel practices and is confidential financial information. Disclosing this information would result in an unwarranted invasion of the personal privacy of the officers and directors involved. PWW does not publicly disclose the full annual salaries or total compensation for its officers and directors who are not listed in PWW’s Annual Report. PWW avers that the subject officers and directors maintain their interests in the privacy of their compensation information and that those interests are not outweighed by the public’s interest in the data. The Commission has previously concluded that such officers and directors have a privacy interest in their personally identifiable financial

information and that the subject officers and director's privacy interest outweighed the public's right to the data. See, *EnergyNorth Natural Gas d/b/a National Grid NH*, Docket No. DG 10-017, Order No. 25,119 at 11 (June 25, 2010).

7. With respect to Puc 1604.07(a)(5) and Puc 1604.07(j) (Schedule 1B - Payroll), located at Tab 11, Schedule 1, Attachment F, Pages 3 and 4, PWW seeks to protect from public disclosure salary and job titles. The subject employee payroll information falls within the RSA 91-A:5, IV exemption because the information relates to internal personnel practices, is confidential financial information, and that its employees have a privacy interest in their pay data. "The privacy interest at stake concerns the individual's control of information about his or her person." Lamy, 152 N.H. at 110. PWW does not make this information public because release of this information to the public would result in the identification of employee wages and this would invade the privacy of PWW employees. Disclosure would also cause competitive harm to PWW because it would make it more difficult to attract or retain qualified employees. The Commission has previously concluded that a privacy interest in non-officer payroll information exists and that the interest would be invaded by disclosure to the public. See *EnergyNorth Natural Gas, Inc.*, DG 10-017, Order No. 25,119 at 8 (June 25, 2010). Further, the Commission has previously granted protective treatment to such data: "[i]t is a longstanding practice of the Commission to grant confidential treatment to compensation data as to specific utility employees who are not officers." *Pennichuck Water Works, Inc.*, DW 06-073, Order No. 24,701 at 2 (November 22, 2006).

8. Because the Commission has previously protected both types of compensation and salary data, PWW respectfully requests that the Commission extend protective treatment to PWW's similar compensation and salary data in its rate case filing.

9. Pursuant to N.H. Admin. Rule Puc 203.08(f), PWW is providing the Commission with seven confidential copies of the rate filing. The information sought to be protected is grey-shaded and “confidential” is noted on the affected pages. PWW is also providing one redacted, public copy that contains blacked-out information and “redacted” on the affected pages.

10. Based on the foregoing, PWW requests that the Commission issue a protective order granting this motion and protecting from public disclosure the confidential payroll information identified in this motion.

WHEREFORE, Pennichuck Water Works, Inc. respectfully requests the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment of Compensation and Payroll Information; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorney,

N.H. Brown Law, PLLC

Date: July 1, 2019

By: *Marcia A. Brown*
Marcia A. Brown, Esq.
NH Brown Law, PLLC
20 Noble Street
Somersworth, NH 03878
(603) 219-4911

Certificate of Service

I hereby certify that a copy of this motion has been emailed to the Docket-Related Service List for this proceeding.

Date: July 1, 2019

Marcia A. Brown
Marcia A. Brown, Esq.