

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 20-153

Pittsfield Aqueduct Company, Inc.
Permanent Rate Proceeding

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT OF
HOURLY BILLING RATE DATA**

NOW COMES, Pittsfield Aqueduct Company, Inc. (PAC or Company) in accordance with N.H. Admin. Rule Puc 203.08 and RSA Chapter 91-A and hereby motions the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment to certain hourly billing rate data provided as part of PAC's rate case expense filing. In support of its motion, PAC states as follows:

1. Pursuant to PART Puc 1900 and Order No. 26,544, dated November 9, 2020, the Commission ordered PAC to file its rate case expense documentation. On December 9, 2021, the Company filed its rate case expense documentation, proposed surcharge, and proposed tariff supplement.

2. As part of PAC's rate case documentation, PAC provided confidential and redacted copies of legal bills from NH Brown Law, PLLC. These legal bills contained confidential and competitively sensitive hourly billing rate information. The legal vendor and PAC do not disclose this confidential commercial information to the public. Disclosure of this information would reveal the competitive rates of this legal vendor, would be an invasion of this vendor's privacy as to its billing rates, and would result in competitive harm to the vendor. Disclosure of this information would cause competitive harm because it would allow the public

and other vendors of legal services to determine the billing rates of PAC's attorneys and, specifically, the hourly billing rates and the number of hours worked.

3. Pursuant to N.H. Code Admin. Rule Puc 201.04, the confidential information in the confidential version of the rate case expense documentation has been grey-shaded and "confidential" appears at the top of the affected pages. In the public version, the confidential information has been blacked-out and "redacted" appears at the top of the affected pages. The affected pages of the rate case expense documentation filing are pages 15 through 32.

4. PAC seeks protection of the above information under RSA 91-A:5. RSA 91-A:5, IV has been interpreted as requiring analysis of both whether the information sought is "confidential, commercial, or financial information," and whether disclosure would constitute an invasion of privacy. See, RSA 91-A:5, IV and *Union Leader Corp. v. New Hampshire Housing Financing Authority*, 142 N.H. 540, 552 (1997) citing *Perras v. Clements*, 127 N.H. 603, 605 (1986). 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 non-disclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 113 (2005). The Commission has stated that 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. *Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. If both of these steps are met, the Commission balances the privacy interest with the public interest to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 (November 9, 2010) at 3-4.

5. The Commission has previously balanced the interest 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 has determined that the former interest outweighed the latter and that the exemption under RSA 91-A:5, IV 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) (The Commission stated that disclosure of hourly billing rates of outside attorneys could “detrimentally impact” the competitive position of those attorneys in future negotiations. *Id.* at 9). *Unitil Energy Systems, Inc.*, DE 05-178, Order No. 24,742 at 3-5 (April 13, 2007). PAC requests the Commission make a similar balance finding in favor of protecting PAC’s legal billing information.

6. Additionally, while the public has an interest in rate case expenses, that interest is diminished as to the confidential information in that the total amount paid by PAC for legal services is disclosed, along with the remainder of its rate case expenses. Therefore, if the Commission protects from public disclosure the specific hourly rates of PAC’s attorneys, the public will still have access to the totals of these expenses. Furthermore, full disclosure of the hourly billing rates will be provided to the Commission, Department of Energy Staff, and the Office of the Consumer Advocate, where the details of the rate case expenses will be subject to investigation and scrutiny. This scrutiny will give the public confidence that the detailed confidential information has been audited.

7. In conclusion, PAC requests the Commission issue a protective order consistent with existing precedent so as to prevent public disclosure of the above-described confidential commercial rate case expense information.

WHEREFORE, PAC respectfully requests the Commission:

- A. Grant its motions for protective treatment; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PITTSFIELD AQUEDUCT COMPANY, INC.

By Its Attorney,

Date: December 21, 2021

By: *Marcia A. Brown*
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion for protective order and confidential treatment has been forwarded this day by electronic transmission to the Docket-Related Service List for DW 20-153.

Dated: December 21, 2021

Marcia A. Brown
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