

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-040

Pennichuck Water Works, Inc. and Pennichuck East Utility, Inc.
Petition to Amend Special Contract

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
OF PROPRIETARY INFORMATION

NOW COMES, Pennichuck Water Works, Inc. (PWW) and Pennichuck East Utility, Inc., in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, hereby move the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment and issue an appropriate order to protect from public disclosure confidential commercial information and work product contained in the Companies' response to the Commission's Record Request (RR-1). In support of its motion, PWW and PEU state as follows:

1. As part of its petition, as allowed by N.H. Admin. Rule Puc 203.059(a)(7), PWW provided a PDF version of the cost of service study supporting the proposed amended rates. This study was conducted by Raftelis Financial Consultants (Raftelis).

2. On October 5, 2022, the Commission issued a record request wherein it requested an electronic, live working model of the cost of service study conducted for PEU's proposed special contract rates. Raftelis considers the live formulas contained in the working model of its study to be proprietary and confidential, its work product, and a trade secret. Raftelis has a privacy interest in its proprietary software. Raftelis does not publicly disclose its software. Raftelis states disclosure of the live formulas in its working cost of service model would put it at a competitive disadvantage because it would give competitors the opportunity to use the methodologies and processes developed by Raftelis for their own financial gain. PWW states

that disclosure of the proprietary software could make it harder for rate-regulated utilities to obtain such studies. For these reasons, PWW asserts that Raftelis' commercial and financial interests with respect to this information significantly outweighs the public's interest in disclosure of Raftelis' software.

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 ... 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. The Commission has provided protection to similar live proprietary models of consultants or vendors used by regulated utilities. See *Unitil Energy Systems, Inc.*, Docket No.

DE 05-178, Order No. 24,677 (October 6, 2006); Norther Utilities, Inc., Docket No. DG 11-069, Order No. 25,251 (July 18, 2011). In so doing, the Commission has previously balanced the privacy interests at stake with the public's interest in disclosure and concluded that a regulated utilities' consultant's interest in keeping its proprietary software and work product protected outweighs the public's interest in disclosure of the same. Because the Commission has previously protected regulated utilities' consultant's live working models in the past, PWW and PEU respectfully request that the Commission extend protective treatment to Raftelis' working model provided in response to RR-1.

7. In compliance with Puc 203.08, PWW and PEU are submitting a public PDF version of RR-1 in addition to the confidential working Excel version. The file name of the PDF version references that it is PUBLIC; the file name of the Excel version references that it is CONFIDENTIAL. This labeling was done because, when printed, none of the formulas are printed and, therefore, there is nothing to redact on print-outs.

8. Based on the foregoing reasons, PWW and PEU request that the Commission issue a protective order granting this motion and protecting from public disclosure Raftelis' live software work product.

9. PWW contacted the Department of Energy (Department) and the Office of the Consumer Advocate (OCA). The Department responded that it takes no position. PWW had not yet heard back from the OCA by the time of this filing.

WHEREFORE, Pennichuck Water Works, Inc. and Pennichuck East Utility, Inc.

respectfully request the Commission:

- A. Grant protective treatment of Raftelis' working model; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.
PENNICHUCK EAST UTILITY, INC.

By its Attorney,

N.H. Brown Law, PLLC

Date: October 12, 2022

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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: October 12, 2022

Marcia A. Brown
Marcia A. Brown, Esq.