

DW 04-001

ATKINSON WOODS WATER, LLC

Petition for Permanent Rates and Financing Approval

Order Granting Confidential Treatment

ORDER NO. 24,364

August 26, 2004

I. REQUEST FOR CONFIDENTIAL TREATMENT

On July 12, 2004, Atkinson Woods Water, LLC (Atkinson) filed with the New Hampshire Public Utilities Commission (Commission) a request for confidential treatment of certain information submitted in response to data requests propounded by Commission Staff (Staff) in this rate proceeding. Staff had requested certain tax returns of Hall Farm Realty Trust (Hall Farm), a related party and the former owner of Atkinson. Atkinson responded stating that Hall Farm did not file tax returns but rather the owners filed “their proportion share of Hall Farm’s revenue and expenses as part of their individual tax returns.” *See* July 12, 2004 letter of Stephen P. St. Cyr on behalf of Atkinson.

With his letter, Mr. St. Cyr enclosed the 1998 Form 1040 – Schedule C of Ernest M. Cherry, Jr. and Carole A. Cherry, principals of Hall Farm, subject to confidential treatment pursuant to N.H. Admin. Rules, Puc 204.06. Atkinson asserts that the information should be granted confidential treatment because it is Mr. Cherry’s personal information, it includes real estate transactions and it does not identify costs specific to the water system.

Staff, on July 19, 2004, submitted a letter to the Commission in which it concurred with the request for confidential treatment. No other party filed a response to the request.

II. LEGAL STANDARD

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "and whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). "An expansive construction of these terms must be avoided," lest the exemption "swallow the rule." *Id.* at 552-53 (citations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citations omitted).

Our applicable rule is designed to facilitate the employment of this balancing test. We require a motion for confidentiality to contain (1) the specific documents or portions thereof for which confidential treatment is sought, (2) reference to statutory or common law authority favoring confidentiality, (3) "[f]acts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public," and certain evidence. N.H. Admin. Rules, Puc 204.06(b). The

evidence must go to the issue of whether the information "would likely create a competitive disadvantage for the petitioner." *Id.* at (c).

III. COMMISSION ANALYSIS

RSA 91-A and Puc 204.06 authorize the Commission to protect information from public disclosure in limited circumstances. The information in this case is contained within a portion of the personal tax return filed by a former owner and principal of the water utility but is not a water utility document in and of itself. The information clearly meets the test of financial information, disclosure of which would constitute an invasion of privacy. Mr. and Mrs. Cherry are in the construction and real estate development business and would likely be put at a competitive disadvantage to have to disclose personal financial information. In balancing the public's interest in disclosure against the Cherrys' interest in non-disclosure, we conclude that the public's interest in disclosure is not sufficient and, will, therefore, grant the request for confidential treatment pursuant to Puc 204.06.

Based upon the forgoing, it is hereby

ORDERED, that the request for confidential treatment of Atkinson Woods Water, LLC regarding 1998 Form 1040 - Schedule C is APPROVED; and it is

FURTHER ORDERED, that the determination granting confidential treatment herein be subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff or any member of the public to reconsider such determination in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth
day of August, 2004.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Attested by:

Lori Normand
Assistant Secretary?