

**STATE OF NEW HAMPSHIRE BEFORE THE
PUBLIC UTILITIES COMMISSION**

DW 20-117

HAMPSTEAD AREA WATER COMPANY, INC

Request for Change in Rates

Order on Motion for Confidential Treatment

O R D E R N O. 26,741

December 6, 2022

In this order the Commission grants, pursuant to N.H. RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08, a request for confidential treatment of certain proprietary information, including service agreement expenses, filed by Hampstead Area Water Company, Inc. (HAWC or the Company) at the initiation of this docket.

I. PROCEDURAL HISTORY

HAWC filed its petition for a change in rates (Petition) in this docket on November 24, 2020. With its Petition, the Company filed a motion (Motion) for protective order and confidential treatment of certain financial information related to costs accrued pursuant to a Management/Service/Rental Agreement (Agreement) with Lewis Builders Development, Inc. (LBD) and Lewis Equipment Company, Inc. (Lewis Equipment) concerning certain expenses incurred during the test year underlying the Petition rate case (Motion). The Motion stated that HAWC, LBD, and Lewis Equipment are related parties.

The motions and all other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at: www.puc.nh.gov/Regulatory/Docketbk/2020/20-117.html.

II. MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

In its Motion, HAWC argued that RSA 91-A:5, IV expressly exempts from public disclosure requirements any “records pertaining to internal personnel practices [and] confidential, commercial or financial information . . .” Motion at Bates Page 12, ¶5. HAWC stated that Commission Rule Puc 1604.01(a) requires the Company to provide supporting information, contents, and documents in rate case proceedings, and that the Company deems some of the required information to be confidential. Specifically, HAWC argued that Exhibits 1 and 2 of Schedule A of the Agreement filed in support of its Petition contain confidential, commercial or financial information that reveals terms of the management and billing services encompassed in the Agreement. On March 11, 2021, the staff of the then-Commission, now the staff of the New Hampshire Department of Energy (DOE), filed a report on a technical session held in this proceeding on February 10, 2021. The DOE stated in its report that the participants in the technical session requested Commission approval of the Company’s revised motion filed as on March 10, 2021.

III. COMMISSION ANALYSIS

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an “analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy.” *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations 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 (citation

omitted).

In furtherance of the Right-to-Know law, the burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002). RSA 91-A:5, IV expressly exempts from public disclosure requirements any “records pertaining to ... confidential, commercial or financial information ...” In determining whether commercial or financial information should be deemed confidential and private, we consider the three-step analysis applied pursuant to the Commission’s rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08. The rule is designed to facilitate the balancing test required by the relevant case law by requiring petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. *See* Puc 203.08(b).

In its November 24, 2020 motion, HAWC asserted that certain information contained in its Agreement with LBD and Lewis Equipment regarding management and billing services constitutes confidential, commercial, or financial information under RSA 91-A:5, IV. Accordingly, HAWC requested confidential treatment of aggregated labor burden and overhead costs for the year 2019 provided pursuant to Puc 1604.01, which pertain to the requirements for a full rate case filing.

The Commission has protected detailed financial information regarding management and billing service rates as confidential in the past. *See, e.g.,* Atkinson Area Waste Water Recycling, Inc., Order No. 26,547 at 7 (November 9, 2021) (granting confidential treatment for “identified labor burden and overhead rate documentation”).

Here, HAWC asserts that the aggregated information provided is “confidential commercial or financial information that reveals terms of such management and billing services.” Motion at Bates Page 13.

While we agree that the information contained in Schedule A, Exhibits 1 and 2 attached to the Agreement constitutes commercial or financial information, we note that HAWC argues that the information “reveals terms of such management and billing services” encompassed in the Agreement, but has neither identified any specific “terms” that it has a privacy interest in protecting, nor provided a persuasive argument that the annual aggregate costs of the identified management and billing services will harm specific terms of the Agreement. However, given the recommendation of the then-Commission staff (now the Department of Energy) to grant the motion, and the lack of any objection to the motion in question from any party to this proceeding, we grant HAWC’s motion for protective order and confidential treatment in this instance, without prejudice.

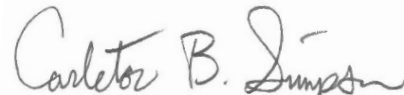
Based upon the foregoing, it is hereby

ORDERED, that Hampstead Area Water Company, Inc.’s motion for confidential treatment and a protective order for certain management and billing service information submitted in this docket is **GRANTED**, without prejudice, as set forth herein, above.

By order of the Public Utilities Commission of New Hampshire this sixth day of December, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

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Docket#: 20-117

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