

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

IR 21-024

Abenaki Water Company

Investigation into Water Pressure Issue in the Rosebrook Water System

DW 21-090

**Petition for Approval of the Acquisition of Abenaki Water Company
by Aquarion Company**

Order on Motion for Protective Order and Confidential Treatment

O R D E R N O. 26,706

October 18, 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 motion for a protective order and confidential treatment of certain infrastructure information filed by Aquarion Water Company, Inc. (Aquarion, or the Company) in Docket Nos. IR 21-024 and DW 21-090.

I. **PROCEDURAL HISTORY**

On May 12, 2022, Aquarion filed a motion for protective order and confidential treatment (Motion) regarding certain infrastructure information provided in Docket Nos. IR 21-024 and DW 21-090 on behalf of Abenaki Water Company, Inc. (Abenaki), now a subsidiary of Aquarion.¹

In its Motion, Aquarion stated that it had agreed, pursuant to a settlement agreement (Settlement) reached in Docket No. DW 21-090, to numerous reporting obligations to address concerns raised by the N.H. Department of Energy (DOE)

¹ See Commission Order No. 26,549, issued on November 12, 2021, in Docket DW 21-090, finding Aquarion's acquisition of Abenaki to be in the public interest.

Division of Enforcement in its “Investigation Report of Water Pressure Reduction Matter in Rosebrook Water System” filed on August 31, 2021, in Docket No. IR 21-024. Pursuant to those requirements, Aquarion stated that it had “prepared system maps for the Abenaki water systems that show water mains, hydrants, valves, wells, treatment/pumping facilities, and tanks” (Maps), and filed those Maps with the requisite reporting and timeline updates on May 12, 2022, in both dockets pursuant to N.H. Code Admin. Rules Puc 203.02 and 203.08. No objections or comments were filed in response to Aquarion’s May 12, 2022, motion for a protective order to preserve the confidential treatment of the identified information in each docket.

The petitions, motions, objections, and 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/2021/21-024.html and
www.puc.nh.gov/Regulatory/Docketbk/2021/21-090.html.

II. COMMISSION ANALYSIS

RSA Chapter 91-A ensures public access to information relative to the conduct and activities of governmental agencies or “public bodies” such as the Commission. Disclosure of records may be required unless the information is exempt from disclosure under RSA 91-A:5. RSA 91-A:5, IV exempts several categories of information, including records pertaining confidential, commercial, or financial information. The party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public’s interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. 345, 355 (2020) (citing *Prof’l Firefighters of N.H. v. Local Gov’t Ctr.*, 159 N.H. 699, 707 (2010)).

The New Hampshire Supreme Court and the Commission each apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the scope of RSA 91-A:5, IV. *Lambert v. Belknap County Convention*, 157 NH 375, 382–83 (2008); *Abenaki Water Company, Inc.*, Order No. 25,840 (November 13, 2015) at 2. Under the balancing test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Order No. 25,840 at 2. The Commission then balances those competing interests and decides whether disclosure is appropriate. *Id.* When the information involves a privacy interest, 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. *Id.*

A. Details of the Abenaki Water System and Infrastructure Facilities

In its May 12, 2022, motion filed concurrently in Docket Nos. IR 21-024 and DW 21-090, Aquarion asserted that certain information regarding its water system and infrastructure facilities submitted in response to reporting requirements established in Docket No. DW 21-090, including “copies of completed As-Built plans with updates and corrections” provided to parties through discovery and relied upon by the Commission in those proceedings, constitutes confidential, commercial, or financial information under RSA 91-A:5, IV.

The Commission routinely protects confidential detailed information regarding utility infrastructure and specific internal operational and financial information. *See, e.g., New Hampshire Regulated Utilities*, Order No. 25,457 at 7 (January 18, 2013) (October 2011 snow storm and requests for confidential treatment of system information); *Aquarion Water Company of New Hampshire, Inc.*, Order No. 25,863 at 2 (February 1, 2016) (granting confidential treatment for infrastructure information);

Unitil Energy Systems, Inc., Order No. 24,677 (October 6, 2006) at 14–15 (granting confidential treatment of electric distribution system information that “disclose[d] detailed information as to how the distribution system is designed and configured, revealing key components and their locations”).

We agree with Aquarion that the information contained within the applicable filings in Docket Nos. DW 21-090 and IR 21-024 constitutes confidential, commercial information under RSA 91-A:5, IV. Abenaki has a privacy interest in protecting the details of its water system infrastructure. As we stated recently in Order No. 26,696 regarding the similar information pertaining to Abenaki’s water infrastructure, given the general interest in protecting the integrity of utility systems from potential harm or disruption, we conclude that Aquarion’s interest in nondisclosure of the information identified in its motion outweighs the public’s interest in disclosure of that information. *See DW 17-165 Abenaki Water Company – Rosebrook* and *DW 19-131 Omni Mount Washington, LLC*, Order No. 26,696 (October 5, 2022) at 6.

Accordingly, although the public may have an interest in information concerning Abenaki’s system infrastructure to aid in its understanding of the Commission’s analysis of the issues presented in these proceedings, we find that the public’s interest in disclosure of the detailed maps showing specific locations of specific assets is outweighed by Aquarion’s privacy interest in information that, if disclosed, could raise security and safety concerns and pose legitimate public safety and security risks.

Accordingly, we grant the motion for protective order and confidential treatment. Consistent with past practice, the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

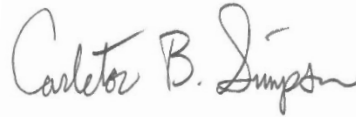
Based upon the foregoing, it is hereby

ORDERED, that Aquarion Company's motion on behalf of Abenaki Water Company for a protective order and confidential treatment of information submitted in Docket Nos. IR 21-024 and DW 21-090 is GRANTED, as set forth herein above.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 21-024

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Service List - Docket Related

Docket#: 21-090

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