

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

DW 22-032

Pennichuck Water Works, Inc.

Request for Change in Rates

Order on Motions for Protective Order and Confidential Treatment

O R D E R N O. 26,711

October 24, 2022

In this order the Commission grants, pursuant to N.H. RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08, two motions for protective orders and confidential treatment of certain proprietary information filed by Pennichuck Water Works, Inc. (PWW, or the Company) in this docket.

I. PROCEDURAL HISTORY

PWW filed a petition for a change in rates (Petition) on June 27, 2022. With its Petition, the Company filed a motion for protective order and confidential treatment of compensation and payroll information (Motion 1).

At the prehearing conference held in this proceeding on September 7, 2022, the Commission made a record request (RR-1) for a 'live' model of PWW's cost of service study, on which the Company had based its June 27, 2022 rate case filing. On September 21, 2022, PWW filed a response to RR-1 with a motion for protective order and confidential treatment (Motion 2) regarding certain proprietary software information related to its most recent cost of service study.

At the September 7 prehearing conference, the Commission asked the Office of the Consumer Advocate (OCA) and the NH Department of Energy (DOE) for their

respective positions on Motion 1. The OCA stated that it had no objection, as the Commission has typically granted confidential treatment for such information. The DOE stated that it did not have a position on the matter at that time. No further filings were made by any party on the two motions.

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/2022/22-032.html.

II. Motions for Protective Orders and Confidential Treatment

A. Motion 1

In Motion 1, PWW 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 1 at 9, ¶4. PWW stated that it seeks to protect certain officer and director compensation that is not publicly reported, and that disclosure would result in an unwarranted invasion of the personal privacy of those officers and directors. PWW further stated that it seeks to protect salary, dates of employment, and job title information pertaining to its salaried employees. PWW argued that employee payroll information falls within the RSA 91-A:5, IV exemption because it relates to internal personnel practices, is confidential financial information, and that employees have a privacy interest in their pay data. PWW further posited that disclosure would cause competitive harm to the Company by making it more difficult to attract or retain qualified employees.

B. Motion 2

In Motion 2, PWW argued that the live formulas contained in the electronic, live working model of the cost-of-service model provided in response to RR-1 is

proprietary, confidential, and a work product and trade secret of Concentric Energy Advisors, Inc. (Concentric), who was retained by PWW to conduct the study. According to PWW, Concentric has a privacy interest in its proprietary software, which it does not publicly disclose, and that disclosure of the live formulas in its working cost of service model would put it at a competitive disadvantage, as it would give competitors opportunity to use the methodologies and processes developed by Concentric for their own financial gain. PWW added that disclosure of Concentric's proprietary software could make it harder for rate-regulated utilities to obtain such studies, and that Concentric's commercial and financial interests outweigh the public's interest in disclosure.

III. 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. *See, e.g.*, Order No. 25,840 at 2 (*citing Pennichuck East Utility, Inc.*, Order No. 25,758 at 4 (January 21, 2015)). 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.*

In both its June 27, 2022 motion filed with its rate case petition and its September 21, 2022 motion filed with its response to the Commission's record request RR-1, PWW asserted that information regarding its employee payroll and compensation, and information pertaining to its consultant's proprietary formulas used to develop a cost of service study for the Company, constitutes confidential, commercial, or financial information under RSA 91-A:5, IV.

The Commission has routinely protected as confidential similar detailed information regarding employee compensation. *See, e.g.*, Pennichuck Water Works, Inc., Order No. 24,701 at 2 (November 22, 2006); Pennichuck Water Works, Inc., Order No. 26,383 (July 24, 2020) at 19; and Abenaki Water Company-Rosebrook, Order No. 26,696 (October 5, 2022). The Commission has protected proprietary business models and software formulae used in support of rate case filings in the past, as well. *See, e.g.*, EnergyNorth Natural Gas, Inc. d/b/a National Grid NH, Order No. 25,208 (March 23, 2011); Northern Utilities, Inc., Order No. 25,251 (July 18, 2011); Abenaki Water Company, Order No. 25,840 (November 13, 2015); and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, Order No. 26,376 (June 30, 2020).

We agree with PWW that the information contained within the applicable filings

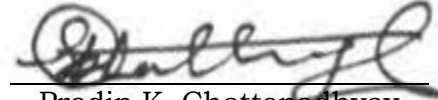
in this docket constitutes confidential and sensitive commercial or financial information under RSA 91-A:5, IV, and that PWW has a privacy interest in protecting the details of its payroll and the compensation of its employees and the proprietary software of its consultants. We therefore conclude that PWW's interest in nondisclosure of the information identified in its motions outweighs the public's interest in disclosure of that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by PWW's privacy interests in information that, if disclosed, could pose legitimate financial harm to or privacy risk to PWW or its personnel and consultants, including the Company's competitive position in hiring employees and retaining experts in aid of its regulatory filings.

Accordingly, pursuant to Puc 203.08(a), we grant PWW's motions for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), 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 under RSA 91-A, should circumstances so warrant.

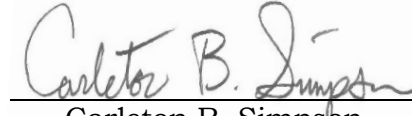
Based upon the foregoing, it is hereby

ORDERED, that Pennichuck Water Works, Inc.'s motion for confidential treatment and a protective order for certain payroll and compensation information and proprietary software information submitted in Docket No. DW 22-032 is **GRANTED**, as set forth herein, above.

By order of the Public Utilities Commission of New Hampshire this October
twenty-fourth day of October, 2022.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-032

Printed: 10/24/2022

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