

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

RE: AQUARION WATER COMPANY OF NEW HAMPSHIRE, INC.

DOCKET NO. DW 10-293

**MOTION FOR PROTECTIVE ORDER AND
CONFIDENTIAL TREATMENT FOR INFORMATION
RESPONSIVE TO DATA REQUEST STAFF 1-1**

Aquarion Water Company of New Hampshire, Inc. (“Aquarion” or the “Company”) hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment regarding certain materials in the above captioned proceeding. In support of this motion, Aquarion states as follows:

1. On November 1, 2010, Aquarion filed with the Commission its 2010 Water Infrastructure and Conservation Adjustment (WICA) Filing.
2. On November 17, 2010, the Commission staff propounded its first set of data requests on Aquarion, seeking among other items, confidential bidding information.
3. Specifically, Data Request Staff 1-1 sought the Company’s “bid results for the Atlantic Avenue main replacement”. The Company produced confidential information responsive to that request, providing information regarding bidders and bid prices received, and hereby submits this Motion to request protective treatment of such data.
4. RSA 91-A:5, IV expressly exempts from the Chapter 91-A public disclosure requirements any “confidential, commercial or financial information. . . .” NH RSA 91-A:5, IV. To determine whether certain information falls under this exemption and qualifies for protective treatment, the Commission applies a three-step analysis. *See Public Service of New Hampshire*, Order No. 25,174 (November 24, 2010) (citing *Lamy v. N.H. Pub. Utils. Comm’n*, 152 N.H. 106

(2005)). First, the Commission evaluates whether there is a privacy interest at stake that would be invaded by the disclosure; second, if a privacy interest is at stake, the Commission assesses the public's interest in disclosure; and third, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.* at 12. As applied to the instant case, this three-step analysis demonstrates that the Company's bid information produced in response to Data Request Staff 1-1 should be accorded protective treatment.

5. The Company has a privacy interest in the submitted bid information. This information is confidential and commercially sensitive, and the Company does not disclose such data to third parties. Among other consequences, releasing bid information to the public would give the Company's competitors access to confidential pricing information and harm the Company's competitive position. The Commission has recognized a utility's privacy interest in bid information. *See, e.g., North Atlantic Energy Corporation*, 87 NH PUC 396, 398 (2002).

6. The public may have an interest in how bid information is factored into and considered in the Company's WICA Filing proceeding. However, when this interest is weighed against the Company's privacy interest and the negative impact public disclosure could have on it and its bidders, the balance tips significantly in favor of protecting the bid information. In addition to the adverse effect on the Company mentioned above, disclosure of the bid data could injure the Company's bidders by giving their competitors access to otherwise confidential pricing information. This result, in turn, could impair the Company's ability to attract and receive competitive bids in the future. Indeed, the Commission has previously considered these factors to be ample grounds to protect bid information, over the public's interest in accessing such information. *See id.* ("public disclosure of bids" could "result in competitive damage to bidders, and also impair the ability of the state to obtain such information in the future" as well

as “chill future auction transactions, thereby limiting the results that might otherwise have been achieved”).

7. Accordingly, Aquarion requests that the Commission issue a protective order granting this motion and protecting the confidential information described herein from public disclosure. Aquarion requests that copying, duplication, dissemination or disclosure in any form should be prohibited, except for use in this proceeding as part of a closed record or subject to similar protections. The protective order should also be extended to any discovery, testimony, argument or briefing relative to the confidential information.

WHEREFORE, the Company respectfully requests that the Commission:

- A. Issue a protective order to prohibit disclosure of the confidential information submitted in response to Data Request Staff 1-1 as described above; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

AQUARION WATER COMPANY OF
NEW HAMPSHIRE, INC.

By Its Attorneys,

MCLANE, GRAF, RAULERSON &
MIDDLETON, P.A.



Dated: December 3, 2010

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion has been forwarded to the parties on the service list this 3rd day of December 2010 by electronic mail.

A handwritten signature in black ink, appearing to read 'St Camerino', written over a horizontal line.

Steven V. Camerino