

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

CONCORD STEAM CORPORATION.  
PETITION FOR RATE INCREASE

Docket No. DG 12-242

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT**

Concord Steam Corporation (“Concord Steam” or the “Company”), in accordance with Puc 203.08, hereby moves the New Hampshire Public Utilities Commission (the “Commission”) grant confidential treatment to certain information provided in the course of the discovery process in the above-captioned docket. In support of its motion, Concord Steam states as follows:

1. During the course of the discovery process in this matter, Concord Steam provided responses to several dozen data requests propounded by the Commission Staff (“Staff”). Three (3) of these responses, Staff 1-22, 1-24, and 3-7, contained confidential information. Rather than seek confidential treatment for each data response, Concord Steam submitted its confidential responses accompanied by written statements of intent to file a motion pursuant to Puc 203.08(d).

2. Information contained in Concord Steam’s responses to Staff 1-22 and Staff 1-24 that was deemed confidential at the time the Company submitted the response has since been publicly disclosed or otherwise no longer considered confidential. As such, the Company no longer seeks confidential treatment for information provided in response to data requests Staff 1-22 and Staff 1-24. Information provided in responses to data request Staff 3-7 remains confidential and is the subject of this motion.

3. Administrative Rule Puc 203.08 provides in pertinent part that “[t]he Commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted pursuant to [Puc 203.08(b)].” N.H. Code of Admin. Rules Puc 203.08.

4. Records containing “confidential, commercial, or financial information” are expressly exempt from public disclosure. RSA 91-A:5, IV. When considering whether to apply this exception, the Commission must determine whether the information is confidential, commercial or financial information and whether disclosure would constitute an invasion of privacy. *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 at 9 (April 30, 2007). The asserted interest then must be balanced against the public’s interest in disclosure. *Id.*

5. In response to Staff data request 3-7, Concord Steam submitted invoices from its attorneys, McLane, Graf, Raulerson, and Middleton Professional Association (“McLane Law Firm”), that contain confidential and competitively sensitive hourly billing rate information.

6. Disclosure of this hourly billing rate information will cause competitive harm to the McLane Law Firm. The information is not publicly available, and disclosing it would put the McLane Law Firm at a competitive disadvantage by divulging to its competitors the rates it charges for its services. For example, the McLane Law Firm has numerous competitors within and beyond New Hampshire for legal work, and disclosure of the firm’s hourly billing rates for attorney services would harm its competitive position when bidding or negotiating for business in the future.

7. The Commission has routinely recognized that this exemption applies to hourly billing rate information. *See, e.g., See, e.g., Pennichuck Water Works, Inc.*, DW 10-091 / DW

11-018, Order No. 25,278 at 11-13 (October 21, 2011); *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 at 9 (April 30, 2007). Specifically, the Commission has balanced the interest that a utility and its service providers have in the confidentiality of hourly billing information against the public's interest in the disclosure of such information and determined that the former interest outweighs the latter. *See, e.g., Pennichuck Water Works, Inc.*, DW 10-091 / DW 11-018, Order No. 25,278 at 11-13 (October 21, 2011).

8. The Commission has specifically granted confidential treatment to attorney billing rates in prior cases due to the commercially sensitive nature of the information. In *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 (April 30, 2007), the Commission considered the movant's argument that disclosure of the hourly billing rates of its outside attorneys could "detrimentally impact" the competitive position of those attorneys in future negotiations. *Id.* at 9. The Commission agreed, recognizing that "the public's interest in review of this financial, commercially sensitive information" is insufficient to "outweigh the benefit derived from maintaining the confidentiality of such information." *Id.* at 10; *see also Pennichuck Water Works, Inc.*, DW 10-091 / DW 11-018, Order No. 25,278 at 11-13 (October 21, 2011)(concluding that disclosure of the McLane Law Firm's billing rates could damage the firm competitive position and that the privacy interest in confidentiality outweighed the public interest in disclosure).

9. Concord Steam prepared the redacted and confidential materials in accordance with Rule Puc 201.04(b)(2)(b) and (c)(2)(b). In doing so, Concord Steam redacted only information that would allow a reader to determine the billing rates of the McLane Law Firm,

including hourly rates and the number of hours worked.<sup>1</sup> Concord Steam is not seeking confidential treatment of any of the amounts billed by the attorneys (i.e., neither for individual billing entries on a given day or for the total amounts on any bills), and therefore the dollar amounts will remain publicly available if the Commission grants this motion. Thus, Concord Steam is seeking the narrowest protection possible by requesting confidential treatment only for information that would allow a reader to determine the billing rates of the McLane Law Firm.

10. For the reasons stated above, Concord Steam requests that the Commission grant this motion and protect from public disclosure the confidential commercial information contained in its response to data request Staff 3-7 as described above. The protective order should also be extended to any discovery, testimony, argument or briefing relative to the confidential information.

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<sup>1</sup> The Company initially provided confidential and redacted versions of the materials attached to its Staff 3-7 response with all descriptions of services redacted to protect potentially privileged information. The Company no longer seeks protection of these descriptions and will accordingly provide Staff with revised confidential and redacted copies of its response to Staff 3-7 that only seek protection of information that would allow a reader to determine the billing rates of the McLane Law Firm.

WHEREFORE, Concord Steam respectfully requests that the Commission:

- A. Issue an order protecting the information described above; and
- B. Grant such other and further relief as may be just and equitable.

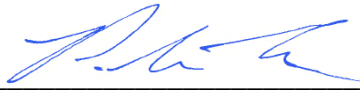
Respectfully submitted,

Concord Steam Corporation

By Its Attorneys

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


Dated: March 28, 2012

By:  \_\_\_\_\_

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**Certificate of Service**

I hereby certify that a copy of this Motion for Protective Order and Confidential Treatment has been electronically served and mailed to the service list in this case.

  
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Patrick H. Taylor, Esq.