

BEFORE THE
STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Abenaki Water Co., Inc.

Docket No. DW 15 - 199

MOTION FOR CONFIDENTIAL TREATMENT

NOW COMES the Abenaki Water Co., Inc., (“Abenaki”) by and through Upton & Hatfield, LLP and moves for confidential treatment as follows:

1. On June 3, 2016, the Commission approved Abenaki’s permanent rate increase and ordered Abenaki to file its “proposed temporary rate reconciliation and proposed surcharges and refund along with its request for rate case expense recovery. ” Order No. 25,905.

2. On June 22, 2016, Abenaki submitted its proposed temporary rate reconciliation and proposed surcharges and refund along with its request for rate case expense recovery. Concurrent with this motion, Abenaki submits the documentation in support of its rate case expense recovery pursuant to Rule Puc 1905.03.

3. Abenaki moves for confidential treatment of the descriptions of legal services provided by Upton & Hatfield, LLP. Abenaki requests confidential treatment because it maintains this information as confidential and Abenaki has NOT disclosed it to the public. The information is therefore confidential under RSA 91-A:5, IV and Rule Puc 203.08.

4. The confidential copies contain limited redactions of information that is privileged. RSA 541-A:33, II, requires that the Commission “shall give effect to the

privilege recognized by law.” The lawyer-client privilege established by NH Rule of Evidence 502 and by the Common Law is a privilege recognized by law. Rule 502(b) provides:

(b) *General Rule of Privilege.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or his or her representative and the client’s lawyer or the lawyer’s representative, (2) between the client’s lawyer and the lawyer’s representative, (3) by the client or the client’s representative or the client’s lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

5. The lawyer-client privilege applies in all legal proceedings. NH Rule of Evidence 1101(b) & (c); RSA 541-A:33, II; *N.H. RTL v. Director*, ___ N.H. ___ (June 2, 2016) (“we agree with the trial court, that attorney work product, like communications protected by the attorney-client privilege, falls within the Right-to-Know Law exemption for “confidential” information.”); *Prof. Fire Fighters of N.H. v. N.H. Local Gov’t Ctr.*, 163 N.H. 613, 614-15 (2012) (“Communications protected under the attorney-client privilege fall within the exemption for confidential information”); RSA 91-A:5, IV.

6. Confidential treatment is appropriate in this case because the descriptions of legal services, if disclosed, would reveal litigation strategy and the nature of the legal services provided. In the case of *Hampton Police Assoc. v. Hampton*, 162 N.H. 7 (2011), the New Hampshire Supreme Court found such information to be privileged, stating:

We hold, however, that the attorney-client privilege *may* apply to information in a billing record that reveals “the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law.” *Clarke*, 974 F.2d at 129; *see Chaudhry*, 174

F.3d at 402; *In re Gibco, Inc.*, 185 F.R.D. 296, 299 (D.Colo.1997); *Maxima*, 641 A.2d at 984; *Hewes v. Langston*, 853 So.2d 1237, 1248-49 (Miss.2003) (billing statements that provided “an hour-by-hour rendition of the work performed for a client,” including identifying, by name, the people with whom the attorney talked, the topics they discussed, the subjects the attorney researched and the papers he reviewed “necessarily reveal[ed] strategies, confidential communications, and the thought processes behind the representation” and were privileged from disclosure).

7. The Commission has previously granted confidential treatment of the descriptions of legal services as confidential. For example, in Order No. 25,454, the Commission granted a motion for confidential treatment for the descriptions of legal services in a rate case, Docket No. 10 - 141. While Order No. 25,454 refers to the confidentiality of hourly rates in the invoices, the information for which confidential treatment was sought was the descriptions of legal services. *See August 30, 2012 Motion for Confidential Treatment* in Docket No. 10 – 141.

8. Confidentiality is critical to the Commission’s ability to evaluate rate case expenses. If this information is not protected as confidential as the law allows, legal representatives of utilities would be forced to abbreviate descriptions in order to protect the confidentiality of legal services as required by the Rules of Professional Conduct, Rule 1.6. Granting this motion allows a utility to provide (and Staff to review) detailed descriptions of the services provided and thereby furthers the public interest.

9. Although not required by rule, counsel sought the assent of the parties to this motion. The Office of Consumer Advocate stated that he “does NOT assent to this motion.” Representatives of the Laconia Housing Authority and Village Shores concurred with the OCA’s position. The Staff indicated it could not take a position until it reviewed the information for which confidential treatment is sought.

WHEREFORE, the Abenaki respectfully requests that the Commission:

- A. Grant this Motion for Confidential Treatment; and
- B. Grant such other relief as justice may require.

Respectfully submitted,

ABENAKI WATER CO., INC.

By its Counsel,

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Dated: June 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service list for DW 15 – 199.



Justin C. Richardson