STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Docket No. DW 20-153

Pittsfield Aqueduct Company, Inc.
Permanent Rate Proceeding

SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

NOW COMES, Pittsfield Aqueduct Company, Inc. (PAC or Company) in accordance with N.H. Admin. Rule Puc 203.08 and RSA Chapter 91-A and hereby motions the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment to certain confidential, commercial, or financial information provided as part of discovery of PAC's rate case expense filing. In support of its supplemental motion, PAC states as follows:

1. Pursuant to PART Puc 1900 and Order No. 26,544, dated November 9, 2020, the Commission ordered PAC to file its rate case expense documentation. On December 9, 2021, the Company filed its rate case expense documentation, proposed surcharge, and proposed tariff supplement.

2. The Department of Energy has conducted discovery on PAC's rate case expense filing. As part of PAC's responses to those data requests, PAC provided confidential and redacted copies of a response to requests for proposals (RFP) for legal services. This response to the RFP contains confidential, commercial, or financially sensitive information that the legal vendor and PAC do not disclose to the public or competing law firms. Disclosure of this information would reveal the winning bidders' calculation of legal fees. Disclosure of this information would result in competitive harm to the legal vendor. Disclosure of this information

would cause competitive harm because it would allow the public and other vendors of legal services to determine the billing rates and fee structure of the winning bidder.

3. Pursuant to N.H. Code Admin. Rule Puc 201.04, the confidential information in the confidential version of the rate case expense documentation has been grey-shaded and "confidential" appears at the top of the affected pages. In the public version, the confidential information has been blacked-out and "redacted" appears at the top of the affected pages. The affected material occurs on attachments to the Department of Energy's data request 4-1, specifically, Attachment DOE 4-1(c).

4. PAC seeks protection of the above information under RSA 91-A:5. RSA 91-A:5, IV has been interpreted as requiring analysis of both whether the information sought is "confidential, commercial, or financial information," and whether disclosure would constitute an invasion of privacy. See, RSA 91-A:5, IV and *Union Leader Corp. v. New Hampshire Housing Financing Authority*, 142 N.H. 540, 552 (1997) citing *Perras v. Clements*, 127 N.H. 603, 605 (1986). An invasion of privacy analysis, in turn, requires an evaluation of three factors: (1) whether there is a privacy interest at stake that would be invaded by disclosure; (2) whether there is a public interest in disclosure; and (3) a balance of the public's interest in disclosure and the interests in non-disclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 113 (2005). The Commission has stated that 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. *Electric Distribution Utilities*, Order No. 25,811 (September 9, 2015) at 5. If both of these steps are met, the Commission balances the privacy interest with the public interest to determine if disclosure is appropriate. *Public Service Company of New Hampshire*, Order 25,167 (November 9, 2010) at 3-4.

5. The Commission has previously balanced the interest a utility and its service providers have in the confidentiality of legal fees against the public's interest in the disclosure of such information and has determined that the former interest outweighed the latter and that the exemption under RSA 91-A:5, IV applies to information concerning how much law firms charge utilities for legal services. See, e.g., *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 08-009, Order No. 25,064 at 11-12 (January 15, 2010). *Unitil Energy Systems, Inc.*, DE 07-035, Order No. 24,746 at 10 (Apri1 30, 2007) (The Commission stated that disclosure of information concerning legal billing rates of attorneys could "detrimentally impact" the competitive position of those attorneys in future negotiations. *Id.* at 9). *Unitil Energy Systems, Inc,* DE 05-178, Order No. 24,742 at 3-5 (April 13, 2007). PAC requests the Commission make a similar balance finding in favor of protecting PAC's legal vendor's derivation of its legal fees.

6. Additionally, while the public has an interest in rate case expenses, that interest is diminished as to the confidential information in that the total amount paid by PAC for legal services has been disclosed, along with the remainder of its rate case expenses. Therefore, if the Commission protects from public disclosure the specific hourly rates and fee structure of PAC's attorneys, the public will still have access to the totals of these expenses. Furthermore, full disclosure of the legal fees will be provided to the Commission, Department of Energy Staff, and the Office of the Consumer Advocate, where the details of the rate case expenses will be subject to investigation and scrutiny. This scrutiny will give the public confidence that the detailed confidential information has been audited.

7. In conclusion, PAC requests the Commission issue a protective order consistent with existing precedent so as to prevent public disclosure of the above-described confidential

commercial legal fee information. In reaching out to the only other party in this docket, the Department of Energy "takes no position on the motion at this time."

WHEREFORE, PAC respectfully requests the Commission:

A. Grant its supplemental motion for protective treatment; and

B. Grant such other relief as is just and equitable.

Respectfully submitted,

PITTSFIELD AQUEDUCT COMPANY, INC.

By Its Attorney,

Date: January 28, 2022

By: Marcia A Brown

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this supplemental motion for protective order and confidential treatment has been forwarded this day by electronic transmission to the Docket-Related Service List for DW 20-153.

Dated: January 28, 2022

Marcia A Brown

Marcia A. Brown