

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-058

Bedford Waste Services Corporation
Permanent Rate Proceeding

MOTION FOR PROTECTIVE ORDER
AND CONFIDENTIAL TREATMENT

NOW COMES, Bedford Waste Services Corporation, (Bedford Waste), in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, hereby moves the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment and issue an appropriate order to protect from public disclosure certain confidential documentation of its rate case expenses. In support of its motion, Bedford Waste states as follows:

1. As part of documentation in support of Bedford Waste's rate case expense recovery filing, Bedford Waste has included invoices for legal services which show the hourly rates for those services. Bedford Waste's legal consultant, NH Brown Law, PLLC, considers its hourly rates to be confidential and that, if publicly disclosed, could cause NH Brown Law, PLLC competitive harm. For this reason, Bedford Waste requests protection of the legal invoices as well as any discovery responses, if any, regarding the confidential legal invoices.

2. Pursuant to N.H. Admin. Rule Puc 203.08(a), "the 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...."

3. RSA 91-A:5, IV expressly exempts from the RSA Chapter 91-A public disclosure requirements any “records pertaining to internal personnel practices [and] confidential, commercial or financial information. . . .” RSA 91-A:5, IV.

4. The New Hampshire Supreme Court and the Commission employ a multi-part analysis to determine whether certain information qualifies for confidential treatment: (1) whether the information sought is confidential, commercial, or financial information; and (2) whether disclosure of that information would constitute an invasion of privacy. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,208 at 7-8 (March 23, 2011). See also *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008). 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 nondisclosure. *Lamy v. N.H. Pub. Util. Comm’n*, 152 N.H. 106, 109 (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. *Lambert*, 157 N.H. at 383.

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 (April 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). Bedford Waste requests the Commission make a similar balance finding in favor of protecting Bedford Waste’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 Bedford Waste for legal services has been disclosed, along with the remainder of its rate case expenses. Therefore, even if the Commission protects from public disclosure the specific hourly rates and fee structure of Bedford Waste’s attorneys and other vendors, the public will still have access to the totals of these expenses. Full disclosure of the fees will be provided to the Commission and the Department of Energy (Department) staff 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. Further, the Company sought competitive quotes and selected the lowest responsive vendor to provide the services sought.

7. Lastly, 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.

8. Based on the foregoing legal arguments, Bedford Waste requests that the Commission issue a protective order granting this motion and protecting from public disclosure the confidential rate case expense documentation identified in this motion.

9. Bedford Waste contacted the Department and the Department does not object to the relief requested.

WHEREFORE, Bedford Waste Services Corporation respectfully requests the Commission:

- A. Grant this Motion; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

BEDFORD WASTE SERVICES CORPORATION

By its Attorney,

N.H. Brown Law, PLLC

Date: September 27, 2023

By: *Marcia A. Brown*
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Certificate of Service

I hereby certify that a copy of this motion has been emailed to the Docket-Related Service List for this proceeding.

Date: September 27, 2023

Marcia A. Brown
Marcia A. Brown, Esq.