

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-085

Pennichuck Water Works, Inc.
Petition to Approve Special Contract with Merrimack Village District

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT
OF PROPRIETARY INFORMATION

NOW COMES, Pennichuck Water Works, Inc. (PWW), in accordance with N.H. Admin. Rule Puc 203.08 and RSA 91-A:5, and hereby moves the New Hampshire Public Utilities Commission (Commission) to grant confidential treatment and issue an appropriate order to protect from public disclosure confidential commercial information and work product contained in the Company's live cost of service study. In support of its motion, PWW states as follows:

1. On December 16, 2022, PWW filed a petition for approval of a special contract with Merrimack Village District (MVD) as well as supporting testimony, the proposed special contract, and a cost of service study conducted by Raftelis Financial Consultants (Raftelis).
2. The Commission has expressed a desire to receive the live workbooks of such cost of service studies. Therefore, similar to recent PWW special contract filings, PWW is providing with this motion the live workbook to assist the Commission in its review of the PWW's petition.
3. Raftelis considers the live formulas contained in the working model of its study to be proprietary and confidential, its work product, and a trade secret. Raftelis has a privacy interest in its proprietary software. Raftelis does not publicly disclose its software. Raftelis states disclosure of the live formulas in its working cost of service model would put it at a competitive disadvantage because it would give competitors the opportunity to use the

methodologies and processes developed by Raftelis for their own financial gain. PWW states that disclosure of the proprietary software could make it harder for rate-regulated utilities to obtain such studies. For these reasons, PWW asserts that Raftelis' commercial and financial interests with respect to this information significantly outweighs the public's interest in disclosure of Raftelis' software.

4. 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...."

5. RSA 91-A:5, IV expressly exempts from the RSA Chapter 91-A public disclosure requirements any "records pertaining to ... confidential, commercial or financial information. . . ." RSA 91-A:5, IV.

6. The Commission employs 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). 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).

7. The Commission has provided protection to similar live proprietary models of consultants or vendors used by regulated utilities. See *Unitil Energy Systems, Inc.*, Docket No.

DE 05-178, Order No. 24,677 (October 6, 2006); *Norther Utilities, Inc.*, Docket No. DG 11-069, Order No. 25,251 (July 18, 2011); *Pennichuck Water Works, Inc.*, Docket No. DW 22-029, Order No. 26,726 (November 18, 2022); and *Pennichuck Water Works, Inc.*, Docket No. DW 22-040, Order No. 26,727 (November 18, 2022). In so doing, the Commission has previously balanced the privacy interests at stake with the public's interest in disclosure and concluded that a regulated utilities' consultant's interest in keeping its proprietary software and work product protected outweighs the public's interest in disclosure of the same. Because the Commission has previously protected regulated utilities' consultant's live working models in the past, PWW respectfully requests that the Commission extend protective treatment to Raftelis' working model in this proceeding.

8. In compliance with Puc 203.08, PWW is submitting a public PDF version in addition to the confidential working Excel version as attachments to this motion. The file name of the PDF version references that it is PUBLIC; the file name of the Excel version references that it is CONFIDENTIAL. This labeling was done because, when printed, none of the formulas are printed and, therefore, there is nothing to redact on physical print-outs.

9. PWW contacted the Department of Energy (Department) in advance of this filing to solicit the Department's position on the relief requested. The Department responded that it does not oppose the motion.

WHEREFORE, Pennichuck Water Works, Inc. respectfully requests the Commission:

- A. Grant protective treatment of Raftelis' live Excel working model; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

PENNICHUCK WATER WORKS, INC.

By its Attorney,

N.H. Brown Law, PLLC

Date: December 21, 2022

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: December 21, 2022

Marcia A. Brown
Marcia A. Brown, Esq.