

DW 01-081

PENNICHUCK WATER WORKS, INC.

Petition for Permanent and Temporary Rate Increase

Order Granting in Part and  
Denying in Part Motion for Confidential Treatment

O R D E R N O. 23,842

November 16, 2001

**I. BACKGROUND**

On September 27, 2001, Pennichuck Water Works, Inc. (Pennichuck) filed a Motion for Protective Treatment concerning a compensation study performed for Pennichuck by consultant Arthur Andersen. The compensation study is dated August 3, 2001 and was filed in response to Staff's Data Request 2-12. Staff took no position regarding the motion.

The compensation study evaluated base salaries and other benefits of the top five executives of Pennichuck and compared these numbers to compensation figures of other water companies. The study also compared a representative sample of Pennichuck's work force with representative positions of other water companies. The study made findings concerning the proximity of Pennichuck's compensation levels to the market median.

Pennichuck requests the Commission issue a protective order granting its motion and protecting from public disclosure salary information contained in the study which Pennichuck maintains in strict confidence. Pennichuck further requests any order relating to protective treatment extend to any testimony that may be filed disclosing the contents of the compensation

study, any discovery, argument or briefing relative to the confidential information.

Pennichuck avers disclosure of the information would cause harm to Pennichuck because competing companies could more easily lure employees away and the information might cause discord among individuals within the company. Pennichuck stated it would be willing to release the compensation study information to intervenors who enter into appropriate confidentiality agreements.

## **II. COMMISSION ANALYSIS**

The detailed information regarding relative compensation levels Pennichuck provides its employees is important to the Commission's investigation of Pennichuck's rates in this docket.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. See RSA 91-A:4, I. The statute contains an exception, RSA 91-A:5, IV, which exempts any "[r]ecords pertaining to internal personnel practices [and] confidential, commercial or financial information." The New Hampshire Supreme Court provided a analytical framework for employing this exception in *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). There must be a determination of whether the information is confidential, commercial or financial information "and whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in

original, citations omitted). "[T]he asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citations omitted).

As stated in previous orders, we require a motion for confidentiality to contain (1) the specific documents or portions thereof for which confidential treatment is sought, (2) reference to statutory or common law authority favoring confidentiality, (3) "[f]acts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public," and certain evidence. Puc 204.06(b). The evidence must go to the issue of whether the information would likely create a competitive disadvantage for the petitioner or the information is not general public knowledge and measures have been taken by the petitioner to prevent dissemination of the information. *Id.* at (c).

The issue of confidential treatment of employee compensation data has been raised before. In Order No. 22,228, Union Telephone Company (July 9, 1996), the Commission found the benefits of non-disclosure of all employee compensation data did not appear to outweigh the benefits of disclosure of certain compensation data.

Other compensation data may not be confidential. Utilities must file with the Commission annual reports pursuant to RSA 374:13. These reports, which are publicly available, require disclosure of compensation for the utility's officers. Pennichuck's annual filings disclose the compensation levels of the President, Vice President, Treasurer/Chief Financial Officer, and Controller. This information is also contained in the compensation study. As to these officers, we will deny Pennichuck's Motion because the information has been previously disclosed.

Pennichuck states it maintains the employee compensation information in strict confidence and has not shared the information outside its parent company's board of directors, the CEO of Pennichuck, or other members of Pennichuck's management team. For this reasons as well as reasons articulated above, we find the information for employees not contained in the annual report is exempt from public disclosure under RSA 91-A:5,IV. It is financial and personnel information which Pennichuck has traditionally kept confidential.

**Based upon the foregoing, it is hereby**

**ORDERED,** that Pennichuck Water Works Inc.'s Motion requesting confidential treatment of the compensation information, be it in the form of Data Response 2-12, or included in other discovery, argument, brief or testimony, is GRANTED IN PART to the extent it relates to compensation of employees not previously disclosed in the annual report filed with the

Commission; and it is

**FURTHER ORDERED**, that Pennichuck Water Works Inc.'s Motion is DENIED IN PART to the extent it relates to compensation for officers identified in the annual report filed with the Commission; and it is

**FURTHER ORDERED**, that this order is subject to reconsideration in the event that the Commission Staff or any party raises concerns and it is subject to the on-going right of the Commission to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of November, 2001.

\_\_\_\_\_  
Thomas B. Getz  
Chairman

\_\_\_\_\_  
Susan S. Geiger  
Commissioner

\_\_\_\_\_  
Nancy Brockway  
Commissioner

Attested by:

\_\_\_\_\_  
Debra A. Howland  
Executive Director and Secretary