

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8881

Joint Petition of Consolidated Communications Holdings, Inc.,)
Consolidated Communications, Inc., Falcon Merger Sub, Inc.,)
FairPoint Communications, Inc., Telephone Operating)
Company of Vermont LLC, FairPoint Vermont, Inc., UI Long)
Distance, Inc., and Enhanced Communications of Northern)
New England, Inc., for Approval of a Transfer of Control by)
Merger, Pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and)
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**MOTION FOR CONFIDENTIAL TREATMENT
OF PREFILED EVIDENCE OF THE DEPARTMENT OF PUBLIC SERVICE AND
LABOR INTERVENORS**

Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., and Falcon Merger Sub, Inc. (collectively “Consolidated”) hereby move the Public Service Board (“Board”) for confidential treatment of portions of the prefiled testimony and exhibits of the Department of Public Service (“Department”) and Labor Intervenors¹. In support of this Motion, Consolidated relies on the following incorporated Memorandum of Law, as well as the attached Averments (Attachment A) and Proposed Order (Attachment B).

MEMORANDUM OF LAW

I. Introduction

On March 29, 2017, the Department and Intervenors filed redacted and confidential copies of prefiled direct testimony and confidential and non-confidential exhibits in the above captioned matter. In this Motion, Consolidated seeks confidential treatment of the nonpublic, confidential information contained in the Department’s and Intervenor’s prefiled testimony

¹ The Labor Intervenors are: Communications Workers of America (CWA) Local 1400 and International Brotherhood of Electrical Workers (IBEW) Locals 2320, 2326 and 2327, that form the IBEW System Council T-9.

exhibits. The confidential information consists of data pulled from confidential and highly confidential Consolidated discovery attachments, and other confidential information, provided to the Department and Labor Intervenors by Consolidated during the course of discovery in this proceeding and subject to the February 9, 2017 Protective Agreement as amended.

II. Standard for Confidential Treatment

In determining whether to grant confidential treatment, the Board considers the following:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information that should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown “good cause” for invoking the Board’s protection?

Petition of Green Mountain Power Corporation requesting a certificate of public good, pursuant to 30 V.S.A. Section 248, for the purchase of electricity from NextEra Energy Seabrook, LLC from 2012 through 2034, Docket No. 7742 (Vt. Pub. Serv. Bd., Sept. 8, 2011); Investigation into Treatment of Allegedly Confidential Information Submitted by Nine Vermont Independent Telephone Companies, Docket No. 6904 (Vt. Pub. Serv. Bd., Nov. 14, 2003); see also Joint Petition of VELCO, Transco, and VEC, Docket No. 7708 (Vt. Pub. Serv. Bd. June 27, 2011).

III. Description of the Information Sought to be Protected

Consolidated seeks confidential treatment of nonpublic, confidential and highly confidential financial protections, competitively sensitive information, and critical infrastructure information, contained in portions of the prefiled testimony of the following Department and Labor Intervenor witnesses:

1. Department Witness Joel Jeanson: The information redacted was taken from Consolidated confidential and highly confidential discovery attachments containing financial information and financial projections.
2. Department Witness Ardeth Smith: The information redacted was taken from Consolidated confidential and highly confidential discovery attachments containing critical infrastructure information and competitively sensitive information.
3. Department Witness Curtis Mills: The information redacted was taken from Consolidated confidential and highly confidential discovery attachments containing competitively sensitive information.
4. Department Witness Carol Flint: The information redacted from Witness Flint's testimony was taken from Consolidated confidential and highly confidential discovery attachments containing competitively sensitive information.
5. Department Witness Scott Wiersen: Portions of the information redacted from Witness Wiersen's testimony consists of, in whole or in part, data taken from Consolidated Confidential Attachment DPS.CC.2-16 and other confidential information provided during discovery containing confidential competitively sensitive information.
6. Labor Intervenor Witness Randy Barber: The information redacted from Witness Barber's testimony consists of, in whole or in part, information taken from confidential and highly confidential Consolidated discovery attachments including financial projections.

In addition, Consolidated seeks confidential treatment of nonpublic, confidential and highly confidential financial protections, competitively sensitive information, and critical

infrastructure information contained in the following exhibits, which consists of, in whole or in part, information taken from the identified Consolidated confidential and highly confidential discovery attachments, and other confidential information:

- a) **DPS-JFJ-2 (Confidential)** (Stress Testing Results of financial model) appears to include information from CONFIDENTIAL Attachment DPS.CC.3-2 (Averment 1);
- b) **DPS-JFJ-3 (Confidential)** (Pre-Acquisition and Post-Acquisition Financial Ratios) appears to include information from Confidential Attachments DPS.CC.2-4.2, DPS.CC.1-1.1 (Averment 1);
- c) **DPS-JFJ-5 (Highly Confidential)** (Synergies Details) appears to include information from Highly Confidential Attachment DPS.CC.1-18.2 (Averment 4);
- d) **DPS-JFJ-6 (Confidential)** (Consolidated and FairPoint standalone and joint entity pro forma income statement and cash flow projections) appears to include information from Confidential Attachments DPS.CC.2-4.1, DPS.CC.2-4.2, DPS.CC.1-1.1 (Averment 1);
- e) **DPS-AS-4 (Highly Confidential)** (Consolidated systems architecture diagram) from Highly Confidential Attachment DPS.CC.1-57 (Averment 3);
- f) **DPS-AS-5 (Highly Confidential)** (Listing of Consolidated's major computer systems) from Highly Confidential Attachment DPS.CC.1-58 (Averment 3);
- g) **DPS-AS-6 (Highly Confidential)** (Consolidated system development roadmap) from Highly Confidential Attachment DPS.CC.1-59 (Averment 5);
- h) **DPS-AS-9 (Highly Confidential)** (Consolidated disaster recovery test plan) from Highly Confidential Attachment DPS.CC.1-60.1 (Averment 3);
- i) **DPS-AS-13 (Confidential)** (Excerpts of "Go/No Go" emails from recent Consolidated cutover) from Confidential Attachment DPS.CC.2-13 (Averment 2);
- j) **DPS-WCM-4 (Highly Confidential)** (Consolidated's service quality reports from California, Texas, and Illinois) from Confidential Attachments DPS.CC. 1-69.1, DPS.CC. 1-69.2, and DPS.CC. 1-69.3 (Averment 2);
- k) **DPS-WCM-5 (Highly Confidential)** (Summary of Consolidated's service quality reports) from Confidential Attachments DPS.CC. 1-69.1, DPS.CC. 1-69.2, and DPS.CC. 1-69.3 (Averment 2);
- l) **WCM-10 (Confidential)** (Consolidated's customer complaint reporting) from Confidential Attachment DPS.CC.1-34 (Averment 2);
- m) **WCM-11 (Confidential)** (Summary of reported customer complaints) from Confidential Attachment DPS.CC.1-34 (Averment 2); and
- n) Labor Intervenor's **RB-5 (Confidential)** (Confidential Excerpts from Confidential Attachment DPS.CC.3-2 (Averment 1)).

IV. The Need for Confidential Treatment

The prefiled testimony and exhibits for which Consolidated seeks confidential treatment involve three types of non-public, confidential and highly confidential information: 1) Consolidated financial information and financial projections; 2) Consolidated competitively sensitive information; and 3) Consolidated critical infrastructure information. This information should be granted confidential treatment because public disclosure of the information would cause cognizable harm to Consolidated's business, place Consolidated at an unfair disadvantage in various bargaining positions, allow competitors to compete more directly and effectively with Consolidated, and pose a risk to critical Consolidated infrastructure.

A. Confidential and Highly Confidential Consolidated Financial Information and Financial Projections

Consolidated seeks to protect testimony and exhibits containing confidential and highly confidential Consolidated financial information including, the redacted portions of the prefiled testimony of Department Witness Joel Jenson and Labor Intervenor Witness Randy Barber, as well as Confidential Exhibits DPS-JFJ-2, DPS-JFJ-3, DPS-JFJ-6, and Labor Intervenors' RB-5, and Highly Confidential Exhibit DPS-JFJ-5. The financial information contained in the prefiled testimony and exhibits was provided to the Department and Labor Intervenors during discovery and was subject to the parties' Protective Agreement. This financial information includes confidential and highly confidential Consolidated financial information and projections, as well as financial information for unregulated aspects of Consolidated's business ventures.

Consolidated seeks protection of this financial information because disclosure would result in harm to Consolidated's business. If disclosed, the information would provide the public and competitors with insight into Consolidated's financial operations and forecasted

performance, thereby placing Consolidated at a competitive disadvantage. Additionally, this material includes sensitive non-public information intended for Consolidated's Board of Directors that contains details of the synergies of the proposed acquisition. This information has been designated by Consolidated as "highly confidential." The disclosure of this information could also harm Consolidated's competitive position amongst its competitors and could place Consolidated at a disadvantage in future negotiations with labor unions.

Further detail regarding the need for confidentiality of this information is set forth in Consolidated Averment No. 1 and No. 4 which are attached to this Motion (Attachment A).

B. Confidential and Highly Confidential Consolidated Competitively Sensitive Information

Consolidated also seeks confidential treatment of prefiled testimony and exhibits containing confidential and highly confidential competitively sensitive information including, portions of the redacted testimony of Department Witnesses Curtis Mills, Ardeth Smith, Carol Flint, and Scott Wierson, as well as Confidential Exhibits DPS-WCM-4², DPS-WCM-5³, DPS-WCM-10, DPS-WCM-11 and DPS-AS-13, and Highly Confidential Exhibit DPS-AS-6. The competitively sensitive information contained in the prefiled testimony and exhibits was provided to the Department and Labor Intervenors during discovery and was subject to the parties' Protective Agreement. The competitively sensitive information includes non-public, recent and specific Consolidated proprietary manuals and guidelines, complaints, and organizational information, as well as recent and specific service quality reports and call center

² This Exhibit was filed as highly confidential, but it was based on information Consolidated re-designated as confidential, so it should be treated as a confidential, not highly confidential Department exhibit.

³ This Exhibit was filed as highly confidential, but it was based on information Consolidated re-designated as confidential, so it should be treated as a confidential, not highly confidential Department exhibit.

systems and statistics. These materials includes information developed using Consolidated systems and personnel.

Consolidated seeks protection of this competitively sensitive information because the information is highly sensitive in the competitive marketplace Consolidated operates in, and disclosure of this information could be detrimental to Consolidated's business. Disclosure would give competitors an unfair advantage by enabling competitors to use the information to more effectively market their services to Consolidated customers, and to create and employ better business strategies designed to retain existing customers and attract customers away from Consolidated. This information also contains details that if disclosed would give labor unions a competitive advantage in future contract negotiations and other bargaining situations. This information has been designated by Consolidated as "highly confidential."

Further detail regarding the need for confidentiality is set forth in Consolidated Averments No. 2 and No. 5 which are attached to this Motion (Attachment A).

C. Highly Confidential Consolidated Critical Infrastructure Information

Lastly, Consolidated seeks confidential treatment of prefiled testimony and exhibits consisting, in whole or in part, of critical infrastructure information including, portions of the redacted testimony of Department Witness Smith and Highly Confidential Exhibits DPS-AS-4, DPS-AS-5, and DPS-AS-9. The critical infrastructure information contained in the prefiled direct testimony and exhibits was provided to the Department and Labor Intervenors during discovery and was subject to the parties' Protective Agreement. This information includes highly confidential critical infrastructure information including information technology architecture, systems, and access points.

Consolidated seeks protection of critical infrastructure information because the disclosure of this information could place critical telecommunications infrastructure at risk by exposing the network to sabotage and other security hazards. In addition, its disclosure would enable competitors to make strategic assessments regarding Consolidated's network capabilities, and market penetration and availability, thus enhancing competitors' abilities to adjust their own business strategies to more effectively compete against Consolidated.

Consolidated would be further harmed by the disclosure of this information if it was provided to labor as the information relates to systems that may improve labor productivity and will likely cause some job loss. This information has been designated by Consolidated as "highly confidential." Disclosure to labor unions would give them an unfair competitive advantage in future contract negotiation.

Further detail regarding the need for confidentiality is set forth in Consolidated Averment No. 3, which is attached to this Motion (Attachment A).

V. Good Cause Exists for Invoking the Board's Protection.

For the above-stated reasons and those set forth in further detail in Consolidated's Averments 1–5, there is good cause for the Board to issue a Protective Order according confidential treatment to the confidential information described above and in the manner described in the attached Proposed Order (Attachment B).

The Board has previously granted confidential treatment of information in similar circumstances. *In re Renewal of the Certificate of Public Good of Comcast of Connecticut/ Georgia/ Massachusetts/ New Hampshire/ New York/ North Carolina/ Virginia/ Vermont, LLC, d/b/a Comcast*, Docket No. 8301 (Vt. Pub. Serv. Bd. Aug. 4, 2016); *Petition of Green Mountain Power Corporation requesting a certificate of public good, pursuant to 30 V.S.A. Section 248*,

for the purchase of electricity from NextEra Energy Seabrook, LLC from 2012 through 2034, Docket No. 7742 (Vt. Pub. Serv. Bd., Sept. 8, 2011); Petition of twenty Vermont utilities and Vermont Public Power Supply Authority requesting authorization, pursuant to 30 V.S.A. Section 248, for the purchase of shares of 218 MW to 225 MW of electricity of H.Q. Energy Services (U.S.) Inc., etc., Docket No. 7670 (Vt. Pub. Serv. Bd., Dec. 14, 2010); Petition of Green Mountain Power Corporation for authority to purchase energy from a proposed Granite Reliable Power Windpark in Coos County, New Hampshire, Docket 7590 (Vt. Pub. Serv. Bd., Feb. 23, 2010).

Consolidated will continue to review the confidential information, and to work with the Department in this regard, to determine whether any of it can be reclassified and will advise the Board and the parties of the results of its review. To the extent that any party disputes the designation of the redacted passages and exhibits as confidential and Consolidated and the party are unable to resolve the dispute, Consolidated seeks an opportunity to present additional information for the Board's consideration specific to the disputed redacted passages and exhibits in connection with this Motion.

VI. Conclusion

For the above-stated reasons, Consolidated respectfully requests that the Board issue a Protective Order substantially in the form provided as Attachment B.

Dated: April 3, 2017

RESPECTFULLY SUBMITTED,
CONSOLIDATED COMMUNICATIONS

By:



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