

Attachment B

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)
311)

PROTECTIVE ORDER

I. INTRODUCTION

On April 3, 2017, Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., and Falcon Merger Sub, Inc. (collectively “Consolidated”) filed a Motion for Confidential Treatment of portions of the Confidential and Highly Confidential Prefiled Evidence submitted by the Department of Public Service (“Department”) and Labor Intervenors.¹ Specifically, Consolidated states that the Confidential and Highly Confidential Prefiled Testimony and Exhibits of the Department and Labor Intervenors contains non-public, confidential and highly confidential information that is proprietary and competitively sensitive and which should be maintained as confidential. Consolidated submitted Consolidated’s Averments Nos. 1–5 in support its request for confidentiality. No party opposed Consolidated’s motion.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that Consolidated has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant Consolidated’s motion for confidential treatment.

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.

To promote full public understanding of the basis for its decisions, the Public Service Board (“Board”) has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.² Generally, however, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.³

In determining whether to protect confidential information, we consider the following issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which 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?⁴

Consolidated seeks confidential treatment of Confidential and Highly Confidential Prefiled Testimony and Exhibits of the following Department and Labor Intervenor witnesses:

- a) Department Witness Joel Jeanson; Confidential Exhibits DPS-JFJ-2, DPS-JFJ-3 and DPS-JFJ-6, and Highly Confidential Exhibit DPS-JFJ-5;

² *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 (“Entergy Docket”), Order of 11/9/01 at 5-6.

³ *Id.* at 6.

⁴ *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) at 2-3.

- b) Department Witness Ardeth Smith; Confidential Exhibit DPS-AS-13, and Highly Confidential Exhibits DPS-AS-4, DPS-AS-5, DPS-AS-6 and DPS-AS-9;
- c) Department Witness Curtis Mills; Confidential Exhibits WCM-10 and WCM-11, and Highly Confidential Exhibits DPS-WCM-4 and DPS-WCM-5;
- d) Department Witness Carol Flint;
- e) Department Witness Scott Wierson; and
- f) Labor Intervenor Witness Randy Barber; Confidential Exhibit RB-5.

The information redacted from the Confidential and Highly Confidential Prefiled Evidence consists of data pulled from Consolidated Confidential and Highly Confidential discovery Attachments listed in Consolidated Averments Nos. 1–5, and other confidential information, all of which was provided to the Department and Labor Intervenor by Consolidated during the course of discovery in this proceeding and was subject to the Protective Agreement approved by the Board on February 9, 2017 and the Amended Protective Agreement approved by the Board on March 27, 2017.

Consolidated asserts that the information contained in the Confidential and Highly Confidential Prefiled Evidence of the Department and Labor Intervenor contains confidential and highly Consolidated financial information and financial projection, confidential and highly confidential Consolidated competitively sensitive information, and highly confidential Consolidated critical infrastructure information. Consolidated asks that this information be treated as confidential because public disclosure would harm Consolidated's business by allowing competitors to compete more effectively against Consolidated, placing Consolidated at a competitive disadvantage, and harming its bargaining position with labor. Further, public disclosure would also endanger critical telecommunications infrastructure. Further detail regarding the need for confidentiality is set forth in Consolidated Averments Nos. 1–5.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that Consolidated has made a *prima facie* showing that the subject information is competitively sensitive, and therefore, warrants confidential treatment.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential and Highly Confidential Information contained in the Department's and Labor Intervenor's Prefiled Evidence (as

described more fully in Consolidated's Motion and listed above) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, to the extent conducted, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in this Docket, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendments, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

5. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont, this _____ day of April, 2017.

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	)	PUBLIC
_____	)	SERVICE
	)	BOARD
	)	OF
_____	)	VERMONT

OFFICE OF THE CLERK

FILED: _____, 2017

ATTEST: _____
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent a further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.