STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., Falcon Merger Sub, Inc., FairPoint Communications, Inc., Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, FairPoint Vermont, Inc., d/b/a FairPoint Communications, 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	)	Docket No. 8881

MOTION FOR CONFIDENTIAL TREATMENT OF REBUTTAL TESTIMONY

Petitioners Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., and Falcon Merger Sub, Inc., (collectively "Consolidated") request that the Public Service Board ("Board"), pursuant to Board Rule 2.206 and 30 V.S.A. § 9, issue a Protective Order allowing for the confidential treatment of certain prefiled rebuttal testimony and rebuttal exhibits. In support of this Motion, Consolidated submits the following Memorandum of Law, as well as the attached Revised Averment 1 and Revised Averment 2 (**Attachments 1** and **2**).

MEMORANDUM OF LAW

I. Introduction

On December 29, 2016, Petitioners filed a Joint Petition in this proceeding and filed supporting prefiled testimony and exhibits on January 10, 2017, seeking approval pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and 311 for Consolidated to acquire FairPoint Communications, Inc. through merger. On April 24, 2017, Consolidated filed rebuttal testimony and exhibits.

II. Standard

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 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?

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); *Joint Petition of Green Mountain Power Corp., Vermont Elec. Coop., Inc., & Vermont Elec. Power Co., Inc.*, Docket No. 7628 (Vt. Pub. Serv. Bd. Aug. 5, 2010) at 2.

III. <u>Description of the Matters Sought To Be Protected</u>

Consolidated seeks confidential treatment of nonpublic, confidential financial projections and other competitively sensitive information developed for purposes of analyzing the proposed Transaction for which it seeks approval from the Board. See *Revised* Averments 1 and 2. Specifically, through this Motion, Consolidated seeks confidential treatment for the following rebuttal exhibits:

1) CONFIDENTIAL Exhibit CCI-GW-1,

2) CONFIDENTIAL Exhibit CCI-MJS-5,

3) CONFIDENTIAL Exhibit CCI-SLC-3, and

4) CONFIDENTIAL Exhibit CCI-SLC-4,

and references to this information and other similar confidential information contained in the confidential versions of:

5) the Rebuttal Testimony of Steven Childers, and

6) the Rebuttal Testimony of Michael Shultz.

This information is financially sensitive and competitively sensitive. If competitors were able to access this non-public information, they would be able to acquire information (1) about how Consolidated intends to direct and manage the business affairs of the combined company and (2) regarding certain non-public information about the financial projections of the combined and stand-alone companies. This would allow competitors to compete more directly and effectively with Consolidated.

IV. Disclosure Of The Information Would Cause A Cognizable Harm Sufficient To Warrant A Protective Order

Public disclosure of this confidential information would result in harm to Consolidated because if disclosed to competitors, it would permit them to adjust their business operations and/or marketing to more effectively compete against Consolidated. The financial viability of Consolidated is relevant to this proceeding, but due to the consolidated nature of these businesses, the information also contains projections for unregulated aspects of Consolidated's business and confidential FairPoint financial projections. This information has not previously been disclosed publicly.

V. Good Cause Exists For Invoking The Board's Protection

For the above-stated reasons, there is good cause for the Board to issue an order according confidential treatment to the information set forth in Consolidated's Revised Averments 1 and 2. The Board has granted confidential treatment of similar financial projections in past cases. See, e.g., *Jt. Pet. of Stowe Cable Holdings, LLC, Stowe Cable Sys.*, Docket No. 8428 (Vt. Pub. Serv. Bd. Apr. 17, 2015) (concluding that "information relating to financial projections … is commercially sensitive, that disclosure could cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting such information").

Consolidated will continue to review the information classified as confidential and to work with the Department of Public Service 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 material as confidential, and Consolidated and that party are unable to resolve the dispute, Consolidated seeks an opportunity to present additional information for the Board's consideration specific to the disputed information in connection with this Motion.

VI. Conclusion

For the above-stated reasons, Consolidated respectfully requests that the Board issue a Protective Order to protect the confidentiality of Consolidated's confidential Rebuttal Testimony and confidential Rebuttal Exhibits.

Dated: April 24, 2017

Consolidated Communications Holdings, Inc.,
Consolidated Communications, Inc., and
Falcon Merger Sub, Inc.

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