

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Joint Petition of Champlain Broadband LLC, City)
of Burlington d/b/a Burlington Telecom, Blue)
Water Holdings LLC for approvals, pursuant to 30)
V.S.A. § 109, 231, 504, 47 U.S.C. § 214(e), and)
Section 438(c)(1) of the City of)
Burlington Charter)
)
)

Case No.

MOTION FOR CONFIDENTIAL TREATMENT OF
SELECTED PREFILED EXHIBITS OF CHAMPLAIN BROADBAND LLC

This document has been filed EPUC

NOW COMES Champlain Broadband LLC, (“Champlain”) and requests that the Vermont Public Utility Commission (“PUC”) issue a Protective Order that provides confidential treatment for Champlain’s Confidential Exhibits, copies of which are appended to this Motion under seal (the “Confidential Information”):

1. Champlain-GA-2 (Eleven Year Plan)
2. Champlain-GA-3 (Burlington Telecom system historic operating statement)

Champlain requests confidential treatment of anticipated future filings such as a proposal for decision that includes the Confidential Information. In support of this Motion and request for a Protective Order, Champlain represents as follows:

1. On February 26, 2018, Champlain along with joint petitioners City of Burlington d/b/a Burlington Telecom (“City”) and Blue Water Holdings LLC, filed a Petition (the “Petition”) with the PUC requesting approvals pursuant to 30 V.S.A. §§ 107, 231, 504, 47 U.S.C. § 214(e), and Section 438(c)(1) of the City of Burlington Charter.
2. To allow for thorough investigation of the issues that arise under the Petition, Champlain seeks to offer into evidence the Confidential Information.
3. The Exhibits contain certain Confidential Information concerning Champlain’s proprietary, highly-competitive sensitive information, and the Confidential Information is subject to a non-disclosure agreement with the City to protect this proprietary information, and therefore Champlain is required to take appropriate measures to prevent its disclosure.
4. Because the majority of the Confidential Information relates to proprietary business information, Champlain believes this information could be used by a third party wishing to compete in this already highly-competitive market and should therefore be granted protection from disclosure subject to the requested Protective Order. See e.g., *In Re: Renewal of the CPG of Comcast*, Doc. No. 8301, Order of August 4, 2016 (granting similar motion).

5. Exhibit Champlain-GA-2 (Eleven Year Plan) is generally described in the prefiled testimony of Gesumino Agostino such that the public can understand the purpose of the document. The Eleven Year Plan discloses details regarding Champlain's financial forecast for Burlington Telecom, including details on operational strategies, market growth, maintenance capital expenditures, identified market expansion communities and developments, market expansion capital expenditures, annual residential subscriber growth, annual commercial customer growth, cost of goods, certain competitive expense savings and purchasing power, General Manager compensation, market assessments, profitability, average revenue per unit, other revenue details, and certain proprietary plans for technological and economic growth and expansion programs benefiting the communities to be served. Burlington Telecom's video, telephone, and broadband high-speed data services are competitive offerings and Burlington Telecom offers these services in a discrete geographical area that is the most competitive communications marketplace in Vermont. The data in this exhibit is thus proprietary and highly competitively sensitive as: (1) public disclosure of any financial information about either past performance or future plans would give a substantial unfair advantage to Burlington Telecom's competitors in the Burlington market; (2) the information contained in the Confidential Information is material to the business, operations and strategies of the Champlain; and (3) Burlington Telecom's competitors are not required to disclose similar data specifically and solely identifiable to the same discrete geographical area of competition.

6. Exhibit Champlain-GA-3 (Burlington Telecom historic operating results) is generally described in the prefiled testimony of Mr. Agostino such that the public can understand the purpose of the document. This exhibit discloses confidential financial information from 2015 through to 2018. Burlington Telecom's video, telephone, and broadband high-speed data services are competitive offerings and Burlington Telecom offers these services in a discrete geographical area that is the most competitive communications marketplace in Vermont. The data in this exhibit is thus proprietary and highly competitively sensitive as: (1) public disclosure of such recent financial information would give a substantial unfair advantage to Burlington Telecom's competitors in the Burlington market; and (2) Burlington Telecom's competitors are not required to disclose similar data specifically and solely identifiable to the same discrete geographical area of competition.
7. As explained above, Champlain has described the key findings and data from the Confidential Information within the prefiled testimony in this case. The testimony provides adequate and meaningful information to the public on the financial basis to support the transaction.

8. Champlain has a substantial interest in keeping the Confidential Information confidential. The Confidential Information is subject to a non-disclosure agreement with the City and Champlain does not share this information outside the company unless there is a business purpose. In such cases, any external disclosure Champlain makes is subject to the same non-disclosure agreement it has with the City. The Confidential Information is maintained on a private and secure business network, accessible only by authorized individuals that understand and maintain the confidentiality of this information.
9. Due to the nature of the confidentiality claim asserted, Champlain anticipates that the causes giving rise to its need for the instant Protective Order will not be such that it can provide the PUC authorization to release the information from the terms of the proposed Protective Order at a future time. Accordingly, Champlain maintains that the Confidential Information will need to be kept confidential while in the PUC's possession.
10. Champlain submits to the treatment of the Confidential Information in the same manner as is generally provided for confidential exhibits and discovery filings under the terms of the traditional protective orders, including the terms that would govern confidentiality during the pendency of the PUC's review of this Motion and while the PUC is in possession of the Confidential Information.
11. To support its assertion that the Confidential Information should be afforded confidential treatment under a Protective Order, Champlain offers the following:
 - a) The Confidential Information contains information that is highly-competitive financial and business information as explained above;

- b) The information contained in the Confidential Information is subject to a non-disclosure agreement and is ordinarily known only to Champlain's management;
- c) It is important to Champlain's ability to support its Petition that it be permitted to utilize the Confidential Information it has developed in this investigation and that Champlain's interests not be harmed through the public disclosure of its Confidential Information;
- d) Champlain does not share the information contained in the Confidential Information outside the company unless there is a business purpose, and in such case, disclosure is made subject to the same non-disclosure agreement it has with the City. The Confidential Information is maintained on a private and secure business network, accessible only by authorized individuals that understand and maintain the confidentiality of this information.;
- e) The information contained in the Confidential Information may be provided to those Parties that sign a Protective Agreement;
- f) The public release and disclosure of the information contained in the Confidential Information will harm Champlain's ongoing competitive activities;
- g) Information of the type contained in the Confidential Information could be useful to third parties that compete in the cable and telecommunications business; and
- h) It is difficult to estimate the cost of developing the information contained within the Confidential Information, but it is not insubstantial. It is unlikely that third parties could develop this information even at substantial cost.

CONCLUSION

For these reasons, Champlain respectfully requests that the PUC issue a Protective Order that affords the Confidential Information protection from public disclosure while it is in the PUC's possession. Champlain maintains that such treatment will facilitate the purposes of this investigation without harming the Champlain's interests and need to protect the confidentiality of its Confidential Information.

DATED at MONTPELIER, VERMONT this 26th day of February, 2018.

CHAMPLAIN BROADBAND LLC

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PROCEDURAL ORDER

I. INTRODUCTION

On February 26, 2018, Champlain Broadband LLC (“Champlain”) filed a Motion for Protective Order/Confidential Treatment of certain information contained in two exhibits that it alleges constitute proprietary business information. Champlain submitted an averment to support its request for a protective order/confidential treatment. No party opposed Champlain’s motion.

II. DISCUSSION

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

To promote full public understanding of the basis for its decisions, this PUC 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 parties 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.¹ Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.² However, even when the motion is uncontested the PUC will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider four 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) Does the matter sought to be protected contain CEII?
- (3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (4) Has the party seeking protection shown "good cause" for invoking the PUC's protection?³

¹ *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.

² *Id.* at 6.

³ See, e.g., *Entergy Docket*, Order of 3/29/02 at 2.

As described in Champlain's motion and supporting materials, Exhibit Champlain-GA-2 (Eleven Year Plan) is generally described in the prefiled testimony of Gesumino Agostino such that the public can understand the purpose of the document. The Eleven Year Plan discloses details regarding Champlain's financial forecast for Burlington Telecom, including details on operational strategies, market growth, maintenance capital expenditures, identified market expansion communities and developments, market expansion capital expenditures, annual residential subscriber growth, annual commercial customer growth, cost of goods, certain competitive expense savings and purchasing power, General Manager compensation, market assessments, profitability, average revenue per unit, other revenue details, and certain proprietary plans for technological and economic growth and expansion programs benefiting the communities to be served. Burlington Telecom's video, telephone and broadband high-speed data services are competitive offerings and Burlington Telecom offers these services in a discrete geographical area that is the most competitive communications marketplace in Vermont. The data in this exhibit is thus proprietary and highly competitively sensitive as: (1) public disclosure of any financial information about either past performance or future plans would give a substantial unfair advantage to Burlington Telecom's competitors in the Burlington market; (2) the information contained in the Confidential Information is material to the business, operations and strategies of the Champlain; and (3) Burlington Telecom's competitors are not required to disclose similar data specifically and solely identifiable to the same discrete geographical area of competition.

Exhibit Champlain-GA-3 (Burlington Telecom historic operating results) is generally described in the prefiled testimony of Mr. Agostino such that the public can understand the purpose of the document. This exhibit discloses confidential financial information from 2015 through to 2018. Burlington Telecom's video, telephone, and broadband high-speed data services are competitive offerings and Burlington Telecom offers these services in a discrete geographical area that is the most competitive communications marketplace in Vermont. The data in this exhibit is thus proprietary and highly competitively sensitive as: (1) public disclosure of such recent financial information would give a substantial unfair advantage to Burlington Telecom's competitors in the Burlington market; and (2) Burlington Telecom's competitors are not required to disclose similar data specifically and solely identifiable to the same discrete geographical area of competition.

With respect to the Exhibits Champlain-GA-2 and 3, I conclude that Champlain has made a prima facie showing that the redacted information constitutes sensitive proprietary commercial business information. Therefore, I grant Champlain's motion for confidential treatment of the information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by Champlain (as described in Champlain's Motion) 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 PUC except by Order of the PUC. Notwithstanding such a statement, the members of the PUC, any employee or consultant specifically authorized by the PUC to assist the PUC 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 other person.
2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of _____, and those whom the PUC 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 PUC stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such PUC 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 PUC, 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 PUC retains jurisdiction to make such amendment, 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 PUC for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont this ____ day of _____, 2018.

Hearing Officer

OFFICE OF THE CLERK

FILED:

ATTEST: _____
Clerk of the PUC

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