

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 21-4060-PET

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| Petition of Consolidated Communications of Vermont Company, LLC, and Consolidated Communications of Northland Company for approval of a successor (2022-2024) Incentive Regulation Plan pursuant to 30 V.S.A. § 226b |  |
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Order entered: 02/09/2022

**PROTECTIVE ORDER FOR CONFIDENTIAL TREATMENT OF EVIDENCE**

**I. INTRODUCTION**

On January 21, 2022, Consolidated Communications of Vermont Company, LLC, and Consolidated Communications of Northland Company, both doing business as Consolidated Communications (“Petitioners” or “Consolidated”), filed a motion with the Vermont Public Utility Commission (“Commission”) related to the confidential treatment of portions of the prefiled testimony and exhibits of witnesses August Ankum and Carol Flint for the Vermont Department of Public Service (the “Department”). Consolidated represents that the information in the testimony that it seeks to protect is nonpublic, confidential, proprietary, and competitively sensitive. Consolidated submitted an averment to support its request for confidential treatment. No responses to Consolidated’s request were filed.

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

**II. DISCUSSION**

To promote full understanding of the bases for its decisions, the Commission has actively taken steps to limit the amount of information subject to protective orders. The Commission has encouraged parties to remove material from that protection to the extent possible. The Commission requires 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.<sup>1</sup>

Generally, the Commission resolves disputes about information only when there is a disagreement about its confidential nature.<sup>2</sup> However, even when the motion is uncontested, the Commission 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 allegedly confidential information, the Commission considers three 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 Commission’s protection?<sup>3</sup>

Consolidated maintains that the redacted portions of the Ankum and Flint prefiled testimony contain competitively sensitive information that is not publicly available. Consolidated explains that the information that it seeks to protect includes descriptions of: (1) all of Consolidated’s voice services, including components; (2) detailed and non-public service quality information; (3) confidential information on Consolidated’s staffing levels; (4) Consolidated’s fiber build plans; (5) budgets and investment data; (6) confidential data on customer complaints; (7) detailed location-specific information where Consolidated’s customer subscribers are located by town; and (8) the total number of Consolidated’s telephone service lines for the period of 2018-2021. Consolidated asserts that the information could be used by competitors to create marketing and sales strategies targeting Consolidated’s customers in particular areas of the state and would enhance competitors’ ability to adjust their own business strategies to compete against Consolidated if disclosed.

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<sup>1</sup> *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.

<sup>2</sup> *Id.* at 6.

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

I have reviewed the motion and supporting materials and applied the existing standard. I conclude that the redacted information is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information. Therefore, I conclude that Consolidated has made a *prima facie* showing that confidential treatment is warranted for the information at issue, and I grant Consolidated's motion for a protective order.

### III. ORDER

IT IS HEREBY ORDERED that the redacted portions of the prefiled testimony of August Ankum and Carol Flint 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 testimony or documents that discuss or reveal documents that constitute confidential material, shall be filed with the Commission via email sent to [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov), if they have not already been filed. The subject line of all such emails must start with the words “Confidential documents attached” and must include the case number in which the documents are being filed. In addition, filers must follow up by mailing one hard copy to the Commission using first-class mail.<sup>4</sup> The hard copies shall be placed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and case 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 Commission except by order of the Commission. Despite such a statement, the members of the Commission, any employee or consultant specifically authorized by the Commission to assist the Commission in this proceeding, and any Hearing Officer appointed in this case 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, no persons, other than those who have agreed to be bound by this Order and any Protective Agreement approved in this case, and those whom the Commission has expressly authorized to have access to this confidential

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<sup>4</sup> *Vermont Public Utility Commission orders and memoranda issued in response to COVID-19 pandemic*, Case No. 20-0789-INV, Orders of 3/31/20 and 12/3/21.

information, shall be permitted to give, hear, or review testimony given or held with respect to this confidential information.

3. Each Commission stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Commission 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 Commission, 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 Commission retains jurisdiction to make any amendments, modifications, and additions to this Order as it may, from time to time, deem appropriate, including any amendments, modifications, or additions resulting from a motion made pursuant to the Protective Agreement.

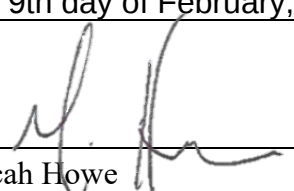
5. Any party or other person may apply to the Commission for an amendment, modification, or addition to this Order.

6. In the event of a challenge to my determination in this Order as to the confidentiality of the relevant information, the burden of proof shall remain with Consolidated.

7. The confidential treatment of evidence provided for in this Order shall expire five years from the date of this Order.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 9th day of February, 2022.

  
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Micah Howe  
Staff Attorney

OFFICE OF THE CLERK

Filed: February 9, 2022

Attest:   
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Deputy Clerk of the Commission

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (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](mailto:puc.clerk@vermont.gov))*

PUC Case No. 21-4060-PET - SERVICE LIST

Parties:

Sarah L. J. Aceves  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620  
sarah.aceves@vermont.gov

(for Vermont Department of Public Service)

Debra L. Bouffard, Esq.  
Sheehey Furlong & Behm  
30 Main Street, 6th Floor  
P.O. Box 66  
Burlington, VT 05402-0066  
dbouffard@sheeheyvt.com

(for Consolidated Communications of Vermont  
Company, LLC)

Debra L. Bouffard, Esq.  
Sheehey Furlong & Behm  
30 Main Street, 6th Floor  
P.O. Box 66  
Burlington, VT 05402-0066  
dbouffard@sheeheyvt.com

(for Consolidated Communications of  
Northland Company)

Eric B. Guzman  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620  
eric.guzman@vermont.gov

(for Vermont Department of Public Service)

Owen McClain, Esq.  
Sheehey Furlong & Behm P.C.  
30 Main Street  
P.O. Box 66  
Burlington, VT 05402  
omclain@sheeheyvt.com

(for Consolidated Communications of  
Northland Company) (for Consolidated  
Communications of Vermont Company, LLC)