

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-2230-PET

Petition of Vermont Gas Systems, Inc., pursuant to 30 V.S.A. § 248(i), for approval of an out-of-state renewable gas purchase contract with a term exceeding 5 years	
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Order entered: 07/07/2022

PROCEDURAL ORDER RE: PROTECTIVE AGREEMENT

I. INTRODUCTION

Vermont Gas Systems, Inc. (“Petitioner” or “VGS”) or other parties may have information that they allege is of a confidential and proprietary nature, and that they have been, or may be, asked to provide to the Vermont Public Utility Commission (“Commission”), the Vermont Department of Public Service (“Department”), the Petitioner, and certain other parties. The Petitioner, the Department, and each other party is referred to, where the context requires, as a “Party” and collectively as the “Parties.” To preserve the alleged confidentiality of that information while facilitating the disclosure of information in this proceeding, the Petitioner and the Department have entered into the attached protective agreement, dated June 15, 2022 (the “Protective Agreement”). Revisions to Schedule I of the Protective Agreement, as it may be amended in accordance with the terms of the Protective Agreement, specifically describes information that the disclosing Party: (1) alleges may result in financial or competitive harm to it or its parent company or affiliates if it is required to disclose this information to the public; and (2) believes to be proprietary, privileged, confidential, or in the nature of a trade secret (“Allegedly Confidential Information”).

Under this Protective Agreement and to preserve the confidentiality of Allegedly Confidential Information, the Parties to the Protective Agreement request that the Commission issue a Protective Order implementing the terms and procedures of the Protective Agreement.

II. DISCUSSION

Rule 26(c)(7) of the Vermont Rules of Civil Procedure, applicable to Commission proceedings pursuant to Commission Rule 2.214(A), authorizes the issuance of protective orders,

for good cause shown, so as to protect “confidential research, development, or commercial information” from disclosure by the Party or Parties receiving it for purposes of discovery and presenting testimony in a given case.

The Commission finds good cause to order the implementation of the Protective Agreement. The Commission has determined that the Protective Agreement is appropriate, useful, and reasonable, but with the following clarification. Today’s Order shall govern only the protection of documents and information provided in discovery. If a Party wishes to keep confidential any material that is proffered for inclusion in the evidentiary record, that Party must present a properly supported motion for protection of that material.

III. ORDER

IT IS HEREBY ORDERED that Allegedly Confidential Information provided by a Party pursuant to the Protective Agreement shall be treated in this proceeding as follows:

1. The attached Protective Agreement, dated June 15, 2022, filed with the Commission on June 16, 2022, is approved and adopted as part of this Order.

2. For each document or information response that a Party wishes to treat as Allegedly Confidential Information, the disclosing Party must submit a detailed, document-specific (or information-specific) averment of the basis for such treatment, which addresses the following, to the extent that the disclosing Party relies upon that factor as the basis for an assertion of confidentiality:

a. Identification of the specific document or information for which confidential treatment is sought;

b. Explanation of the degree to which the document or information contains a trade secret or other commercially sensitive information or is privileged;

c. For documents and information alleged to contain Allegedly Confidential Information:

i. the extent to which the information is known outside the Party and/or its parent or affiliates;

ii. the extent the information is known by employees and independent contractors;

iii. the measures taken to guard secrecy;

- iv. the value of the information to the Party, its parent, its affiliates, and competitors;
 - v. the amount of effort or money used to develop the information;
 - vi. the ease or difficulty of others in acquiring or duplicating the information; and
 - vii. an explanation of how disclosure of the information could result in cognizable harm sufficient to warrant a protective order;
- d. Justification of the period during which the Party asserts that material should not be available for public disclosure;
 - e. Explanation of whether partial disclosure or disclosure of redacted versions can adequately protect the Allegedly Confidential Information; and
 - f. Any other information that the Party seeking confidential treatment believes may be useful in assessing whether the document or information should remain confidential.
3. If a Party wishes to prefile any testimony or exhibits that include or otherwise disclose Allegedly Confidential Information, that Party must give ten days' advance notice to counsel for the Party or other person that designated the information as Allegedly Confidential. Any Party may move the Commission for an order that the testimony or exhibits be filed under seal or under other conditions to prevent unnecessary disclosure.
- a. If a motion to seal is filed within the ten days' advance notice period, the proponent of the testimony and exhibits shall file the documents with the Commission via email sent to puc.clerk@vermont.gov. 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.¹ 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 contents (exhibit, report, etc.), and a statement that it shall not be opened or released from custody of the Clerk of the Commission except by order of the Commission or Hearing Officer.

¹ *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 4/01/22.

Despite such a statement, the members of the Commission, and any employee or consultant specifically authorized by the Commission to assist the Commission in this proceeding and any Hearing Officer appointed to this Case, may have access to the sealed Allegedly Confidential Information but shall not disclose the contents of this sealed information to any person who has not agreed to be bound by the Protective Agreement.

The Commission will then determine whether the proffered evidence should continue to be treated as confidential information and, if so, what protection, if any, may be afforded to this information.

b. If no motion for confidential treatment is filed by the end of the ten days' advance notice period, the testimony and exhibits may be filed as documents available for public access.

4. At any hearing or conference in this proceeding, no witness may be questioned with respect to any Allegedly Confidential Information unless examining counsel has provided advance notice to counsel for any Party or other person that designated the information as allegedly confidential. To the extent possible, this notice shall be given before the hearing or conference. Any Party may move the Commission for an order that the testimony be received in camera or under other conditions to prevent unnecessary disclosure. If that type of motion is made, the Commission will then determine whether the testimony should be received in camera or subject to other protection.

5. Upon receipt of an executed Protective Agreement signature form – that is, either Schedule IIa or IIb to the Protective Agreement – counsel for the disclosing Party shall forward one copy of the form to the Clerk of the Commission.

6. All documents filed with the Commission that are subject to the Protective Agreement as Allegedly Confidential Information and any documents that discuss or reveal documents that constitute Allegedly Confidential Information shall be filed with the Commission via email sent to puc.clerk@vermont.gov. 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.² 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 contents (e.g., discovery response, report, etc.), and a statement that the sealed record shall not be opened or released from custody of the Clerk of the Commission except by order of the Commission. Despite such a statement, the members of the Commission, and any employee or consultant specifically authorized by the Commission to assist the Commission in this proceeding and any Hearing Officer appointed to this Case, may have access to such sealed Allegedly Confidential Information but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound by the Protective Agreement.

7. The Commission will retain jurisdiction to make amendments, modifications, and additions to this Order, including in response to a motion made pursuant to the Protective Agreement. Any Party or other person may apply to the Commission for an amendment, modification, or addition to this Order.

If any Party challenges the treatment of any document provided pursuant to this Protective Order as Allegedly Confidential, the Party claiming confidentiality bears the burden of proof.

8. The Commission cautions the Parties that there must be a good-faith basis for all claims of confidentiality. Claims without a good-faith basis may result in sanctions against the Party making the unfounded claim. A Party's public disclosure of information that it has designated as Allegedly Confidential may indicate that the Party lacked a good-faith basis for that designation.

SO ORDERED.

² *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 4/01/22.


Dated at Montpelier, Vermont, this 7th day of July, 2022.



Daniel Burke, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: July 7, 2022

Attest: 
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)

PUC Case No. 22-2230-PET - SERVICE LIST

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