

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 22A-4238

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Vermont Gas Systems, Inc Rutland Regional Medical Center Geothermal Project	
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Order entered: 11/02/2022

**PROTECTIVE ORDER FOR CONFIDENTIAL TREATMENT OF EVIDENCE**

**I. INTRODUCTION**

On October 26, 2022, Vermont Gas Systems, Inc. (“VGS”) filed a motion with the Vermont Public Utility Commission (“Commission”) related to the confidential treatment of portions of (1) VGS’s Geothermal Energy Services Agreement with Rutland Regional Medical Center (“RRMC”) (Confidential Attachment 1), and (2) VGS’s related financial modeling (Confidential Attachment 2). VGS represents that the information contained in these documents is nonpublic, confidential, and competitively sensitive pricing information of its contractors. VGS submitted an averment to support its request for confidential treatment. No party opposed the motion or filed a response.

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

**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>

VGS maintains that public disclosure of the geothermal energy services pricing information and related financial modeling would cause cognizable harm to VGS by disadvantaging VGS in future negotiations. The public disclosure of competitively sensitive information could also result in competitive harm by impacting other vendors’ willingness to contract with VGS in the future.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We 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, we conclude that VGS has made a *prima facie* showing that confidential treatment is warranted for the information at issue, and we grant VGS’s motion for a protective order.

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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.

### III. ORDER

IT IS HEREBY ORDERED that the geothermal energy services pricing information and related financial modeling 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). 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 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

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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 10/28/22.

persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.



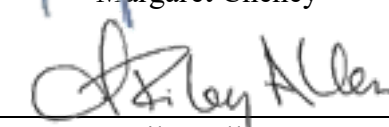
4. The Commission retains jurisdiction to make any amendments, modifications, and additions to this Order as it may, from time to time, deem appropriate, including any amendments, modifications, or additions resulting from a motion made pursuant to the Protective Agreement.

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

6. The confidential treatment of evidence provided for in this Order shall expire five years after the expiration of the RRMC contract.

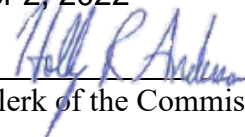
**SO ORDERED.**

Dated at Montpelier, Vermont, this 2nd day of November, 2022.

 _____ )	) PUBLIC UTILITY
Anthony Z. Roisman )	
) _____ )	
 _____ )	) COMMISSION
Margaret Cheney )	
) _____ )	
 _____ )	) OF VERMONT
J. Riley Allen )	

OFFICE OF THE CLERK

Filed: November 2, 2022

Attest:   
 \_\_\_\_\_  
 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. 22A-4238 - SERVICE LIST

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