

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 18-3231-PET

Petition of the Vermont Department of Public Service for an investigation into the service quality provided by Telephone Operating Company of Vermont, Inc., d/b/a Consolidated Communications, Inc.	
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Order entered: 06/06/2019

**PROTECTIVE ORDER FOR CONFIDENTIAL TREATMENT OF EVIDENCE**

**I. INTRODUCTION**

On April 25, 2019, Telephone Operating Company of Vermont, LLC d/b/a Consolidated Communications (“Consolidated”) filed a motion with the Vermont Public Utility Commission (“Commission”) related to the confidential treatment of information contained in the prefiled testimony to be filed by the Vermont Department of Public Service (“Department”) on April 26, 2019. Consolidated represents that certain information in the Department’s prefiled testimony is proprietary and competitively sensitive information that Consolidated has provided to the Department pursuant to the protective agreement in this case. Consolidated submitted averments to support its request for confidential treatment. On April 29, 2019, the Department filed a response stating that it does not oppose Consolidated’s motion.

We have reviewed the motion and supporting materials, and conclude that Consolidated has made a *prima facie* showing that confidential treatment is warranted for some of the information at issue. Therefore, we grant-in-part 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 Vermont Public Utility Commission (“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 seeks confidential treatment of portions of the prefiled direct testimony of Department witnesses Fred Goldstein and Barlow Keener, Scott Wheeler, and Carol Flint, as well as Exhibit DPS-CF-2 to the testimony of Carol Flint. The information that Consolidated seeks to protect includes (1) Consolidated’s financial information and capital investment planning for Vermont and for Consolidated’s corporate parent and (2) Consolidated’s service quality and staffing details, including specific information about numbers and types of trouble tickets, response times, and specific references to affected towns and wire centers.

Consolidated asserts that public disclosure of the information would cause cognizable harm to Consolidated’s business and place Consolidated at an unfair advantage in its bargaining positions.

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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.

We have reviewed the motion and supporting materials, and we have applied the existing standard. With respect to Consolidated's financial information, capital investment planning for Vermont and for Consolidated's corporate parent, staffing details, and specific references to affected towns and wire centers, we conclude that Consolidated has made a *prima facie* showing that the redacted information includes proprietary and 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 Consolidated has made a *prima facie* showing that confidential treatment is warranted for this information, and we grant Consolidated's motion for a protective order for this information.

However, we are not persuaded that the numbers and statistics related to trouble tickets and Consolidated's average time to respond to those trouble tickets should be treated as confidential. This information is similar to the quarterly reports that Consolidated files with the Department and the Commission, which are publicly available on ePUC. The information does not include customer identities, problem locations, or Consolidated's staffing levels, which are the bases of confidentiality asserted by Consolidated in its averments. Consolidated has not demonstrated that the disclosure of information about its trouble tickets and response times would result in competitive harm to Consolidated or place Consolidated at an unfair advantage in bargaining positions.<sup>4</sup>

Absent a more substantial and persuasive argument from Consolidated, we will not deem the following redactions confidential:

<b>Witness</b>	<b>Page: Lines</b>	
Flint	<b>10:</b> 1, 2, 4, 6, 8 <b>11:</b> 1-16 (table) <b>12:</b> 2, 4, 6, 8	<b>14:</b> 18-19 <b>15:</b> 1 (table), 6, 9, 10 Exhibit DPS-CF-2
Goldstein & Keener	<b>5:</b> 3, 10 <b>6:</b> 13, 15 <b>7:</b> 28 <b>8:</b> 10 <b>9:</b> 9, 17 <b>10:</b> 5, 7, 9, 11, 13, 14, 16, 18	<b>23:</b> 1, 7, 9, 11, 19-20, 22 <b>24:</b> 2, 9, 11, 13-14, 16-17 <b>25:</b> 1-3 (chart), 9 <b>27:</b> 2, 4, 8, 10, 11, 13, 16 <b>28:</b> 1, 4 <b>29:</b> 4, 5, 7, 9, 11, 13

<sup>4</sup> See *Petition of Telephone Operating Company of Vermont LLC*, Docket 8701, Order of 12/7/16 at 7-8; Order of 6/5/17 at 9-11.

	<b>11:</b> 1-3 (chart), 8	<b>30:</b> 17, 20
	<b>12:</b> 11, 14, 15	<b>31:</b> 2
	<b>13:</b> 1, 4, 5, 8, 10, 12, 13, 16, 17, 19, 20	<b>34:</b> 3, 5, 10, 12
	<b>14:</b> 1, 2, 4, 6, 7, 12-14 (chart)	<b>36:</b> 2, 4 (percentage only); 11
	<b>15:</b> 11-13 (chart)	<b>37:</b> 5, 12
	<b>16:</b> 8, 11	<b>47:</b> 16
	<b>17:</b> 9, 12, 14	<b>48:</b> 5-7 (chart)
	<b>20:</b> 7-8, 13, 15, 17, 18, 19	<b>50:</b> 13
	<b>21:</b> 5-7 (chart)	<b>57:</b> 7, 9, 12
	<b>22:</b> 3-5 (chart), 11, 13	

Consolidated is directed to provide the Department with revised redactions for the testimony of the Department's witnesses.

### **III. ORDER**

IT IS HEREBY ORDERED that the redacted portions of the prefiled direct testimony of Department witnesses Fred Goldstein and Barlow Keener, Scott G. Wheeler, and Carol Flint, with the exceptions identified in the table above, 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 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 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 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.

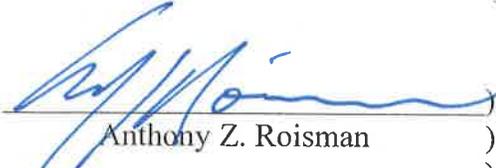
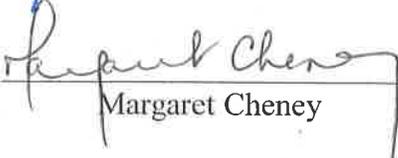
5. In any future proceeding, the burden of establishing that the confidential treatment of this information is warranted is on the party seeking to avoid disclosure.

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

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 6th day of June, 2019.

	)	
Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
	)	
Margaret Cheney	)	COMMISSION
	)	
	)	
Sarah Hofmann	)	OF VERMONT

OFFICE OF THE CLERK

Filed: June 6, 2019

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. 18-3231-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, Inc.)

James Porter, Esq.  
Vermont Department of Public Service  
Vermont Public Service Department  
112 State St  
Montpelier, VT 05620  
james.porter@vermont.gov

(for Vermont Department of Public Service)

Michael Shultz  
Consolidated Communications, Inc.  
770 Elm Street  
Manchester, NH 03101  
michael.shultz@consolidated.com

(for Consolidated Communications, Inc.)