

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. _____

Petition of Vermont Transco LLC, and Vermont Electric Power Company, Inc. (collectively, “VELCO”), for a Certificate of Public Good pursuant to 30 V.S.A. § 248 authorizing upgrades to VELCO’s existing Florence Substation, located in Pittsford, Vermont

MOTION FOR CONFIDENTIAL TREATMENT OF
A SELECTED PREFILED EXHIBIT OF
VERMONT ELECTRIC POWER COMPANY, INC.,
AND VERMONT TRANSCO LLC

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NOW COME Vermont Electric Power Company, Inc. and Vermont Transco LLC (together, “VELCO” or “Petitioners”) and request that the Vermont Public Utility Commission (“PUC”) issue a Protective Order that provides confidential treatment for Petitioners’ Confidential Exhibit, a copy of which is appended to this Motion under seal (the “Confidential Information”): Exhibit Petitioner DP-2 (VELCO Condition Assessment)

Petitioners request 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, Petitioners represent as follows:

1. VELCO is a company as defined by 30 V.S.A. § 201, and as such it is subject to the PUC’s jurisdiction pursuant to 30 V.S.A. § 203.

2. On September 1, 2021, Petitioners filed a Petition (the “Petition”) with the PUC requesting the issuance of a Certificate of Public Good pursuant to 30 V.S.A. § 248 authorizing VELCO to upgrade its existing substation located at 8040 Whipple Hollow Road, in Pittsford, Vermont (referred to as the “Project”).
3. To investigate the issues that arise under the Petition, Petitioners seek to offer into evidence the Confidential Information.
4. The Confidential Exhibit contains certain Confidential Information concerning VELCO’s bulk electric system. VELCO is concerned that some of the information in the Confidential Exhibit constitutes Critical Energy Infrastructure Information (“CEII”) as defined by the Federal Energy Regulatory Commission (the “FERC”) and therefore VELCO is required to take appropriate measures to prevent its disclosure.
5. The FERC defines CEII as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure.

6. The Confidential Exhibit also contains information relating to the safety and security of property that serves the public and that which is part of the backbone of Vermont's electrical system. The Confidential Exhibit identifies security systems, the internal layout and structural elements of VELCO's substation, access points, communication equipment and other cybersecurity information, detailed planning criteria, and deficiency analysis. While this proceeding does not involve the application of Vermont's Public Records Act, this act exempts similar types of information from public disclosure.¹
7. While VELCO has made portions of the Confidential Exhibit public in different sections of its public Section 248 filing, it has not released all this information collectively in one document. The Confidential Exhibit provides context for such publicly released information in a way that one could not obtain without having access to the Confidential Exhibit – it collectively provides a roadmap for how a person could damage the substation's ability to properly function.
8. The risk of providing the Confidential Exhibit in redacted form greatly outweighs the benefits of providing a redacted version to the public. VELCO's Section 248 filing provides a reasonable level of public information so that the public can understand the Project. VELCO believes it is best utility practice to treat the entirety of the Confidential Exhibit as confidential. Preserving the confidentiality of the Confidential Exhibit will

¹ See recent amendment to Public Records Act, 1 V.S.A. § 317, adding exemption number 43: "(43) Records relating to a regulated utility's cybersecurity program, assessments, and plans, including all reports, summaries, compilations, analyses, notes, or other cybersecurity information"; see also 1 V.S.A. § 317 (32) (exempting from public disclosure "[w]ith respect to publicly owned, managed, or leased structures, and only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans, and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation and security manuals, plans, and security codes.").

make it more difficult for a person wishing to do harm to this substation to obtain all the necessary information.

9. Because the majority of the Confidential Information relates to exposure to system contingencies and discloses specific details about VELCO facilities, VELCO believes this information could be used by a third party wishing to do harm to or severely damage critical electric system assets and should therefore be granted protection from disclosure subject to the requested Protective Order.
10. The following exhibit contains CEII and other sensitive information that needs to remain confidential:
 - Exhibit Petitioner DP-2 (VELCO Condition Assessment) contains information relating to vulnerabilities of VELCO facilities and includes specific details regarding the location of the facilities.
11. Petitioners have 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 about the Project pertaining to its need, design, and cost effectiveness without disclosing system design, operational, or performance information that could be used by a terrorist to negatively impact the electric system or undermine the reliability improvements that the proposed Project would create.
12. The information contained in the Confidential Information is material to the business, operations and strategies of VELCO and the Project.

13. VELCO has a substantial interest in keeping information about risks to its CEII and other security, access, and communication information confidential to manage a reliable electric network, and to avoid regulatory fines that could be assessed for improper disclosure of Confidential Information.
14. Due to the nature of the confidentiality claim asserted by Petitioners, Petitioners anticipate 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, Petitioners maintain that the Confidential Information will need to be kept confidential while in the PUC's possession.
15. Since VELCO provides information in its testimony and other exhibits about the nature of its system's exposures to system contingencies, VELCO maintains that the issuance of the requested Protective Order should not hamper the public's ability to understand Petitioners' instant Petition and request for approval of the Project. Material information regarding Petitioners' Project is presented in substantial detail in the Petition, supporting prefiled testimony and related non-confidential exhibits. Should parties or members of the public have additional questions about VELCO's transmission planning procedures, Petitioners refer those parties to VELCO's 2021 Long Range Transmission Plan.
16. Any member of the public can follow VELCO's protocols available on its website if such member would like to view the material that VELCO has identified as confidential.

17. VELCO also anticipates filing a motion for approval of a protective agreement and any party to the proceeding can sign the approved Protective Agreement if they would like an unredacted copy of the Confidential Exhibit.
18. Petitioners submit 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.
19. The Commission has granted VELCO's similar assessments complete confidential treatment in other substation upgrade cases, and has not required a public redacted version even when associated testimony and exhibits have publicly disclosed portions of VELCO's assessment.² The Commission issued the most recent order approving confidential treatment of a similar VELCO assessment on August 8, 2021, in Case No. 21-2455–North Rutland Substation upgrade case. In these projects, the prefiled testimony of VELCO's project manager included some of the text that was also included in the confidential assessment report. VELCO's engineering witness provided a public exhibit that contained a diagram, and such diagram was also included in the confidential assessment. Only the confidential assessment exhibit, however, provided VELCO's detailed long-term planning criteria, deficiency analysis, layout diagrams, access and

² For example: Case No. 21-2455, VELCO North Rutland substation project, Protective Order For Confidential Treatment of Evidence (Order of 8/25/21); Case No. 19-1812, VELCO Berlin Substation project, Order Granting Confidential Treatment of Evidence (Order 8/21/19); Case No. 17-5240, Barre Substation project, Order Granting Confidential Treatment of Evidence (Order of 1/23/18); Case No. 17-3808, VELCO St. Albans Substation project, Order Granting Confidential Treatment of Evidence (Order 12/6/17).

associated security details, and communication and other cybersecurity details in one document. The Commission treated the entire assessment as confidential and concluded that the assessment “is 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.”³ VELCO requests the Commission to follow its precedent in this case as well because VELCO has demonstrated good cause to protect the Confidential Exhibit.

20. To support its assertion that the Confidential Information should be afforded confidential treatment under a Protective Order, Petitioners offer the following:
- a) The Confidential Information contains information that is CEII and other sensitive information as discussed above, including information related to the assessment of vulnerabilities affecting Vermont’s bulk electric system;
 - b) The information contained in the Confidential Information is ordinarily known to VELCO’s management but is not generally described or released in this form;
 - c) It is important to Petitioners’ ability to support its Petition that it be permitted to utilize the Confidential Information it has developed in this investigation and that VELCO’s interests not be harmed through the public disclosure of its Confidential Information;
 - d) The information contained in the Confidential Information is ordinarily provided to management engaged in transmission planning and operation matters, only as confidential information that is not to be disclosed except by VELCO;
 - e) The information contained in the Confidential Information may be provided to third parties including representatives of other utilities, participants in the Vermont System Planning Committee, interested persons, and consultants and management advisors, including counsel, subject to appropriate confidentiality arrangements;

³ See e.g., Case No. 19-1812, VELCO Berlin Substation project, Order Granting Confidential Treatment of Evidence (Order 8/21/19).

- f) The release and disclosure of the information contained in the Confidential Information could harm VELCO's ongoing transmission planning and operation activities, and those of other interconnected utilities;
- g) Information of the type contained in the Confidential Information could be useful to other third parties in planning an attack on or putting at risk critical electric system infrastructure; 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 other third parties could develop this information even at substantial cost.

CONCLUSION

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

DATED at MONTPELIER, VERMONT this 3rd day of September, 2021.

VERMONT ELECTRIC POWER COMPANY, INC.,
AND VERMONT TRANSCO LLC



By: _____

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I. INTRODUCTION

On September 3, 2021 Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively referred to as “Petitioners” or “VELCO”) filed a Motion for Protective Order/Confidential Treatment of certain information contained in an exhibit that it alleges constitutes Critical Energy Infrastructure Information (“CEII”)⁴, and other sensitive information that relates to the safety and security of property that serves the public and that which is part of the backbone of Vermont’s bulk electrical system. Petitioners submitted an averment to support their request for a protective order/confidential treatment. No party opposed Petitioners’ motion.

II. DISCUSSION

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

⁴ The Federal Energy Regulatory Commission (“FERC”) defines CEII as:
Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure.

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 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.⁵ Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.⁶ 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?⁷

⁵ *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.

⁶ *Id.* at 6.

⁷ See, e.g., *Entergy Docket*, Order of 3/29/02 at 2.

As described in Petitioners' motion and supporting materials, Exhibit Petitioner DP-2 (VELCO Condition Assessment), relates to vulnerabilities of VELCO facilities, and includes specific details regarding the location of the facilities. This Exhibit contains information relating to the safety and security of property that serves the public and that which is part of the backbone of Vermont's bulk electrical system. The Exhibit identifies security systems, the internal layout and structural elements of VELCO's substation, access and associated security measures, communication equipment and other cybersecurity information, detailed planning criteria, and deficiency analysis. While VELCO has made some portions of this Exhibit public in other materials, this Exhibit provides context for such publicly released information in a way that one could not obtain without having access to the Exhibit.

With respect to the alleged CEII, I conclude that Petitioners have made a *prima facie* showing that the redacted information falls within the FERC definition of CEII. FERC began limiting public access to CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. ¶ 61,030 (2001). FERC has since issued a series of subsequent orders that establish formal procedures for the management and consistent treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 662, 702 and 890).⁸

Because Petitioners have made a *prima facie* showing that the redacted information is CEII and other sensitive information regarding the bulk power system, the information warrants confidential treatment. Therefore, I grant Petitioners' motion for confidential treatment of the information.

⁸ FERC procedures for the management of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by Petitioners (as described in Petitioners' 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 amendments, 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 September, 2021.

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: psb.clerk@state.vt.us)