

**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 St. Johnsbury Substation, located in St. Johnsbury, Vermont

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

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Vermont Electric Power Company, Inc. and Vermont Transco LLC (together, “VELCO” or “Petitioners”) request that the Vermont Public Utility Commission (“Commission”) 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 JRF-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 Commission’s jurisdiction pursuant to 30 V.S.A. § 203.

2. On October 30, 2023 Petitioners filed a Petition (Petition) with the Commission 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 397 Higgins Hill Road, St. Johnsbury, Vermont (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 (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. 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 See 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.").

8. 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.
9. 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 make it more difficult for a person wishing to do harm to this substation to obtain all the necessary information.
10. 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.
11. The following exhibit contains CEII and other sensitive information that needs to remain confidential:

- Exhibit Petitioner JRF-2 (VELCO Condition Assessment) contains information relating to vulnerabilities of VELCO facilities and includes specific details regarding the location of the facilities.
12. 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.
 13. The information contained in the Confidential Information is material to the business, operations and strategies of VELCO and the Project.
 14. 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.
 15. 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 Commission 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 Commission's possession.

16. 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.
17. 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.
18. 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.
19. 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 Commission's review of this Motion and while the Commission is in possession of the Confidential Information.
20. 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 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 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.

21. 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;

² For example: Case No. 21-3732, VELCO Florence substation project, Protective Order For Confidential Treatment of Evidence (Order of 10/1/21); 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).

³ See e.g., Case No. 19-1812, VELCO Berlin Substation project, Order Granting Confidential Treatment of Evidence (Order 8/21/19); and see also Case No. 21-2455, VELCO North Rutland substation project, Protective Order For Confidential Treatment of Evidence (Order of 8/25/2) (concluding that "disclosure would cause a cognizable harm sufficient to warrant a protective order," "there is good cause for protecting the information," and "VELCO has made a prima facie showing that confidential treatment is warranted for the information at issue.")

- 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;
- 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 Commission issue a Protective Order that affords the Confidential Information protection from public disclosure while it is in the Commission'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 30th day of October, 2023

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



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PROTECTIVE ORDER FOR CONFIDENTIAL TREATMENT OF EVIDENCE

I. INTRODUCTION

On October 30, 2023 Vermont Electric Power Company, Inc. and Vermont Transco LLC (together “Petitioners” or “VELCO”) filed a motion with the Vermont Public Utility Commission (“Commission”) related to the confidential treatment of exhibit Petitioner JRF-2 (VELCO Condition assessment). VELCO represents that this exhibit contains Critical Energy Infrastructure Information (“CEII”)

¹, 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. VELCO submitted an averment to support its request for a confidential treatment. No party opposed the motion or filed a response.

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

¹ 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.

II. DISCUSSION

To promote full public understanding of the basis 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.²

Generally, the Commission resolves disputes about information only when there is a disagreement about its confidential nature.³ 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 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?⁴

² *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.

³ *Id.* at 6.

⁴ See, e.g., *Entergy Docket*, Order of 3/29/02 at 2.

VELCO maintains that some of the information in exhibit Petitioner JRF-2 (VELCO Condition Assessment), constitutes CEII, relates to vulnerabilities of VELCO facilities, includes specific details regarding the location of the facilities, and therefore VELCO is required to take appropriate measures to prevent its disclosure. 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.

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

III. ORDER

IT IS HEREBY ORDERED that the Confidential Information provided by VELCO (as described in VELCO's motion and supporting averment) 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, must be filed following the process for filing information that a party asserts to be confidential that is set forth in Commission Rule 2.226(B). This process requires, among other things, that any confidential information must be filed by email with the Clerk of the Commission or filed in paper and must have the word "Confidential" as the first word of the subject line.⁵ Any documents containing Allegedly Confidential Information that are filed in paper with the Commission must be placed in sealed envelopes or other appropriate sealed containers on which must 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 must 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 must 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, will 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 must acknowledge and be bound by this Order. Each such Commission stenographer or reporter will be instructed to and must start a separate transcription for testimony or discussion on the record of confidential information. Such transcription must be marked “Confidential” and must be sealed and filed with the Clerk of the Commission, and copies of the same will be made available only to those persons authorized to view such information. This transcription must, in all other respects, be treated as confidential information pursuant to this Order.

4. The Commission 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 Commission for an amendment, modification or addition of this Order.

6. There is no time limit to the protection granted in this order to exhibit Petitioner JRF-2 (VELCO Condition Assessment).

SO ORDERED.

Dated at Montpelier, Vermont this ____ day of November, 2023.

Hearing Officer

OFFICE OF THE CLERK

FILED:

⁵ See Commission Rule 2.226(B) for the complete list of filing requirements.

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)