

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No.

Petition of Vermont Transco LLC and Vermont)
Electric Power Company, Inc., requesting a)
certificate of public good, pursuant to 30 V.S.A.)
§ 248, authorizing the construction of the PV20)
Cable Replacement Project)

**MOTION FOR CONFIDENTIAL TREATMENT OF
PREFILED EXHIBITS ON BEHALF OF
VERMONT TRANSCO LLC AND
VERMONT ELECTRIC POWER COMPANY, INC.**

NOW COME Vermont Electric Power Company, Inc., Vermont Transco LLC
(together, "VELCO" or "Petitioners") and request a Protective Order from this
Honorable Vermont Public Service Board to treat certain of Petitioners' Prefiled Exhibits
as confidential and allow disclosure only in accordance with the terms of a Board order.

In support of this Motion and request for a Protective Order, Petitioners
represent as follows:

1. Each individual Petitioner is a company as defined by 30 V.S.A. § 201, and as
such each is subject to the Board's jurisdiction pursuant to 30 V.S.A. § 203.
2. On this same date, Petitioners filed a Petition with the Board requesting the
issuance of a Certificate of Public Good pursuant to 30 V.S.A. § 248 authorizing
the construction of the "PV20 Cable Replacement Project" consisting of the
replacement of a submarine transmission line, termination and control
equipment, and connecting line structures, all located within the town of Grand

Isle, Vermont and within Lake Champlain to the New York border (the “Project”).

3. In support of the Petition and request for relief, Petitioners prefiled two exhibits under seal that contain Confidential Information. These exhibits are:

Exhibit Petitioner-EM-5: One-Line Drawing

Exhibit Petitioner-SSM-4: Realtime Utility Engineers Transmission Life Extension & Modernization Assessment Report

4. The Confidential Information pertains to VELCO’s bulk electric system that qualifies as Critical Energy Infrastructure Information (“CEII”) as defined by the Federal Energy Regulatory Commission (the “FERC”). Therefore, VELCO must take appropriate measures to prevent the CEII from public 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. Because the Confidential Information relates to information that could be used by a third party wishing to do harm to or severely damage critical electric system

assets, it should be granted protection from public disclosure through an a Protective Order consistent with Attachment 1 to this Motion.

7. 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.
8. VELCO has a substantial interest in keeping information about risks to its CEII confidential to manage a reliable electric network and to avoid regulatory fines that could be assessed for improper disclosure of Confidential Information.
9. 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 Board 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 Board's possession.
10. VELCO provides information in its testimony and other exhibits about the nature of its system's exposures to system contingencies, and therefore the issuance of

the requested Protective Order is not likely to 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 2015 Long Range Transmission Plan (currently in draft form).

11. 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 Board's review of this Motion and while the Board is in possession of the Confidential Information.
12. 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, 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;
- 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 Board issue a Protective Order that affords the Confidential Information protection from public disclosure while it is in the Board's possession. Petitioners maintain that such treatment will facilitate the purposes of this investigation without harming the public interest or impairing VELCO's interests and need to protect the confidentiality of its Confidential Information.

DATED at CASTLETON, VERMONT this 8th day of September, 2015.

VERMONT TRANSCO LLC &
VERMONT ELECTRIC POWER COMPANY, INC.

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PROCEDURAL ORDER

I. INTRODUCTION

On September 8, 2015, Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively referred to as “Petitioners”) filed a Motion for Protective Order/Confidential Treatment of information contained in certain exhibits that it alleges constitutes Critical Energy Infrastructure Information (“CEII”).¹ Petitioners submitted an averment to support their request for a protective order/confidential treatment. No party opposed Petitioners’ motion.

II. DISCUSSION

We 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, we hereby grant Petitioners’ 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.”

To promote full public understanding of the basis for its decisions, this Board 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.² Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.³ However, even when the motion is uncontested, the Board 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 board'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.*

As described in Petitioners' motion and supporting materials, Exhibit Petitioner-EM-5 (One-Line Diagram) and Exhibit Petitioner-SSM-4 (Realtime Utility Engineers Transmission Life Extension & Modernization Assessment Report) contain data pertaining to geographic locations, circuit identifiers, engineering notes, voltage levels and switches affecting the proposed Project as well as other elements of the Vermont transmission network. With respect to the alleged CEII, we 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).⁵

Because Petitioners have made a prima facie showing that the redacted information is CEII, the information warrants confidential treatment. Therefore, we grant Petitioners' motion for confidential treatment of the information.

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

⁵FERC procedures for the management of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

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 Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board 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 those whom the Board 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 Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board 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 Board, 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 Board retains jurisdiction to make such amendment, 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 Board for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont this ____ day of _____, 2015.

_____)	PUBLIC SERVICE
_____)	
_____)	BOARD
_____)	
_____)	OF VERMONT

OFFICE OF THE CLERK

FILED:

ATTEST: _____
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (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)