

**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(j) authorizing upgrades to VELCO’s existing Irasburg Substation, located in Irasburg, Vermont	
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PROTECTIVE ORDER

I. INTRODUCTION

On November 18, 2020, Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively “VELCO” or “Petitioner”) filed a Motion for Confidential Treatment of Prefiled Evidence concerning one exhibit of witness Daniel Poulin and one exhibit of witness Edward McGann. Specifically, the Petitioner states that the confidential exhibits contain confidential information constituting Critical Energy Infrastructure Information (“CEII”) that the Petitioner is obligated to maintain as confidential pursuant to regulations of the Federal Energy Regulatory Commission (“FERC”). The Petitioner submitted an averment to support the request for confidentiality. No party opposed the Petitioner’s Motion.

II. DISCUSSION

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

To promote full public understanding of the basis for its decisions, the Vermont Public Utility Commission 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.¹ Generally, however, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.²

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 [Commission’s] protection?³

VELCO asserts that CONFIDENTIAL Exhibit Petitioner DAP-2 (VELCO Irasburg Substation Condition Assessment), and CONFIDENTIAL Exhibit Petitioner EJM-2 (Irasburg Substation One-Line Diagram) should be kept confidential for the following reasons:

- (1) The portions of the Petitioner’s exhibits at issue contain information revealing transmission facility details including electrical ratings and component information, such as critical cyber assets. The exhibits at issue also contain information revealing vulnerabilities of the substation. This information therefore falls within the definition of CEII because it contains: “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.” 18 C.F.R. § 388.113(c)(2).

¹ 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.

² *Id.* at 6.

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

- (2) Release of the specific information and locations of vulnerable assets listed in Petitioners' exhibits would enable a third party wishing to do harm to severely damage critical electric system assets.
- (3) For this reason, FERC has established formal procedures for the management, consistent treatment of, and restrictions on access to, CEII (including but not limited to FERC Orders Nos. 630, 630-A, 643, 662, 702, and 890, as well as 18 C.F.R. §§ 388.112, 388.113).

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that VELCO has made a *prima facie* showing that the subject 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). *See also* 18 C.F.R. §§ 388.112, 388.113. Because VELCO has made a *prima facie* showing that the redacted information is CEII, the information warrants confidential treatment.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by VELCO (as described in Petitioner's 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 Commission except by Order of the Commission. Notwithstanding such a statement, the Commission members, any employee or consultant specifically authorized by the Commission to assist the Commission in this proceeding, and any Hearing Officer appointed to 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, to the extent conducted, no persons, other than those who have signed or agreed to be bound by this Order and the 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 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.

SO ORDERED.

DATED at MONTPELIER, VERMONT, this _____ day of _____, 2020.

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_____)	
_____)	PUBLIC UTILITY
_____)	COMMISSION
_____)	
_____)	OF VERMONT

OFFICE OF THE CLERK

FILED: _____

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 email, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (Email address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

DOCUMENTS SUBJECT TO CONFIDENTIAL TREATMENT

Witness	Exhibit	Pages	Subject	Averment
Poulin	DAP-2		VELCO Irasburg Substation Condition Assessment	1
McGann	EJM-2		Irasburg Substation One-Line Diagram	1