

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7798

Petition of Waitsfield-Fayston Telephone Company, Inc.,)
d/b/a Waitsfield Telecom, d/b/a Champlain Valley)
Telecom, pursuant to 47 U.S.C. § 251(f)(2), for suspension)
or modification of the interconnection requirements of)
47 U.S.C. § 251(b))

Order entered: 2/7/2012

PROTECTIVE ORDER RE PREFILED EVIDENCE

I. INTRODUCTION

On January 13, 2012, Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom, d/b/a Champlain Valley Telecom ("Waitsfield" or "Petitioner") filed a Motion for Protective Order concerning portions of the prefiled testimony of Waitsfield witnesses Douglas Duncan Meredith and Roger Nishi, and five exhibits thereto (the "Allegedly Confidential Testimony and Exhibits"), filed by Waitsfield on December 5, 2011. On December 22, 2011, Waitsfield filed corrections concerning two of the confidential exhibits (subsequently designated as Exhibit RN-3rev and Exhibit RN-4rev) to correct calculation errors. Specifically, Waitsfield asserts that the redacted passages contain confidential information that is competitively sensitive and that should be maintained as confidential. Waitsfield submitted an averment to support its request for confidentiality. No party opposed the Petitioner's Motion.

II. DISCUSSION

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

To promote full public understanding of the basis for its decisions, the Public Service Board ("Board") has actively taken steps to limit the amount of information subject to protective orders. The Board has encouraged parties to remove material from that protection to the extent

possible. Since 2001, the Board has 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, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.² 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, the Board 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 Board's protection?³

Waitsfield asserts that certain portions of its prefiled testimony of Douglas Duncan Meredith and Roger Nishi, and exhibit RN-2 and portions of exhibits RN-3rev, RN-4rev, RN-5, and RN-6,⁴ should be kept confidential for the following reasons:

- (1) The Allegedly Confidential Testimony and Exhibits contain certain information pertinent to the present proceeding that Waitsfield has been asked, or may in the future be asked, to provide to the docket parties which

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.

4. At the technical hearings for this docket held on January 30 and 31, 2012, Waitsfield moved the following additional confidential exhibits into the record: Waitsfield-2, Waitsfield-3, Waitsfield-4, Waitsfield-5, and Waitsfield RN-8. I admitted the confidential exhibits into evidence to be governed by the terms of this Order and the Protective Agreement (as amended) in this proceeding.

Waitsfield believes to be privileged, proprietary, or in the nature of a trade secret.

- (2) According to Waitsfield, the public release of the information would result in a cognizable financial and/or competitive harm to Waitsfield since the information contains internally prepared financial and strategic forecasts, and information involving non-regulated business activities, that Waitsfield does not intend to provide to the public.
- (3) Release of the information would result in significant financial harm to the Petitioner by revealing aspects of Waitsfield's internal operations placing the Petitioner at a competitive disadvantage.

I have reviewed the motion and supporting materials, and I have applied the existing standard. I conclude that Waitsfield has made a *prima facie* showing that confidential treatment is warranted for portions of the prefiled testimony and associated schedules.

The Board has consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. I expect Waitsfield to do the same here.

Finally, Waitsfield has requested that portions of the prefiled testimony and associated schedules be kept under seal throughout the proceeding and indefinitely thereafter, until the parties consent to disclosure in accordance with Vermont law.

At this time, I do not explicitly rule that any specific information should remain confidential indefinitely as requested by the Petitioner. Instead, I will grant protection to the Allegedly Confidential Testimony and Exhibits for the period ending two years after the date of the Protective Agreement, as amended, entered in this proceeding, i.e., the protection shall end as of January 23, 2014.⁵ Prior to the end of the two-year period, the Petitioner may seek an extension for some or all of the redacted information if it can demonstrate that continued protection is warranted for the specific information for which the extension is sought.

5. On January 23, 2012, Waitsfield, Comcast Phone of Vermont LLC ("Comcast"), and the Department of Public Service executed an addendum to the Protective Agreement which makes Comcast a party to the agreement and amends Schedule IV to include information filed by Comcast that Comcast believes to be confidential.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Allegedly Confidential Testimony and Exhibits submitted by the Petitioner on December 5, 2011 (as revised on December 22, 2012), and at the Technical Hearings of January 30 and 31, 2012, 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 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 person.

2. At any 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, as amended, approved in the Order of February 7, 2012, 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. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

5. The protections established in today's Order shall expire as of January 23, 2014, unless extended by further order of the Board.

Dated at Montpelier, Vermont, this 7th day of February, 2012.

s/Jay E. Dudley
Jay E. Dudley
Hearing Officer

OFFICE OF THE CLERK

FILED: February 7, 2012

ATTEST: s/Susan M. Hudson
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)