

STATE OF VERMONT
PUBLIC SERVICE BOARD

Order establishing standards and procedures regarding)
the filing and Board review of proposed special contracts)
pursuant to 30 V.S.A. § 229, and the filing of "notice-)
only" special contracts by telecommunications)
companies that are exempt from the requirements of)
30 V.S.A. § 229)

Order entered: 12/24/2014

ORDER ESTABLISHING STANDARDS AND PROCEDURES

I. INTRODUCTION

Under Vermont law, public service companies are required to obtain prior approval from the Vermont Public Service Board ("Board") of any contracts with customers for products or services not provided for in the public service company's tariffs.¹ Such contracts between public service companies and their customers customarily have been referred to as "special contracts" in Board practice.

In turn, pursuant to 30 V.S.A. § 227d, certain telecommunications companies are exempt from the prior approval requirements of 30 V.S.A. § 229, and need only file notice with the Board of any contracts they enter into with their customers. Other telecommunications carriers have been relieved of the obligation to obtain approval of special contracts by Board Rule 7.500

1. 30 V.S.A. § 229 provides, in relevant part, that:

A public service company shall not directly or indirectly or by any special rate, rebate, drawback or other device or method make any deviation from the rates, fares, charges or prices for any service rendered by it or in services rendered or to be rendered in connection therewith, as specified in its schedules of charges in effect at the time such service was rendered. No public service company may enter into any contract, agreement or arrangement relating to the furnishing or rendering of any special product or special service not provided for or covered in the schedule without the prior approval of the board. . . . Subject to the approval of the board, it shall be lawful for any public utility to make a contract for a definite term for its product or service.

or through an alternative regulation plan.² In this Order, we refer to such agreements as "notice-only special contracts."

In this Order we adopt standards and procedures regarding the filing and Board review of proposed special contracts pursuant to 30 V.S.A. § 229, and the filing of notice-only special contracts by telecommunications companies that are exempt from the requirements of 30 V.S.A. § 229.

We note that at this time the Board is in the process of designing and implementing a new electronic case management system, which will be known as ePSB.³ As part of this transition, many of the Board's current business processes are under review for adaption to ePSB's new capabilities, including those processes related to the filing of allegedly confidential information. Accordingly, individuals who file proposed special contracts or notice-only special contracts containing allegedly confidential information should be sure to first verify that the procedures contained in today's Order have not been superceded by a more recent Board order or procedure governing the filing of allegedly confidential information.

II. PROCEDURAL HISTORY

On July 31, 2014, the Board issued an Order soliciting comments on draft standards and procedures regarding special contracts and notice-only special contracts.

On August 15, 2014, Green Mountain Power Corporation ("GMP"), the Vermont Department of Public Service ("DPS"), and Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"), separately filed comments via e-mail message on the draft standards and procedures. GMP and the DPS support the draft standards and procedures as proposed. FairPoint supports the draft standards and procedures, and provides substantive comments that are addressed in the discussion below.

On August 18, 2014, Vermont Electric Cooperative, Inc. ("VEC") filed comments on the draft standards and procedures. VEC supports the draft standards and procedures as proposed.

2. See, 30 V.S.A. §§ 226b and 227c.

3. ePSB will include electronic filing, electronic document management, and electronic case management capabilities. External users (including both parties to cases and members of the public) will be able to access ePSB via the Board's website.

III. DISCUSSION

FairPoint provided three substantive comments on the draft standards and procedures relating to: (1) the applicability of Section 3 to notice-only special contracts; (2) the proposed three-year limitation for protection of customer-identifying information; and (3) the relationship between the standards and procedures and a company's alternative regulation plan. We address each of these comments in turn.

Applicability of Section 3 to Notice-Only Special Contracts

FairPoint notes that the draft standards and procedures state that only Section 6 of the draft standards and procedures applies to notice-only special contracts, and requests clarification regarding whether Section 3 also applies to notice-only special contracts. Section 3 relates to confidential treatment of customer-identifying information (a term that is defined in Section 2 of the draft standards and procedures) and includes a reference to proposed notice-only special contracts that are filed with the Board. We clarify that Section 3 does apply to notice-only special contracts and have modified Section 1 of the standards and procedures to reflect this.

Proposed Three-Year Limitation for Protection of Customer-Identifying Information

The draft standards and procedures propose that customer-identifying information (as defined in the draft standards and procedures) in proposed special contracts involving a telecommunications company and proposed notice-only special contracts that are filed with the Board be provided confidential treatment for three years after the starting date of the proposed contract. FairPoint requests more information from the Board on this proposed three-year limitation, and proposes that the parties to a contract should be able to set the duration for all confidentiality in accordance with their agreement and applicable law.

Vermont law creates a strong presumption that public records, such as proposed special contracts and proposed notice-only special contracts, be available for public inspection.⁴ In relatively rare circumstances, the Board issues protective orders to provide confidential treatment

4. 1 V.S.A. § 315.

upon an appropriate demonstration of harm sufficient to warrant a protective order and if "good cause" is shown. However, as stated in the Board's protective orders, a heavy burden is placed on a party seeking confidentiality to justify that decision.

Historically, the names of customers who have signed special contracts for utility service were public, and today the names of customers who have signed special contracts for electric or natural gas service continue to be public. However, when the telecommunications industry was opened to competition in the mid-1990s, this practice was changed to address the concern that a regulated telecommunications company would be at a competitive disadvantage if its competitors subject to less regulation could obtain information about what telecommunications services specific individual customers were receiving and the prices they were paying for those services. At that time, the Board began to determine on a case-by-case basis that customer-identifying information contained in proposed telecommunications special contracts should be treated as confidential, not to protect the customer's privacy, but rather to eliminate this competitive disadvantage and level the playing field between regulated telecommunications companies and those subject to less regulation. Nonetheless, the Board also concluded that it was reasonable to disclose the pricing information. Competitors could see prices, but could not target the special contract customers because they could not identify them. At the same time, however, the Board recognized that in the new competitive marketplace, the telecommunications services offered and the prices charged for them were changing rapidly. As a result, information about the prices specific customers paid for particular services was only valuable to competitive telecommunications providers for a fairly short period of time. Therefore, the Board typically granted confidential treatment of customer-identifying information in proposed special contracts for only three years.⁵

5. See, e.g., Special Contract Approval of Special Contract #201, 8/12/96 at 2 (Order paragraphs 4 and 5) "NYNEX has requested that customer-identifying information associated with this contract be treated as confidential. We find that the Company's letters of August 10, 1995, and October 2, 1995, demonstrate a prima facie case for treating the information as proprietary until approved by this Board, subject to rebuttal by some interested party at a future time. . . . The customer-identifying information in the filed Special Contract shall be made public thirty-six months after the starting date of the Contract, unless the parties file, and receive Board approval for extension of the Contract."

Thus, the proposed three-year limitation on the confidential treatment of customer-identifying information is consistent with long-standing Board practice.⁶ The limitation was included in the draft standards and procedures so that all relevant practices would be contained in one document. FairPoint has not presented any justification for changing this policy.

Next we turn to FairPoint's request that the parties to a contract be able to set the duration for all confidentiality in accordance with their agreement and applicable law.

In the context of a request for confidential treatment of certain terms of a proposed power purchase agreement, the Board stated:

We do not accept that the contracting parties can arrange merely through their own agreement to shield details of the proposed power purchase from public views. Vermont law creates a strong presumption that public records, such as the testimony and exhibits in this proceeding, are to be available for public inspection. In our determination of whether to grant confidential treatment to the PPA Confidential Information, we have given no weight to the contractual provisions that call for confidential treatment, and instead have independently judged the merits of the request for confidentiality without regard to the contractual provisions.⁷

This reasoning applies equally to proposed telecommunications special contracts and notice-only special contracts — the signatories to such agreements should not be able to determine merely through their own agreement the length of time customer-identifying information should be granted confidential treatment. Therefore, we decline to modify the draft standards and procedures to allow the parties to a contract to be able to determine the duration of the confidential treatment of the customer-identifying information.

Relationship of Standards and Procedures to Alternative Regulation Plans

FairPoint recommends that the standards and procedures include a statement indicating that any public service company operating under an alternative form of regulation shall have its alternative regulation plan govern in the event of any conflict or inconsistency.

6. *See, e.g.*, Docket 6066, Order of 9/25/01 at 8 (footnote 7). "The Board has typically granted confidential treatment for customer-identifying information in Special Contracts filed by telecommunications carriers. However, the Board only permits such treatment for the first three years of the contract."

7. Docket 7670, Order of 12/14/10 at 4 (footnote omitted).

We recognize that alternative regulation plans set forth a specific regulatory framework that applies to a particular public service company. These plans are carefully reviewed by the Board in contested-case proceedings. FairPoint is correct that in the context of a comprehensive review of a public service company's proposed alternative regulation plan, the Board could decide that one or more specific provisions of the standards and procedures should be modified for that public service company. In such a circumstance, the public service company's alternative regulation plan would control, not the standards and procedures.

However, sometimes alternative regulation plans contain broad enabling language that generally alters normal regulatory precepts. It is not our intention that such broad enabling language supercede the requirements of the standards and procedures. Rather, in order for an alternative regulation plan to supercede one or more provisions of the standards and procedures, the alternative regulation plan must identify the specific portions of the standards and procedures that do not apply to the public service company operating under that plan.⁸

We have modified Section 1 of the draft standards and procedures to reflect this determination.

IV. STANDARDS AND PROCEDURES

I. Purpose and Applicability

The purpose of these standards and procedures is to implement 30 V.S.A. § 229 and to govern the filing of special contracts by telecommunications companies that are exempt from the requirements of 30 V.S.A. § 229. These standards and procedures are applicable to requests for Board approval of proposed special contracts. Only Sections 3 and 6 of these standards and procedures are applicable to the filing of notice-only special contracts. The Board may, upon request of the applicant and for good cause, waive or modify the standards and procedures with respect to a specific proposed special contract.

8. We recognize that three public service companies currently operate under alternative regulation plans. If any such company wishes to modify its current alternative regulation plan because of the implementation of these standards and procedures for special contracts and notice-only special contracts, the company may propose an amendment to its current alternative regulation plan. We will consider any such amendments at the time they are filed.

If a public service company is operating under an alternative regulation plan at the time that a proposed special contract or a notice-only special contract is filed with the Board, and that alternative regulation plan modifies specific provisions of these standards and procedures, the terms of that alternative regulation plan shall govern. Broad enabling language contained in an alternative regulation plan shall not supercede these standards and procedures.

II. Definitions

"Board" is the Vermont Public Service Board.

"Customer-identifying information" is the name, address, and other information in a special contract with a telecommunications company or a notice-only special contract that clearly identifies who the customer is.

"DPS" is the Vermont Department of Public Service.

"Notice-only special contract" is a contract between a telecommunications company that is exempt from the prior approval requirements of 30 V.S.A. § 229 and one of its customers for a product or service for a definite term.

"Special contract" is a contract between a public service company that is subject to the requirements of 30 V.S.A. § 229 and one of its customers for a product or service for a definite term.

III. Confidential Treatment of Customer-Identifying Information

Customer-identifying information in proposed special contracts involving a telecommunications company and proposed notice-only special contracts that are filed with the Board shall be provided confidential treatment for three years after the starting date of the proposed contract.

IV. Advance Filing Requirement for Proposed Special Contracts

Any public service company seeking Board approval of a proposed special contract pursuant to 30 V.S.A. § 229 shall file the proposed special contract with the Board and the DPS

at least 60 calendar days prior to the proposed effective date.⁹ The purpose of this advance filing requirement is to provide the Board and the DPS with sufficient time to review the underlying cost data and the proposed contract terms. For this reason, requests for waivers of this advance filing requirement are discouraged.

The Board will consider any requests for waivers of this advance filing requirement on a case-by-case basis. A public service company that files a request for a waiver of this advance filing requirement shall include with the waiver request:

- specific reasons why such a waiver is necessary;
- an explanation why the public service company's filing could not have been made at least 60 days prior to the proposed effective date; and
- a demonstration of the specific harm if the waiver is not granted.

V. Filing Requirements for Proposed Special Contracts

Requests for Board approval of proposed special contracts pursuant to 30 V.S.A. § 229 shall include, at a minimum, the proposed special contract and appropriate supporting information to enable the Board and the DPS to review the proposed special contract's terms. If the proposed special contract is intended to replace an existing Board-approved special contract, the filing shall include a redline/strikeout version of the proposed special contract comparing it to the existing Board-approved special contract.

If the proposed special contract contains information that the public service company alleges is confidential, the filing shall include:

- a redacted, public version of the proposed special contract;
- an unredacted, allegedly confidential version of the proposed special contract; and
- a motion for confidential treatment accompanied by appropriate supporting averments or affidavits, except that if the proposed special contract is with a telecommunications company and the only redacted information is customer-

9. If the Board has implemented an electronic filing system and the public service company files the proposed special contract with the Board using that electronic filing system, the public service company may request at the time it makes the filing that the electronic filing system provide notice of, and access to, the filing to the DPS. Such a request will satisfy the public service company's obligation to file a copy of the proposed special contract filing with the DPS.

identifying information, a motion and supporting averments or affidavits are not required.

VI. Filing Requirements for Notice-Only Special Contracts

Notice-only special contract filings shall include the proposed special contract.

If the proposed special contract contains information that the public service company alleges is confidential, the filing shall include:

- a redacted, public version of the proposed special contract;
- an unredacted, allegedly confidential version of the proposed special contract; and
- a motion for confidential treatment accompanied by appropriate supporting averments or affidavits, except that if the only redacted information is customer-identifying information, a motion and supporting averments or affidavits are not required.

VII. Filing Requirements for Amendments to Pending Special Contracts

If a public service company files an amendment to a proposed special contract that is pending before the Board, the filing shall include a redline/strikeout version of the proposed amendment comparing the amendment to the version of the pending special contract that was previously filed with the Board.

If the proposed special contract contains information that the public service company alleges is confidential, the filing shall include:

- a redacted, public version of the proposed special contract;
- an unredacted, allegedly confidential version of the proposed special contract; and
- a motion for confidential treatment accompanied by appropriate supporting averments or affidavits, except that if the proposed special contract is with a telecommunications company and the only redacted information is customer-identifying information, a motion and supporting averments or affidavits are not required.

VIII. Schedule for Review of Special Contracts

The DPS shall file any recommendation regarding the proposed special contract within 30 calendar days of the date on which the proposed special contract was filed with the Board. The Board may request additional information from the public service company at any time during the 60-day review period.

IX. Issuance of Decision Regarding Special Contracts

The Board will issue a final decision regarding the proposed special contract within 60 calendar days of the date on which the proposed special contract was filed with the Board unless: (a) the Board grants a waiver of the 60-day advance notice period; (b) the public service company extends the proposed effective date of the proposed special contract; or (c) the Board determines, upon request of the DPS or on its own initiative, that good cause exists to extend the review period of the proposed special contract.

If the Board grants a waiver of the 60-day advance notice period, the Board will issue a final decision regarding the proposed special contract no later than one business day prior to the special contract's proposed effective date. If the public service company extends the proposed effective date, the Board will issue a final decision regarding the proposed special contract no later than one business day prior to the new proposed effective date. If the Board determines that good cause exists to extend the review period of the proposed special contract, the Board will inform the public service company and the DPS no later than one business day prior to the special contract's proposed effective date of the Board's determination that the review period will be extended.

Notwithstanding the time frames set forth above, a proposed special contract is not approved until the Board issues an order approving it; failure to meet the above time frames does not constitute de facto approval.

SO ORDERED.

Dated at Montpelier, Vermont, this 24th day of December, 2014.

<u>s/ James Volz</u>)	
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)	
<u>s/ John D. Burke</u>)	PUBLIC SERVICE
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<u>s/ Margaret Cheney</u>)	BOARD
)	
)	OF VERMONT

OFFICE OF THE CLERK

FILED: December 24, 2014

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)

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