

STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of NorthStar Decommissioning)
Holdings, LLC, NorthStar Nuclear)
Decommissioning Company, LLC, NorthStar)
Group Services, Inc., LVI Parent Corp., NorthStar) Docket No. 8880
Group Holdings, LLC, Entergy Nuclear Vermont)
Investment Company, LLC, and Entergy Nuclear)
Operations, Inc., and any other necessary)
affiliated entities to transfer ownership of Entergy)
Nuclear Vermont Yankee, LLC, and for certain)
ancillary approvals, pursuant to 30 V.S.A. §§ 107,)
231, and 232)

**NORTHSTAR PETITIONERS’ MOTION FOR APPROVAL OF SPECIAL PROTOCOL
TO GOVERN PARTIES’ ACCESS TO HIGHLY CONFIDENTIAL DOCUMENTS**

Petitioners NorthStar Decommissioning Holdings, LLC, NorthStar Group Holdings, LLC, LVI Parent Corp., NorthStar Group Services, Inc., and NorthStar Nuclear Decommissioning Company, LLC (together, “NorthStar”), respectfully submit this motion seeking the Board’s approval of a special Protocol to govern Parties’ access to two highly confidential NorthStar documents (one of which includes drafts) in this proceeding.

FACTUAL BACKGROUND

This statement of factual background is supported by the accompanying Affidavit of Scott E. State, and is summarized here for the Board’s convenience.

NorthStar has in the past performed numerous decommissioning projects, including several projects at nuclear-related facilities. NorthStar, in this proceeding, seeks to acquire Entergy Nuclear Vermont Yankee, LLC, and to accomplish radiological decommissioning and site restoration of the Vermont Yankee Nuclear Power Station (the “Project”). Other commercial nuclear plants in the United States will also soon be in need of decommissioning and site restoration, and NorthStar intends to compete for at least some such projects. NorthStar expects

that other companies such as *EnergySolutions*, whose subsidiary is decommissioning the Zion nuclear plant in Illinois, will compete for that same business. There are approximately three to four companies that could perform the work necessary to decommission Vermont Yankee, and this industry is incestuous in terms of employees moving back and forth between these companies and consulting firms.

NorthStar believes that it has a competitive advantage over its competitors because of the unique and proprietary way that it plans, schedules and budgets its decommissioning projects. Decommissioning and site restoration consist of numerous sub-tasks. In the case of Vermont Yankee, for example, NorthStar has developed approximately 900 sub-tasks. NorthStar expended substantial effort and resources to determine how to break down the Project into these smaller sub-tasks and how much funding is needed to accomplish each one. This highly sensitive information is known only to NorthStar's management team and regulatory counsel, was developed at NorthStar's expense, and is not known to others in NorthStar's industry or to the public in general. Were it to become known to NorthStar's competitors, they would likely be able to adopt it at NorthStar's expense and detriment, to use it unfairly to compete for future projects. In addition, this highly sensitive information, developed at NorthStar's expense, contains NorthStar's very detailed approach to decommissioning that allows NorthStar to complete projects in the most efficient manner possible. NorthStar would potentially lose the opportunity to earn hundreds of millions of dollars of revenue, along with reasonable profit thereon, if its work product was made available to its competitors.

In particular, there are two documents that contain the level of detail concerning sub-tasks and cost allocations that would damage NorthStar if disclosed:

First is the Detailed Pay Item Disbursement Schedule, which is labeled internally in

NorthStar's files as "EXHIBIT 1_VYPDC2 NNDS-1 VY SOV-v1.0 Y2016-09-08." This is a 20-page document that contains the approximately 900 sub-tasks and the cost allocations for each task. NorthStar has not provided this document to Entergy or to the U.S. Nuclear Regulatory Commission ("NRC").

Second is the Deal Model. This is a 16-page document that contains cost allocations for specific tasks (though aggregating some of those tasks relative to the detail set forth in the Detailed Pay Item Disbursement Schedule), and then shows how the primary funding sources for this Project (i.e., the Nuclear Decommissioning Trust and the Site Restoration Trust) will be utilized to pay for those costs, and in what sequence over time. Disclosure to NorthStar's competitors of the Deal Model, like disclosure of the Detailed Pay Item Disbursement Schedule, would threaten NorthStar's competitive advantage on future projects by enabling competitors to under-bid NorthStar. The Deal Model was provided to Entergy during due diligence on this transaction, with Entergy strictly bound by a Non-Disclosure Agreement not to disclose it to anyone else; NorthStar did not provide the Deal Model to the NRC. There are numerous drafts of the Deal Model, but it is the final Deal Model, not the drafts, that will govern NorthStar's implementation of the Project.

NorthStar is making available, without the use of any special protocol, other forms of these documents that contain at a more aggregated and less competitively sensitive level information in the Detailed Pay Item Disbursement Schedule and the Deal Model. In particular, a 90-line item version of the Pay Item Disbursement Schedule, Attachment A.DPS.NS.1-77.1, is being produced under ordinary confidentiality designation, and a 4-page version of the Deal Model was already filed publicly, Exhibit JP-SES-Supp-1, Enclosure 4 (4 page deal model). Moreover, the Joint Petitioners have produced approximately 1,500 public documents in the first

round of discovery and plan to produce a few thousand more under the Protective Agreement, some of which detail NorthStar's approach to decommissioning.

PROCEDURAL BACKGROUND

NorthStar's initial position was to make the Detailed Pay Item Disbursement Schedule and the Deal Model available only to the Public Service Department ("Department"), and only for inspection (not copying), at NorthStar's counsel's office in Montpelier, Vermont. Subsequently, NorthStar and the Department collaborated on a protocol that resulted in portions of the Protocol that NorthStar herein proposes; however, the Department asked NorthStar to make clear that the Department has not approved of the Protocol, as it required review and approval by the Public Service Board and vetting with other parties.

On April 24, 2017, the Department facilitated a meeting open to all parties to the proceeding to discuss the issue. Since then, NorthStar has modified its proposed Protocol (described in more detail in the Argument, *infra*) to provide access to the other Vermont agencies and to non-State governmental parties that sign the Protective Agreement. Because the parties were not all able to reach agreement on the Protocol, they signed a Protective Agreement that required NorthStar to place the issue of the Protocol before the Board in a motion to be filed by May 5, 2017. See Second Addendum to Protective Agreement, ¶ 1.

ARGUMENT

Although NorthStar recognizes that the ordinary Protective Agreement used in Board proceedings provides protection against disclosure of confidential materials, NorthStar respectfully submits that this protection is not sufficient in the unique circumstances here, where, as explained above, the highly confidential documents in question, if disclosed to NorthStar's competitors, would potentially cause NorthStar to lose the opportunity to earn hundreds of

millions of dollars of revenue, along with reasonable profit thereon. This potential is exacerbated by the fact that NorthStar has only a few competitors, and mobility between outside consultants and these competitor entities is significant.

In civil litigation, there is precedent for dealing with similar concerns through entry of a protective order that limits access to highly confidential documents to attorneys only, and indeed occasionally to outside counsel only. *See, e.g., In re The City of N.Y.*, 607 F.3d 923, 935 (2d Cir. 2010) (“The disclosure of confidential information on an ‘attorneys’ eyes only’ basis is a routine feature of civil litigation involving trade secrets.”); *Voice Domain Techs., LLC v. Apple, Inc.*, No. CIV.A. 13-40138-TSH, 2014 WL 5106413, at *2 (D. Mass. Oct. 8, 2014) (noting parties’ agreement that “source code” would be treated as “outside attorneys’ eyes only” material).

While that approach is potentially available here, it may fail to provide the Department and other parties sufficient access because the information in the highly confidential documents is beyond the understanding of many, if not most, attorneys and thus may require use of expert consultants to interpret. Relatedly, the Department has a statutory duty to make a recommendation to the Board in a proceeding like this one under 30 V.S.A. § 231(a), and the Department may find it difficult to make an informed recommendation without assistance from non-attorneys.

Accordingly, NorthStar is proposing a special Protocol that balances NorthStar’s interests in preserving its highly sensitive trade secrets with the interests of the Vermont State agencies and other parties in this proceeding to access and to review the documents. NorthStar’s proposed Protocol is attached to the accompanying Affidavit of Scott E. State. To summarize, it provides for access to the Detailed Pay Item Disbursement Schedule and the Deal Model (and drafts thereof) in the following ways:

First, as to the Vermont State governmental agencies: (a) the Department and its outside counsel, Wilmer Hale, each will designate an internal data owner to guard the documents; before NorthStar provides the documents to the internal data owner(s) on a special hard drive, Wilmer Hale will provide NorthStar the identities of proposed experts and consulting experts who will have access to the documents, and NorthStar will have an opportunity to object to any such person that raises concerns with regard to a risk of disclosure (even inadvertent disclosure) to NorthStar's competitors, which concerns NorthStar and the Department will seek to resolve in good faith and, failing resolution, to submit to the Board for decision; (b) five specific employees (or their equivalent replacements upon notice to NorthStar) of the Agency of Natural Resources ("ANR") will have access to the documents; and (c) Kyle Landis-Marinello, Esq., Assistant Attorney General, Office of the Attorney General of the State of Vermont (or his equivalent replacement upon notice to NorthStar) will have access to the documents. Further detailed provisions, described in the actual protocols attached hereto, describe exactly how the documents may be provided and accessed by authorized persons (and potentially used in this proceeding).

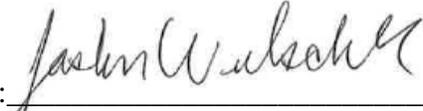
Second, as to non-State governmental agencies that sign the Protective Agreement: (a) documents will be made available in hard copy form for review at the office of NorthStar's counsel in Montpelier at a mutually agreeable date and time; (b) attorneys of record for such parties may participate in such inspection; (c) proposed experts and/or consulting experts that have been processed under the same provision described above for the Department's experts and/or consulting experts may participate in such inspection; (d) no copying, photographing, note taking, or dictation recording will be permitted; and (e) review will be supervised to ensure compliance, although private conference space away from the documents will be provided to allow attorneys and/or experts and/or consulting experts to step out and consult if needed.

Accordingly, NorthStar respectfully requests that the Board approve the Protocol attached to the accompanying Affidavit of Scott E. State.

DATED at Montpelier, Vermont, this 5th day of May, 2017.

Respectfully submitted,

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