

**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)
Group Holdings, LLC, Entergy Nuclear Vermont) Docket No. 8880
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)

**RESPONSE OF THE DEPARTMENT OF PUBLIC SERVICE AND AGENCY OF
NATURAL RESOURCES TO NORTHSTAR MOTION FOR APPROVAL OF
SPECIAL PROTOCOL FOR HIGHLY CONFIDENTIAL DOCUMENTS**

The Department of Public Service (“Department”) and the Agency of Natural Resources (together, “Responding State Agency Parties”) respectfully submit this response to the Motion for Approval of Special Protocol to Govern Parties’ Access to Highly Confidential Documents (“Motion”) submitted by NorthStar Decommissioning Holdings, LLC, NorthStar Group Holdings, LLC, LVI Parent Corp., NorthStar Group Services, Inc., and NorthStar Nuclear Decommissioning Company, LLC (together “NorthStar”) to the Vermont Public Service Board (the “Board”) on May 5, 2017. The Responding State Agency Parties believe that the Protective Agreement proposed in this docket—filed by the Department on May 2, 2017—provides sufficient protection for confidential materials. However, the Responding State Agency Parties do not object to additional protections for the two documents identified by NorthStar, based on NorthStar’s representations regarding the highly confidential and sensitive nature of those

documents.¹

As a general matter, the Responding State Agency Parties seek to minimize the number and scope of documents treated as confidential and therefore not made available to the public.² For documents that are truly confidential, proprietary, or privileged, such that public disclosure could result in financial and/or competitive harm or might threaten the security of energy infrastructure, the Responding State Agency Parties believe the Department's so-called "standard" Protective Order (a slightly modified version of which has been proposed in this docket) provides sufficient protections to maintain confidentiality. *Cf. Docket 6545, 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, and Related Transactions*, Order Re: Motion for Special Protective Order, Dec. 18, 2001, 2001 WL 1902362, at *1 ("Vermont Yankee has not shown that it requires more protection than would exist under a Protective Order that prevents *further* dissemination of the material beyond existing parties."); *Docket No. 5780 Tariff Filing of Green Mountain Power Corporation, Requesting a 13.9% Rate Increase, to Take Effect 11/10/94*, Order Granting Motion to Compel Discovery, Feb. 6, 1995, 1995 WL 881095, at *3 ("IBM's claim that

¹ This response identifies specific objections of the Responding State Agency Parties to NorthStar's proposed Highly Confidential Documents Protocol (the "Protocol").

² The Responding State Agency Parties strongly disfavor distinction amongst the parties for access to confidential documents. Any such distinction is not supported by Board precedent and risks precluding access to the Board process by pro se and other parties. See *Docket No. 6545, 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, and Related Transactions*, Order Re: Motion for Special Protective Order, Dec. 18, 2001, 2001 WL 1902362, at *2-3; *Docket No. 5700/5702, Investigation of Proposed Vermont Price Regulation Plan and Proposed Interim Incentive Regulation Plan of New England Telephone and Telegraph Company AND Petition of Department of Public Service for an Investigation of New England Telephone and Telegraph Company Rates*, Procedural Order Re: Protective Agreement, July 25, 1994, 1994 WL 905761, at *2-3.

most of the information sought by GMP is privileged as ‘trade secret or other confidential . . . commercial information,’ pursuant to Rule 26(c), is not sufficient to prevent discovery in light of the established protective agreements.”); *Docket No. 5540 Investigation of Proposed Second Vermont Telecommunications Agreement*, Procedural Order Re: Motion for Protective Order, Dec. 30, 1991, 1991 WL 736082, at *4 (identifying need for disclosing party to “demonstrate specifically why the entry of a protective order allowing all intervenors’ attorneys, witnesses and other representatives involved in [the] case access to its competitively sensitive data is not a sufficient protection for this information.”).

In this docket, based on NorthStar’s representations regarding the highly sensitive nature of the two documents identified in its Motion, the Responding State Agency Parties support the proposed Protocol as consistent with Board precedent allowing for additional protections beyond the so-called “standard” Protective Agreement. *See Docket No. 8586 Petition of Coolidge Solar I, LLC for Approval of a Rule 4.100 Power Purchase Agreement Concerning the Purchase of Energy and Capacity from a 20 MW Photovoltaic Generation Plant in Ludlow, Vermont*, Order Re: Motion to Compel, July 22, 2016, at 5; *Docket 6545, 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, and Related Transactions*, Order Re: Motion for Special Protective Order, Dec. 18, 2001, 2001 WL 1902362, at *2 (demonstrating Board’s delegation to parties to negotiate additional appropriate protections). That support, however, pertains only to the portions of the Protocol directed at State agencies, which are the only portions of the Protocol on which the Responding

State Agency Parties were consulted, and are also the only portions of the Protocol discussed among to all parties during the Department-organized open meeting referenced in the Motion.

While the Responding State Agency Parties disfavor unequal treatment among the parties with respect to access to information, they recognize that Joint Petitioners have provided for some level of access by non-State agency parties, and defer to those parties as to the sufficiency of that proffered access.

The Responding State Agency Parties object to the following provisions of NorthStar's Protocol:

1. Paragraph 1.A(3): The Responding State Agency Parties agree to provide NorthStar with the information requested in Paragraphs 1.A(1) and (2) regarding its experts, but will not provide employment history. Providing the identities and client lists of experts—coupled with the commitments and protections provided in the Protocol, not to mention standard professional ethics—is more than sufficient to protect against NorthStar's concerns regarding potential misuse of its information.³
2. Paragraph 1.D: The Responding State Agency Parties cannot agree to withhold the Highly Confidential documents, or notes or other materials derived therefrom, from their respective clients, Commissioner June E. Tierney, Secretary Julie Moore, and Deputy Secretary Peter Walke. If the Commissioner, Secretary, or Deputy Secretary seeks access to the materials, they would first execute the relevant undertakings.
3. Paragraph 8: All State Agency Parties must receive their own copy of USB drives for review at their offices subject to the same document handling procedures as outlined in the Protocol.
4. Paragraph 11: All State Agency Parties reserve the right to depose other experts

³ The Board has disapproved of “blanket claim[s]” that competitor-intervenors or in-house counsel “cannot be reasonably expected to abide by protective agreements.” *See Docket No. 5540 Investigation of Proposed Second Vermont Telecommunications Agreement*, Procedural Order Re: Motion for Protective Order, Dec. 30, 1991, 1991 WL 736082, at *4. The Board has taken this position despite arguments by the disclosing party that it is impractical to “expect[] employees of competitors to maintain a mental ‘Chinese wall’ in order not to disclose [disclosing party]’s highly detailed [confidential information].” *Id.* at *2. The Responding State Agency Parties take no position on the suggestion that NorthStar makes here—that the nature of the nuclear decommissioning industry requires an expansive employment history to assess potential conflicts.

(who have executed the relevant undertakings) using the Highly Confidential documents subject to the same provisions provided for in ¶ 11 of the Protocol.

5. Paragraph 14: All State Agency Parties note that the Vermont Public Records Law (§ 317a) prohibits such parties from destroying, giving away, or discarding any records maintained by those entities, “unless specifically authorized by law or under a record schedule approved by the State Archivist pursuant to 3 V.S.A. § 117(a)(5)”.

The Responding State Agency Parties respectfully request that the Board address these objections in its Order regarding the Motion. The Responding State Agency Parties otherwise support adoption of the State agency provisions of the Protocol as appropriate preliminary safeguards for handling the two documents identified as in this docket. The Responding State Agency Parties reserve the right to challenge the alleged Highly Confidential status of those documents.

Dated at Montpelier, Vermont, this 10th day of May 2017.

VERMONT PUBLIC SERVICE DEPARTMENT

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