

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' REPLY IN SUPPORT OF THEIR 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 reply in support of their 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.

The Responding State Agency Parties identified five objections in their response (“Response”) to NorthStar’s Motion for Approval of Special Protocol to Govern Parties’ Access to Highly Confidential Documents (“Motion”). NorthStar has no objection to suggested changes 2 through 5 (on pages 4 to 5 of the Response), but does object to the Response’s first suggested change, relating to Paragraph 1.A(3), outlined below.

The Response objects to that part of Paragraph 1.A(3) that requires the Department’s outside counsel, WilmerHale, to provide “information regarding previous employment by such

experts based on information provided by NorthStar.” NorthStar requests that the Board maintain this provision of the Special Protocol, as the Department will need to disclose the employment history of its “experts” (as the Special Protocol defines those terms) during the discovery process, and NorthStar is simply requesting that the disclosure occur earlier on in the process. The employment history would reveal whether any expert worked for a NorthStar competitor. Given the small universe of competitors and consultants in this industry, and the movement of consultants from consulting firms to competitor companies, NorthStar must be permitted to understand the risk level of disclosing sensitive information to such experts. See e.g., *Vermont Microsystems, Inc. v. Autodesk, Inc.*, 88 F.3d 142 (2d Cir. 1996) (example of competitor’s employee misappropriating trade secret).

Finally, NorthStar understands that the Attorney General’s office will not take a position on the Motion, but requested that NorthStar add Deputy Attorney General Josh Diamond as an Approved Reviewer and correct the spelling of Attorney Kyle Landis-Marinello’s name in the event that the Board approves of the Special Protocol. NorthStar has made those changes. In addition, NorthStar has added the Attorney General to Paragraph 1.D as a client of a State Agency Party who may be permitted to access the Highly Confidential documents upon execution of the relevant protocols.

A modified proposed protocol incorporating four of the five changes requested in the Response and the changes requested by the Attorney General’s office is attached hereto both in redline and clean version.

DATED at Montpelier, Vermont, this 12th day of May, 2017.

Respectfully submitted,

PRIMMER PIPER EGGLESTON & CRAMER PC
Attorneys for NorthStar Decommissioning
Holdings, LLC, NorthStar Nuclear
Decommissioning Company, LLC, NorthStar
Group Services, Inc., LVI Parent Corp., and
NorthStar Group Holdings, LLC

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Highly Confidential Document Protocol

THIS PROTOCOL is dated as of _____, 2017, and is by and between NorthStar Decommissioning Holdings, LLC, NorthStar Group Holdings LLC, LVI Parent Corp., NorthStar Group Services, Inc., NorthStar Nuclear Decommissioning Company, LLC, (together, “NorthStar”), the Vermont Public Service Department (“Department”), the Vermont Agency of Natural Resources (“ANR”), the Vermont Attorney General’s Office (“AG”) (collectively “State Agency Parties”), and intervenors in this Docket (other than State Agency Parties) that sign the Protective Agreement and the Second Addendum thereto.

The Parties desire to cooperate in providing information relevant to the issues to be litigated or potentially litigated in the above-designated Docket before the Vermont Public Service Board (“Board”);

NorthStar has information pertinent to issues in the Docket that it desires to provide to the State Agency Parties governmental agencies and non-State Agency Parties, but which NorthStar believes could result in financial and/or competitive harm if disclosed, and which NorthStar believes to be proprietary, privileged, confidential or in the nature of a trade secret (that information is referenced herein as “Highly Confidential”);

Those Highly Confidential documents consist of the following: (1) 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,” and is a 20-page document that contains the approximately 900 sub-tasks and the cost allocations for each task; (2) the Deal Model (including drafts of same, but only if a Party requests such drafts) which 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;

Accordingly, the Parties agree to implement the following protocol for the disclosure and handling of information and materials designated as Highly Confidential by NorthStar.

1) State Agency Authorized Reviewers and Data Owners:

A. For the Department, the Department and its outside counsel, Wilmer Cutler Pickering Hale and Dorr (“WH”), each will designate an internal data owner who will authorize reviewers as needed; reviewers will be limited to individuals associated with the Department involved in Docket 8880 (e.g., WH and Department staff, experts) who have executed undertakings that bind them to this Protocol (“Department Approved Reviewers”). WH and the Department will maintain executed confidentiality undertakings for all Department Approved Reviewers. Before NorthStar provides the Highly Confidential documents, WH will provide: (1) the identity of experts and consulting experts (as defined below) who will review the Highly Confidential documents; (2) a current list of nuclear industry and decommissioning industry clients on whose behalf any experts who will review the designated documents are working; and (3) information regarding previous employment by such experts based on information provided by NorthStar. NorthStar will inform WH within three [3] business days of receipt of any concerns arising from that list, and the Parties will work together in good faith to resolve any such concerns, with the Board serving as the ultimate arbiter of any conflict the Parties cannot reconcile themselves. A consulting expert means an expert that the Department will not have testify in this Docket and the Department uses in a consulting role. NorthStar shall keep the identity of consulting experts confidential and shall treat such consulting expert as if the expert were undisclosed pursuant to VRCP 26(b)(4)(D), unless the Department chooses to make the identity of such expert public, or such person is a state employee.

B. For ANR, only Jennifer Duggan, Esq. (General Counsel), Jordan Gonda, Esq. (Deputy Attorney), Steve Simoes, Gerold Noyes, and Chuck Schwer, or their equivalent replacements upon notice to NorthStar (together, “ANR Approved Reviewers”), can review the Highly Confidential documents in accordance with this Protocol.

C. For the AG, only attorneys Josh Diamond and Kyle Landis-Marinello, or their equivalent replacements upon notice to NorthStar, can review the Highly Confidential documents in accordance with this Protocol (“AG Approved Reviewers”).

D. This Protocol collectively refers to the Department Approved Reviewers, ANR Approved Reviewers, and AG Approved Reviewers as the “Approved Reviewers.” The Approved Reviewers may share their impressions and

conclusions with their clients. The Approved Reviewers shall not share the Highly Confidential documents or any portion of the Highly Confidential documents with their clients, Commissioner June E. Tierney, Secretary Julie Moore, Deputy Secretary Peter Walke, and Attorney General T.J. Donovan, unless they have executed the relevant protocols.

2) WH Litigation Support will mail or deliver to NorthStar five encrypted external USB drives at the following address:

Greg DiCarlo, Esq.
NorthStar Group Services, Inc.
35 Corporate Drive, Suite 1155
Trumbull, CT 06611

The passwords to those drives will be communicated to Mr. DiCarlo separately by the WH legal team.

3) NorthStar will upload on to each USB drive an excel version of documents identified as Highly Confidential. If NorthStar chooses, those files can include a HASH value, which is a permanent signature for the document that protects it against untracked changes. The file names will include confidential designations.

4) Hard copies are not required to be produced. If hard copies are produced, those documents should be clearly marked and packaged as confidential by NorthStar. Such documents should be produced on colored paper which contrasts well with the print, with headers and or footers on every page indicating that the document is **HIGHLY CONFIDENTIAL – DO NOT COPY**.

5) NorthStar will send the materials by courier/hand delivery to the WH Boston, WH DC, Department, ANR, and AG offices. The package shall be double wrapped and the front and back of both the outside wrapper or envelope and the inside wrapper or envelope shall state that the package contents are “HIGHLY CONFIDENTIAL.” NorthStar will alert WH, the Department, ANR and the AG that the materials are en route.

6) WH, the Department, ANR, and AG each will have a representative available who has executed the relevant undertakings to meet the respective couriers upon arrival.

7) The USB drives and any hard copy materials will be stored in a segregated and locked enclosure (e.g., a locked file cabinet or encrypted container) when not in use by an Approved Reviewer. Notes and work product based on those materials will be treated and stored in the same manner.

8) Review by Approved Reviewers (including Approved Reviewers from all State Agency Parties) will be conducted at designated workstations within WH and State Agency Parties' Offices. Each State Agency Party will receive a USB drive for review. The USBs shall not leave the WH and State Agency Party offices. Review of electronically stored materials will

be conducted on computers set up exclusively for confidential review purposes; those units feature disk encryption measures, have features to prevent viewing by unauthorized persons, and are disabled from accessing the internet and internal networks.

9) Consistent with the above, each Approved Reviewer may share information or documents derived from materials designated as Highly Confidential only with other Approved Reviewers. The Highly Confidential documents shall not be disclosed to any other person or party without NorthStar's express written consent.

10) NorthStar consents to the submission of the Highly Confidential documents to the Board, subject to the Board's approval of appropriate confidentiality protocols. If the State Agency Parties or other intervenors that review the Highly Confidential documents under this Protocol (see paragraph 13, *infra*) seek to disclose Highly Confidential documents to the Board, they would support a proposal by NorthStar that the Board adopt a set of appropriate protocols based on those set forth herein.

11) No party shall use the Highly Confidential documents to depose any party other than NorthStar. All State Agency Parties also reserve the right to depose other expert witnesses who have executed the relevant protocols. Only Approved Reviewers, NorthStar counsel (or other attorneys that NorthStar approves), and the court reporter, may attend any portion(s) of such deposition(s) during which testimony or questioning includes information derived from materials designated as Highly Confidential. Any portions of deposition transcript(s) that reflect such testimony or questioning must be produced under seal. The review and control of the transcript shall follow the same protocol for treatment of the Highly Confidential documents, subject to the Board's approval of the same.

12) Subject to Board approval, the same process set forth for depositions above, must occur if the State Agency Parties or other intervenors that review the Highly Confidential documents under this Protocol (see paragraph 14, *infra*) wishes to address the Highly Confidential documents during a technical hearing.

13) Standard post-proceeding confidential document handling procedures will apply (e.g., original materials can either be returned to the producing party or destroyed and certified as such - at that party's option). State Agency Parties note that their procedures will comply with the Vermont Public Records Law (§ 317a), which 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)."

14) As to intervenors (other than State Agency Parties) that sign the Protective Agreement and the Second Addendum thereto, the Highly Confidential Documents will be provided in the following way:

A. Approved Reviewers for any such intervenor shall include the attorney(s) of record for such intervenor, as well as any experts or consulting experts that are processed in the same manner required for Department experts or consulting experts described above.

B. The Highly Confidential 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; no copying, photographing, note taking, or dictation recording will be permitted; and 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.

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