

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Case No. 8880

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Joint Petition of NorthStar Decommissioning Holdings, LLC, NorthStar Nuclear Decommissioning Company, LLC, NorthStar Group Services, Inc., LVI Parent Corporation, NorthStar 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	
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Order entered: 06/15/2017

**PROCEDURAL ORDER ON MOTION**  
**FOR SPECIAL CONFIDENTIALITY PROTOCOLS**

On May 5, 2017, NorthStar Decommissioning Holdings, LLC, NorthStar Nuclear Decommissioning Company, LLC, NorthStar Group Services, Inc., LVI Parent Corporation, and NorthStar Group Holdings, LLC (collectively, “NorthStar”) filed a motion (the “Motion”) with the Vermont Public Service Board (“Board”) seeking approval of special protocols to govern access of the parties in discovery to two documents, which North Star maintains are highly confidential. In the Motion, NorthStar identified one of the documents as a “detailed pay item disbursement schedule” (referred to herein as the “Disbursement Schedule”) and the other as the “deal model” (referred to herein as the “Deal Model Document”).

On May 11, 2017, the Vermont Department of Public Service (“Department”) and the Vermont Agency of Natural Resources (“ANR”) filed a response to the Motion to which NorthStar filed a reply on May 12, 2017.

On May 17, 2017, the New England Coalition (“NEC”) filed its opposition to the Motion, which was joined in by the Conservation Law Foundation (“CLF”).

On May 25, 2017, NorthStar filed a reply to NEC’s opposition to which NEC filed a sur-reply on June 6, 2017.

On June 2, 2017, the Department made an additional filing with respect to the Motion, which was submitted, among other things, as a reply to NEC's opposition to the Motion and to NorthStar's reply to NEC's opposition.

On June 12, 2017, NorthStar submitted copies of the two documents under seal pursuant to a Procedural Order on Motion for Special Confidentiality Protocols of May 26, 2017, for the limited purpose of enabling a Board ruling on the Motion.

In the Motion, NorthStar contends that the normal procedures used in Board proceedings for the protection of allegedly confidential documents produced in discovery are not sufficient in the case of the Disbursement Schedule and Deal Model Document. North Star proposes different degrees of access to the two documents among parties signing the protective agreement under which the Vermont State agency parties would have less restrictive access to the two documents than the non-State governmental parties. The Department, ANR, NEC, and CLF object to NorthStar's proposal that the non-State parties have more limited access to the two documents.

Based on its review of the parties' filings and the two documents, the Board concludes and orders as follows.

The protections and procedures provided for in the Procedural Order Re: Protective Agreement of May 26, 2017 (the "Protective Order") provide sufficient protection for the Deal Model Document. However, further confidentiality protocols for the Disbursement Schedule beyond those provided for in the Protective Order are warranted to provide additional assurance to NorthStar regarding access to and use of the allegedly confidential information contained in the Disbursement Schedule.

The differential treatment between State and non-State parties as proposed by NorthStar is not appropriate under the circumstances.<sup>1</sup> The proposed limitations on access to the Disbursement Schedule (as well as the Deal Model Document) would impose a significant handicap on the non-State parties given the nature of the documents and the possible relevance in

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<sup>1</sup> In its June 2 filing, the Department appears to suggest that differential treatment of parties under a protective order for disclosure and review of confidential information is always inappropriate. Department's filing of June 2, 2017, at 9. Although the Board concludes, following its review of the parties' filings and the two documents, that differential treatment is not appropriate in this case, other cases may present circumstances under which differential treatment is appropriate given the scope of a party's intervention or the nature and relevance of the documents.

discovery of the information contained therein in identifying and addressing issues in this case. The Board agrees with the Department that “[e]xcluding some parties from meaningful access -- note taking, expert consultation, review over time with ongoing access – to the [Disbursement Schedule and the Deal Model Document] threatens to deprive those parties of the opportunity to fully participate in the proceeding.”<sup>2</sup>

The Board directs each of the parties seeking to obtain access in discovery to the Disbursement Schedule to file a preliminary list of counsel, experts, and consulting experts that such party proposes have access to the Disbursement Schedule. With respect to each expert and consulting expert, parties shall identify any nuclear industry and decommissioning industry clients on whose behalf each such expert or consulting expert is working, provide information regarding previous employment, and describe the reasons why it is appropriate that such expert or consulting expert have access to the information based on his or her knowledge and experience.<sup>3</sup> To the extent that NorthStar believes access to the Disbursement Schedule by any expert or consulting expert should be precluded, NorthStar may, within 10 days of the filing of any such list, file an objection stating reasons why such expert or consulting expert should not have access to the Disbursement Schedule.

The Board directs NorthStar, NEC, CLF, the Department, ANR, and any other party that seeks access to the Disbursement Schedule to consult with each other to develop appropriate protocols for the disclosure and review of the Disbursement Schedule (which may be based on protocols agreed to by NorthStar, the Department, and ANR) that are consistent with the requirements of this Order. In the case of the State parties, such protocols should take into account their record retention obligations under state law. If the parties are unable to agree on such protocols and present a joint proposal for Board review by June 23, 2017, the Board will determine such protocols based on the filings of the parties related to the Motion.

In its June 2 filing, the Department and ANR request that the Board clarify that the Protective Order and any future order in this proceeding related to confidential documents do not alter the record retention obligations of any State agency pursuant to Vermont’s Public Records Law (1 V.S.A. §§315-320) or other applicable document retention requirements. The Board

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<sup>2</sup> Department’s filing of June 2, 2017, at 4.

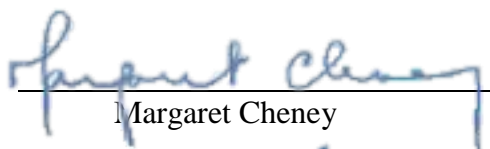
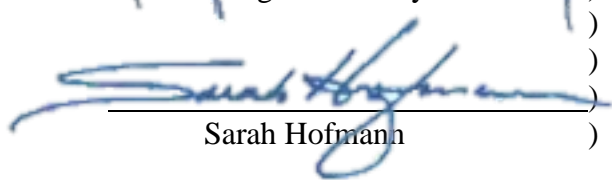
<sup>3</sup> As noted, this should be a preliminary list, and it will not preclude any party from seeking to add other individuals to such list in the future.

hereby clarifies that the Board’s approval and adoption of the protective agreement attached to the Protective Order are in no way intended to alter record retention requirements applicable to the state agency parties, including their obligations under 1 V.S.A. § 317a.

This Procedural Order is intended to facilitate the process of discovery with respect to two documents that NorthStar alleges contain highly confidential information. Nothing in this Order should be construed as a final determination by the Board with respect to the confidentiality of any allegedly confidential documents. If NorthStar or any other party wishes to keep confidential any material (including information contained in the Disbursement Schedule and the Deal Model Document) that another party seeks to enter into evidence in accordance with the Protective Order, a properly supported motion for protection of that information must be presented to the Board.

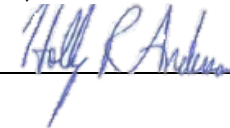
**SO ORDERED.**

Dated at Montpelier, Vermont, this \_\_\_15th day of June, 2017\_\_\_\_\_

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)	PUBLIC SERVICE
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)	
 )	BOARD
Margaret Cheney )	
)	
 )	OF VERMONT
Sarah Hofmann )	

OFFICE OF THE CLERK

Filed: June 15, 2017

Attest:  \_\_\_\_\_

*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@vermont.gov](mailto:psb.clerk@vermont.gov))*

PSB Case No. 8880 - SERVICE LIST

Parties:

William James Brotherton  
Abenaki Nation of Missisquoi  
100 Grand Avenue  
Swanton, VT 05488  
william@brothertonlaw.com

(for Abenaki Nation of Missisquoi)

Lawrence Christopher Company  
Windham Regional Commission  
139 Main Street Suite 505  
Brattleboro, VT 05301  
ccampany@windhamregional.org

(for Windham Regional Commission)

Geoffrey Commons, Esq.  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601  
geoff.common@vermont.gov

(for Vermont Department of Public Service)

Richardson P Daniel  
Tarrant, Gillies & Richardson  
P.O. Box 1440  
Montpelier, VT 05601  
drichardson@tgrvt.com

(for Entergy Nuclear Vermont Investment  
Company, LLC) (for Entergy Nuclear  
Operations, Inc.)

Joshua Diamond  
Vermont Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
joshua.diamond@vermont.gov

(for Vermont Office of the Attorney General)

William Driscoll  
Associated Industries of Vermont  
wdriscoll@aivt.org

(for Associated Industries of Vermont)

Jennifer Duggan, Esq.  
Office of General Counsel, Vermont Agency  
of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05620  
Jen.Duggan@vermont.gov

(for Vermont Agency of Natural Resources)

James Dumont  
PO Box 229  
Bristol, VT 05443  
dumont@gmavt.net

(for New England Coalition on Nuclear  
Pollution, Inc.)

Felicia H. Ellsworth  
Wilmer, Cutler, Pickering, Hale and Dorr, LLP  
60 State Street  
Boston, MA 02109  
Felicia.Ellsworth@wilmerhale.com

(for Vermont Department of Public Service)

Jordan Gonda  
Vermont Agency of Natural Resources  
1 National Life Drive  
Davis 2  
Montpelier, VT 05620  
Jordan.Gonda@vermont.gov

(for Vermont Agency of Natural Resources)

Bonnie Heiple  
Wilmer, Cutler, Pickering, Hale and Dorr, LLP  
60 State Street  
Boston, MA 02109  
Bonnie.Heiple@wilmerhale.com

(for Vermont Department of Public Service)

Stephanie Hoffman, Esq.  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601  
steph.hoffman@vermont.gov

(for Vermont Department of Public Service)

Richard Holschuh  
Elnu Abenaki Tribe  
117 Fuller Drive  
Brattleboro, VT 05301  
rich.holschuh@gmail.com

(for Elnu Abenaki Tribe)

Robert C. Kirsch  
Wilmer, Cutler, Pickering, Hale and Dorr, LLP  
60 State Street  
Boston, MA 02109  
Robert.Kirsch@wilmerhale.com

(for Vermont Department of Public Service)

Aaron Kisicki, Esq.  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601  
[aaron.kisicki@vermont.gov](mailto:aaron.kisicki@vermont.gov)

(for Vermont Department of Public Service)

Kyle Landis-Marinello  
Vermont Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
kyle.landis-marinello@vermont.gov

(for Vermont Office of the Attorney General)

Sandra Levine, Esq.  
Conservation Law Foundation  
15 East State Street  
Suite 4  
Montpelier, VT 05602  
slevine@clf.org

(for Conservation Law Foundation)

John Marshall, Esq.  
90 Prospect Street  
P.O. Box 99  
Saint Johnsbury, VT 05819-0099  
jmarshall@drm.com

(for Entergy Nuclear Vermont Investment  
Company, LLC) (for Entergy Nuclear  
Operations, Inc.)

James Porter, Esq.  
Vermont Public Service Department  
Vermont Public Service Department  
112 State St  
Montpelier, VT 05620  
james.porter@vermont.gov

(for Vermont Department of Public Service)

Janet Rasmussen  
Town of Vernon Planning Commission  
52 Southern Heights Drive  
Vernon, VT 05354  
janetrasmussen1@aol.com

(for Town of Vernon Planning and Economic  
Development Commission)

\*\*Ingrid Scholze, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
ingridscholze@quinnemanuel.com

(for Entergy Nuclear Vermont Investment  
Company, LLC) (for Entergy Nuclear  
Operations, Inc.)

Roger Longtoe Sheehan  
Elnu Abenaki Tribe  
Elnu Tribe Headquarters  
5243 VT Route 30  
Jamaica, VT 05343  
[gitceedadann@yahoo.com](mailto:gitceedadann@yahoo.com)

(for Elnu Abenaki Tribe)

Ellyde R. Thompson  
Quinn Emanuel Urquhart & Sullivan LLP  
51 Madison Avenue  
22nd Floor  
New York, NY 10010  
ellydethompson@quinnemanuel.com

(for Entergy Nuclear Vermont Investment  
Company, LLC) (for Entergy Nuclear  
Operations, Inc.)

Hunter B. Thomson  
Quinn Emanuel Urquhart & Sullivan LLP  
51 Madison Avenue  
22nd Floor  
New York, NY 10010  
hunterthomson@quinnemanuel.com

(for Entergy Nuclear Vermont Investment  
Company, LLC) (for Entergy Nuclear  
Operations, Inc.)

Sanford I. Weisburst  
Quinn Emanuel Urquhart & Sullivan, LLP  
51 Madison Avenue  
22nd Floor  
New York, NY 10010  
sandyweisburst@quinnemanuel.com

(for Entergy Nuclear Vermont Investment  
Company, LLC) (for Entergy Nuclear  
Operations, Inc.)

Joslyn L. Wilschek, Esq.  
Primmer Piper Eggleston & Cramer PC  
100 East State Street  
P.O. Box 1309  
Montpelier, VT 05602  
jwilschek@primmer.com

(for NorthStar Decommissioning Holdings,  
LLC) (for NorthStar Nuclear  
Decommissioning Company, LLC) (for  
NorthStar Group Services, Inc.) (for NorthStar  
Group Holdings, LLC) (for LVI Parent Corp.)

Jeffrey C. Wimette  
International Brotherhood of Electrical  
Workers, Local 300  
3 Gregory Drive  
South Burlington, VT 05403  
jcw@ibewlocal300.org

(for International Brotherhood of Electrical  
Workers, Local 300)

\*\*Motion to appear *pro hac vice* pending.