

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

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)	

**THE PUBLIC SERVICE DEPARTMENT’S RESPONSE TO JOINT PETITIONERS’
SEPARATE OBJECTIONS TO COMMISSION’S RETENTION OF CONSULTANT**

The Public Service Department (the “Department”) respectfully submits this Response to the Entergy Objection¹ filed on November 8, 2017 and the NorthStar Objection² filed on November 9, 2017. Those objections were filed in response to an October 30, 2017 letter from the Public Utility Commission (the “Commission”) informing the Joint Petitioners of the Commission’s intention to “retain a consultant to assist the Commission in connection with various technical issues raised in Case 8880.”³ The Department’s Response: (1) recognizes the Commission’s authority to retain an expert advisor for consultation during the pendency of the litigation of this case; and (2) requests that the Commission define the parameters for use of this expert consultant throughout the proceeding.

¹ The Objection to the Public Utility Commission’s Proposed Retention of a Consultant filed by Entergy Nuclear Vermont Investment Company, LLC and Entergy Nuclear Operations, Inc. (together “Entergy”).
² The Limited Objection to the Public Utility Commission’s Proposed Retention of a Consultant filed by NorthStar Decommissioning Holdings, LLC, NorthStar Group Holdings, LLC, LVI Parent Corp., NorthStar Group Services, Inc., and NorthStar Nuclear Decommissioning Company, LLC (together “NorthStar,” and together with Entergy “Joint Petitioners”).
³ Letter from George Young to John Marshall, Sanford I. Weisburst, and Joslyn L. Wilschek dated Oct. 30, 2017 (“[T]he consultant will assist the Commission in assessing the costs and benefits of various decommissioning alternatives proposed by the parties to the extent they relate to matters within the jurisdiction of the Commission in this case.”). See also Public Utility Commission, Request for Proposals (“RFP”), Exhibit A to Entergy Objection.

ARGUMENT

The Commission has authority to retain consultants to assist in Commission proceedings.

Title 30 of the Vermont Statutes Annotated provides:

The Commission . . . may authorize or retain . . . expert witnesses, advisors, temporary employees, and other research, scientific, or engineering services:

...
(E) To assist [the Commission] in monitoring the ongoing and future reliability and the postclosure activities of any nuclear generating plant within the State.

30 V.S.A. § 20(a). That statutory authorization applies to proceedings “resulting from a petition for a merger, consolidation, or acquisition for which the approval of the [Commission] is required by law.” *Id.* § 20(b)(3).

The plain meaning of Section 20 allows the Commission to retain an expert witness or advisor. “The Legislature is presumed to have intended the plain, ordinary meaning of the adopted statutory language. If the statute is unambiguous and the words have plain meaning, we accept and enforce that plain meaning as the intent of the Legislature, and our inquiry proceeds no further.” *In re S. Burlington-Shelburne Highway Project*, 174 Vt. 604, 605, 817 A.2d 49, 51 (2002) (mem.). Following long-settled canons of statutory interpretation, the Vermont Supreme Court will not read portions of a statute to be superfluous. *See In re Margaret Susan P.*, 169 Vt. 252, 733 A.2d 38 (1999). Section 20 provides the Commission with authority to employ both “expert witnesses”—who, presumably would offer testimony—and non-testifying “advisors, temporary employees, and other research, scientific, or engineering services.” 30 V.S.A. § 20(a)(1) (emphasis added). *See also In re Vt. Elec. Power Co.*, Docket No. 6860, 2004 WL 834736 (Vt.P.S.B. Apr. 8, 2004) (distinguishing between Commission’s authority to appoint testifying experts and expert advisors).

The cases cited by Entergy do not involve Section 20 and its clear statutory command. See Entergy Objection at 3-4. Rather, they involve trial courts that do not have express statutory authority to retain advisors. Entergy relies in particular on *Association of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 614 (9th Cir. 2000) (*en banc*) (Tashima, J., dissenting), an out-of-state, dissenting opinion that does not construe Section 20 or even similar statutory language. Entergy does not articulate any reason why the Commission should be persuaded by that dissent over a plain reading of the relevant Vermont statute. Ultimately, it is Section 20, not cases from other jurisdictions, that controls, and nothing in Section 20 precludes the Commission from retaining “advisors, temporary employees, and other research, scientific, or engineering services” to perform the role anticipated in the Commission’s October 30th letter.

Entergy’s argument that the Commission must “allow[] parties to probe evidence on which the Commission . . . may rely” is premature. Entergy Objection at 2. Certainly, evidence relied on by the Commission in formulating its ultimate decision in this matter must be admitted into the record. See *Petition of Twenty-Four Vt. Utilities*, 159 Vt. 339, 349-50, 618 A.2d 1295, 1301-02 (1992). But nothing about the Commission’s proposal suggests that it will rely on anything other than record evidence, sufficiently tested by the parties, in rendering its decision in this proceeding. Significantly, the *Twenty-Four Vermont Utilities* Court found it was appropriate for the Commission to use outside, confirmatory methods to test the parties’ positions. *Id.* at 351, 618 A.2d at 1303. Entergy’s suggestion that the Commission will rely on evidence outside the record or will otherwise run afoul of the boundaries articulated in *Twenty-Four Vermont Utilities* is unfounded.

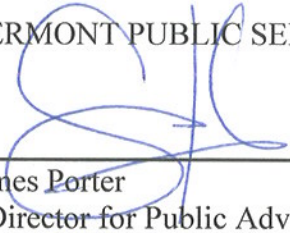
While recognizing the Commission’s authority to retain an expert witness or advisor, the Department requests that the Commission more specifically define the role that “consultant,” as

the Commission has used the term, will play in this proceeding. Clear parameters regarding the expert's intended role—including what information about the expert's involvement will be discoverable by the parties, and whether the expert will be subject to questioning—will promote efficiency and could serve to allay concerns surrounding the expert's retention.

Finally, the Department does not object to NorthStar's request that the Commission adhere to the protocols set forth in the Procedural Order on Motion for Special Confidentiality Protocols dated June 15, 2017. NorthStar Objection at 1-2.

Dated at Montpelier, Vermont, this 16th day of November 2017.

VERMONT PUBLIC SERVICE DEPARTMENT



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