

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 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 )

Docket No. 8880

**JOINT PETITIONERS’ MOTION FOR PROTECTIVE ORDER REQUIRING CERTAIN PREFILED SUR-REBUTTAL TESTIMONY, EXHIBITS, DEPOSITION EXCERPTS, AND DISCOVERY RESPONSES TO BE SUBMITTED UNDER SEAL INTO THE EVIDENTIARY RECORD**

Joint Petitioners NorthStar Decommissioning Holdings, LLC, NorthStar Group Holdings, LLC, LVI Parent Corp., NorthStar Group Services, Inc., NorthStar Nuclear Decommissioning Company, LLC, (collectively, “NorthStar”), Entergy Nuclear Vermont Investment Company, LLC, and Entergy Nuclear Operations, Inc., (together, “Entergy”), by their attorneys, respectfully submit this motion for a protective order requiring certain prefiled sur-rebuttal testimony, exhibits, deposition excerpts, and discovery responses to be submitted under seal into the evidentiary record because they contain confidential information of one or both Joint Petitioners. These exhibits and responses are expected to be provisionally submitted under seal by the Public Service Department (“Department”) on December 1, 2017, in connection with the Department’s prefiled sur-rebuttal testimony in this Docket, pending the Commission’s determination of this motion.

**PROCEDURAL BACKGROUND**

On May 26, 2017, the Commission entered a protective order in this docket, which, *inter alia*, allows parties to designate as Allegedly Confidential Information (“ACI”) certain materials

requested from Joint Petitioners during the discovery process. *See* Procedural Order Re: Protective Agreement dated May 26, 2017, at 3-4. Subsequently, the Commission provisionally approved a similar but even more protective designation for one particular document, the detailed pay-item disbursement schedule. *See* Procedural Order On Motion For Special Confidentiality Protocols dated June 15, 2017. These materials were provisionally allowed to be served only upon the parties that signed the protective agreement (which the Commission approved in its May 26 order), and in the case of the detailed pay-item disbursement schedule only to the parties that qualified to receive that document.

Joint Petitioners followed the appropriate process in designating certain documents and discovery responses as ACI and, in the case of the detailed pay-item disbursement schedule, highly confidential. Those materials were served on the parties entitled to view them on or about May 31, June 20, June 21, July 3, July 11, August 2, August 3, August 18, 2017, and November 17, 2017.

Under the schedule currently in place in this Docket, non-petitioners' prefiled sur-rebuttal testimony is due on December 1, 2017. On November 22, 2017, the Department gave notice to Joint Petitioners that the Department intends to discuss certain ACI in its prefiled testimony and to submit exhibits containing certain ACI in support of that testimony. On November 28, the Department identified the documents, response, and excerpts containing the ACI. The above-mentioned June 15 order contemplates that Joint Petitioners may file such a motion between the day that is five business days before the due date for non-petitioners' prefiled testimony, and the due date for non-petitioners' prefiled testimony. *See* Procedural Order On Motion For Special Confidentiality Protocols dated June 15, 2017, at 4 ("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 [now the Commission].”); Procedural Order Re: Protective Agreement dated May 26, 2017, at 4 (similar). If such a motion is timely filed, the party that wishes to submit prefiled testimony and/or exhibits that discuss the ACI must provisionally submit the relevant portions of the materials under seal, pending the Commission’s determination of the motion. *See* Procedural Order Re: Protective Agreement dated May 26, 2017, at 4.

Certain of the documents to be submitted with the December 1 sur-rebuttal testimony were included in the Department’s prior testimony and thus already been addressed in Joint Petitioners’ August 29 Motion for a Protective Order. For the Commission’s convenience, Joint Petitioners have included the discussion of these documents again in this Motion. In addition, Joint Petitioners already have provided a redacted version of one of the ACI documents the Department intends to use in its December 1 filing. As to the remaining documents, deposition transcript excerpts, and response, Joint Petitioners respectfully submit this motion to allow the ACI materials the Department intends to use in its sur-rebuttal prefiled testimony to be submitted under seal. Joint Petitioners also respectfully incorporate by reference the full set of Averments that were filed on May 31, 2017 and subsequently supplemented in connection with production of ACI during discovery in this Docket.

#### ARGUMENT

Vermont Rule of Civil Procedure 26(c), made applicable to proceedings before the Commission by PUC Rule 2.214(a), provides: “Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any Superior Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or

undue burden or expense, including one or more of the following ...; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge.” V.R.C.P. 26(c). Consistent with this Rule, as noted in the Procedural Background section above, the Commission’s May 26 and June 15 orders in this case contemplate that, upon a proper showing, certain material may be required to be submitted into the evidentiary record under seal.

That treatment has been authorized in other dockets as well. *See, e.g., In Re: Renewal of the Certificate of Public Good of Comcast, expiring on December 29, 2016, to provide cable television service*, Docket No. 8301, Protective Order For Confidential Treatment Of Exhibit, 2016, 2016 WL 4239380 (Vt. P.S.B. Aug 4, 2016). In *Comcast*, the petitioner demonstrated that an exhibit to its prefiled testimony “contain[ed] confidential financial information and business projections that [we]re competitively sensitive, which, if publicly disclosed, would result in significant cognizable harm and disadvantage to Comcast.” *Id.* at \*1. The Commission “conclude[d] that Comcast ha[d] made a *prima facie* showing that confidential treatment [wa]s warranted for the exhibit” and “grant[ed] Comcast’s motion for a protective order for a period of two years from the date [of the order].” *Id.* The Commission has authorized longer periods of protection, including even indefinite protection. *See, e.g., Joint Petition of Consol. Commc’ns Holding, Inc., Consol. Commc’ns, Inc. et al.*, Docket No. 8881, Protective Order For Confidential Treatment Of Evidence, 2017 WL 1862358, at \*3 (Vt. P.S.B. May 4, 2017). Other courts and agencies similarly hold that protective orders are often appropriate. *See, e.g., Springfield Terminal Ry. Co. v. Agency of Transp.*, 174 Vt. 341, 347–48, 816 A.2d 448, 454 (2002) (affirming denial of request for financial information submitted to the Vermont Agency of Transportation made

pursuant to Vermont's Access to Public Records Act, noting that "generally private corporate information that gives its possessor a commercial advantage over others... [is] exempt from disclosure"); *Common Point, LLC, Application for Approval to Provide Switched Access Tandem Serv. As A Competitive Access Provider*, Docket No. 2011-396, Protective Order, 2011 WL 5825209, at \*1 (Me. P.U.C. Nov. 16, 2011) (granting protective order restricting access to "confidential business information" where "[t]he potential harm of public disclosure outweigh[ed] the potential benefits"); *Formax Inc. v. Alkar-Rapidpak-MP Equip., Inc.*, No. 11-C-0298, 2013 WL 2452703, at \*1 (E.D. Wis. June 5, 2013) ("[D]ocuments containing sensitive pricing information, sales figures, sales dollar amounts, profit and loss data, and other financial records not normally made known to the public may be properly filed under seal.").

Similar concerns are present here, as explained below regarding each document, discovery response, and deposition excerpt at issue. Joint Petitioners note that, as of the filing of this motion, they have only been able to review the exhibits and responses identified by the Department, not the prefiled sur-rebuttal testimony that the Department has not yet filed. As to any such prefiled sur-rebuttal testimony that discusses ACI, Joint Petitioners understand that the Department will file the complete testimony (including any portions that arguably discuss ACI) under seal, and will file publicly a version that contains only those portions (if any) that do not arguably discuss ACI. Joint Petitioners will then meet and confer with the Department promptly in an attempt to make available a more complete (less redacted) public version.

**Attachment A.DPS.JP.3-4.1:** This document contains GAAP-format internal financial statements for NorthStar Group Holdings, LLC. The document contains non-public financial information of NorthStar. NorthStar is not a public company and its financial information (including lines of credit, liquidity positions, revenue and operating margin) are not known to the

public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

**Attachment A.DPS.JP.3-5.1:** This document is a "Statement of Operations 9+3 Forecast" for NorthStar Group Holdings, LLC for the full year 2017, containing detailed information about income and expenses. The document contains non-public financial information of NorthStar. NorthStar is not a public company and its financial information (including lines of credit, liquidity positions, revenue and operating margin) are not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

**Attachment A.DPS.JP.3-6.1:** This document provides updated financial information for NorthStar entities. The document contains non-public financial information of NorthStar. NorthStar is not a public company and its financial information (including lines of credit, liquidity positions, revenue and operating margin) are not known to the public. Were that information to

become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

**Attachment A.DPS.JP.3-43.1:** This document contains confidential information about waste disposal and pricing that is subject to a Non-Disclosure Agreement between NorthStar and WCS. Accordingly, no redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Because the need for secrecy of this document extends well into the future for as long as NorthStar competes in this industry, NorthStar cannot now propose a date for when the detailed document can be made public.

**Attachment A.DPS.NS.1-57.2264:** This document was also the subject of Joint Petitioners' August 29 Motion for a Protective Order. This document is the detailed deal model of NorthStar, 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. This document is a working model, meaning that parties can change the figures to determine how the model works (NorthStar's core confidential business

model). 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 adopt NorthStar's plan without incurring the costs of developing it, and 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. A four-page summary version of the Deal Model was already filed publicly, Exhibit JP-SES-Supp-1, Enclosure 4. Because the need for secrecy of this document extends well into the future for as long as NorthStar competes in this industry, NorthStar cannot now propose a date for when the detailed document can be made public.

**Attachment A.DPS.NS.1-24.21:** This document was also the subject of Joint Petitioners' August 29 Motion for a Protective Order. This document sets forth various financial data for NorthStar Group Services, Inc. NorthStar Group Services, Inc. is not a public company and its financial information is not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no further redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

**Attachment A.DPS.NS.2-20.1:** This document was also the subject of Joint Petitioners' August 29 Motion for a Protective Order. This is a June 12, 2017 credit agreement between

NorthStar and certain lenders. It sets forth, *inter alia*, the terms on which NorthStar can borrow from those lenders, and the amounts that can be borrowed. The document is not a public document. Were it to be publicly disclosed, it would likely harm both NorthStar's competitive advantage in its industry (by providing competitors better information on which to negotiate their own credit agreements) and the lenders' competitive advantage (by providing their competitors better information on which to negotiate future lending transactions). This document would never be made public in the ordinary course of NorthStar's business, and its lenders would not expect it to be public either. A redacted version of this document has been prepared and served publicly as Attachment A.DPS.NS.2-20.1 R. The redacted portions deal with financial information and inter-lender relationships that NorthStar believes it would need to go back to its lender group (10 banks) to get approval to release. NorthStar has left in for public review the current terms of its credit, which is the key material that the PUC and parties should be interested in reviewing. The complete unredacted document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Because the need for secrecy of this document extends well into the future for as long as NorthStar competes in this industry and the lenders compete in their industry, NorthStar cannot now propose a date for when the detailed document can be made public.

**Attachment A.DPS.NS.2-21.3:** This document was also the subject of Joint Petitioners' August 29 Motion for a Protective Order. This document contains NorthStar Group Services, Inc.'s consolidated financial statements and an accompanying accountant's report. NorthStar Group Services, Inc. is not a public company and its financial information is not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no further redaction is possible that would make the document amenable

to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

**Response A.DPS.JP.3-43:** This response was served confidentially because it makes specific reference to confidential information contained within Attachment A.DPS.JP.3-43.1. It should be submitted into the evidentiary record under seal for the same reasons as set forth above for that document. Because the need for secrecy of this document extends well into the future for as long as NorthStar competes in this industry, NorthStar cannot now propose a date for when the detailed document can be made public

**Confidential portions of J. Adix and S. Scheurich deposition transcripts.** The identified portions of deposition transcripts the Department intends to use involve confidential information about Entergy and NorthStar's respective business plans and cost estimates for the decommissioning and about NorthStar's credit agreements. The relevant portions of the deposition transcripts have been marked confidential because they contain confidential information that, if released, could cause harm to either or both Entergy or NorthStar, including for the reasons discussed supra regarding NorthStar's credit agreement. As such, any such excerpts should be submitted into the evidentiary record under seal. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

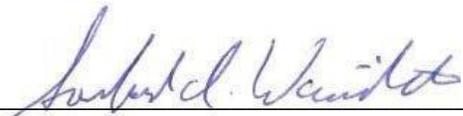
CONCLUSION

The Department's prefiled sur-rebuttal testimony and exhibits should be required to be filed under seal to the extent they discuss (or reproduce) the documents described above.

DATED at New York, New York, this 30th day of November, 2017.

Respectfully submitted,

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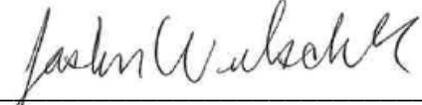
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