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' OBJECTIONS TO THE ADMISSION OF CERTAIN PREFILED SURREBUTTAL TESTIMONY AND EXHIBITS AND MOTION TO EXCLUDE

Pursuant to Commission Rule 2.216(C), 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. (together, "Joint Petitioners") object to and move to exclude certain surrebuttal testimony and exhibits that the New England Coalition ("NEC") and Conservation Law Foundation ("CLF") prefiled on December 1, 2017.

INTRODUCTION

NEC's witnesses Arnold Gundersen and Raymond Shadis impermissibly seek to offer hearsay into the evidentiary record through their prefiled surrebuttal testimony. CLF's witness Michael Hill seeks to introduce as evidence questions posed by Entergy's counsel during a deposition on the theory that those questions are statements of fact by a party-opponent; in fact, they are merely questions, and should be excluded as irrelevant and/or as more prejudicial than probative.

ARGUMENT

I. Hearsay Contained In Or Attached To The Testimony Of NEC Witnesses Mr. Shadis And Mr. Gundersen Should Be Excluded

Mr. Shadis and Mr. Gundersen seek to enter into the record impermissible hearsay. The Vermont Rules of Evidence require that opportunities for cross-examination be available to parties and litigants in order to arrive at "a full and true disclosure of the facts." 3 V.S.A. § 810. Thus, "[h]earsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court or by statute." V.R.E. 802; *Investigation Pursuant to 30 V.S.A. §§ 30 & 209 & Pub. Serv. Bd. Rule 5.110(d)*, Docket No. 8843, Order of 8/22/2017, 2017 WL 3843482, at *2. In particular, expert testimony "may not be used to circumvent the restrictions of the hearsay rules generally." *State v. Recor*, 150 Vt. 40, 48, 49 A.2d 1382, 1388 (1988). Thus, the Commission has excluded as hearsay evidence for which "the witness that was relied upon to produce the finding is not available in this proceeding, and the parties, and the Board, cannot cross-examine that witness to determine the underlying assumptions and methodology." *Petition of Georgia Mountain Community Wind, LLC*, Docket No. 7508, Order of 3/3/2011, 2001 WL 840854, at 6.

A. The Commission Should Exclude Hearsay Contained In The Prefiled Testimony And Exhibits Of The NEC Witnesses

Mr. Shadis proffers, in his prefiled surrebuttal testimony, an excerpt of a conference paper, purportedly presented by Michael Meisner. NEC could have offered Mr. Meisner as a witness, but instead chose to include hearsay in Mr. Shadis' testimony about the truth of the matter asserted – namely, the meaningful community input for which Mr. Shadis advocates in his testimony. *See* Shadis PFST 3:15-17; 14:12-15:33. It should not be admitted.

Similarly, Mr. Gundersen presents a recollection of a question and answer session with John Sauger in his prefiled surrebuttal testimony, instead of offering Mr. Sauger himself as a witness. *See* Gundersen PFST 3:5-16. Mr. Gundersen's second-hand report of what Mr. Sauger allegedly said is impermissible hearsay offered for the truth of the statements asserted. It should not be admitted.

B. The Commission Should Not Depart From The Rules Of Evidence

The Commission may depart from the Rules of Evidence to admit evidence otherwise impermissible in certain circumstances. 3 V.S.A. § 810 ("When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs."). The exceptions do not apply here.

Mr. Shadis and Mr. Gundersen have included in their prefiled surrebuttal testimony statements and excerpts from documents that are inadmissible under the Vermont Rules of Evidence. None of these witnesses has provided any reason why the evidence they seek to enter into the record is "necessary to ascertain facts not reasonably susceptible to proof" under the rules of evidence. Furthermore, these statements and excerpts containing hearsay are not "of the type commonly relied upon by reasonably prudent [people]." 3 V.S.A. § 810. A prudent person would only commonly rely upon hearsay statements with indicia of trustworthiness equivalent to those in V.R.E. 803 and 804. None of the proffered hearsay satisfies this requirement. Furthermore, none of the hearsay evidence offered is "necessary to ascertain facts not reasonably susceptible of proof under [the] rules." 3 V.S.A. § 810. All of the hearsay evidence could have been properly entered into the record if NEC had sought and engaged other expert and lay witnesses. As they

did not, the hearsay evidence is inappropriate and should not be admitted. If admitted, Joint Petitioners would be disadvantaged and deprived of the opportunity to question the declarants, which violates the spirit, purpose, and letter of the law of evidence in Vermont.

II. Mr. Hill Should Not Be Permitted To Offer Into Evidence Questions Posed By Entergy's Counsel At Mr. Hill's Deposition

Mr. Hill offers as an exhibit to his surrebuttal testimony an excerpt of his deposition testimony in this matter in order to claim that Joint Petitioners' counsel's hypothetical scenarios and questions in deposition constitute statements of fact, and Mr. Hill offers those supposed statements of fact for their truth. In fact, the questions are questions, not statements of fact, and they should be excluded either as irrelevant or because their prejudicial impact outweighs their probative value. *See Teske v. Wausau Heart & Lung Surgeons, S.C.*, 2011 WI App 114, ¶ 17, 336 Wis. 2d 473, 801 N.W.2d 348 ("[T]he court determined there would be serious public policy implications to the discovery process and the attorney-client relationship if counsel's deposition questions . . . constituted an admission by a party opponent.").

CONCLUSION

The exhibits and testimony listed in Appendices A and B should be excluded from the record in this proceeding.

New York, New York

DATED: December 28, 2017

Respectfully submitted,
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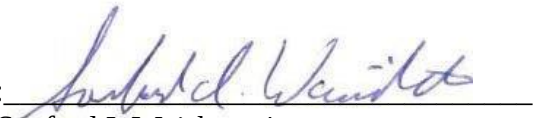
By: 

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APPENDIX A

Testimony To Be Excluded From the Record

Shadis PFST	3:15-17; 14:12-15:33
Gundersen PFST	3:5-16
Hill PFST	9:35-10:6

APPENDIX B

Exhibits and Documents To Be Excluded From the Record

CLF-MOH-6	In its entirety