

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

DOCKET NO. 8880

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. SECTIONS 107, 231 AND 232

Deposition of Michael Hill
held at 44 E. State Street
Montpelier, Vermont
on October 12, 2017
beginning at 9:30 a.m.

A P P E A R A N C E S

For the Petitioners

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1 non-disclosure agreement.

2 Q. To be clear, the public is not making the
3 decision as to whether the license transfers; correct?

4 A. That's a compound question. What is your
5 question?

6 MS. LEVINE: I'll give you -- give you
7 an objection as to form.

8 BY MR. RICHARDSON:

9 Q. Certainly if you didn't understand --

10 A. I did understand. I'll answer what I think
11 your question might have been, but I'll need to rephrase
12 your question.

13 Q. Okay. You mentioned the public.

14 A. Yes.

15 Q. And their lack of knowledge about these
16 confidential documents. Correct?

17 A. That is true.

18 Q. Okay. But my question is simply the public is
19 not the regulatory entity that approves the transfer;
20 correct?

21 A. The regulatory entity that approves the
22 transfer is acting on behalf of the public. That is
23 correct.

24 Q. And do you --

25 A. No, but your question -- I was unfair to your

1 environmental insurance and fixed -- well we have already
2 talked about fixed price contracting. So let me start
3 that over again.

4 Did you practice in the specialized area of
5 environmental liability transfers and related areas of
6 environmental insurance while you were at Primmer?

7 MS. LEVINE: Objection as to form.

8 THE WITNESS: Right. That was a bit
9 compound. So --

10 MR. RICHARDSON: I'll break it down.

11 BY MR. RICHARDSON:

12 Q. Did you practice in a specialized area of
13 environmental liability transfers at Primmer?

14 A. Yes, I believe I've answered that. That my
15 work while at Primmer did involve environmental review or
16 environmental liability transfers.

17 Q. Okay. And I believe you talked about your
18 expert witness testimony in the Mare case.

19 A. That's true. The Mare Island case. Yes.

20 Q. And that would have involved environmental
21 liability transfer?

22 A. Yes.

23 Q. How about the related area of environmental
24 insurance? Did you practice in that area while you were
25 at Primmer?

1 the Department of Justice; is that correct?

2 A. No. I was at Covington Burling for five years
3 before I was at Collier.

4 Q. Okay. Where is that firm at?

5 A. That's in Washington, D.C.

6 Q. What kind of work was that?

7 A. That was -- over 90 percent of that was
8 environmental law.

9 Q. Okay. The same sort of litigational
10 environmental work?

11 A. Some of it was transactional. But the
12 majority of it was litigation.

13 Q. Okay. And so was it before that that you were
14 at the Department of Justice?

15 A. Yes.

16 Q. Okay. And you represented the EPA; correct?

17 A. I did.

18 Q. Did any of the work there involve nuclear
19 contamination?

20 A. No.

21 Q. Or nuclear regulation?

22 A. No.

23 Q. So I just want to confirm as sort of a summary
24 type question. You've never worked in any capacity on a
25 liability transfer or even a regulatory matter involving a

1 nuclear plant or nuclear contamination; is that correct?

2 A. No.

3 Q. That is not correct or it is correct?

4 A. That is not correct.

5 Q. Okay. When have you worked on a nuclear plant
6 or nuclear contamination?

7 A. I worked on matters pertaining to nuclear
8 contamination while I was at Covington. And I also worked
9 on a matter that may have or that did involve nuclear
10 contamination while at Alba.

11 Q. Okay. Well let's talk about the Covington,
12 was this one case or multiple cases?

13 A. There were at least two cases.

14 Q. Okay. And what was the nature of the nuclear
15 contamination that you dealt with there?

16 A. I'm not free -- I'm not sure the degree to
17 which I can answer that question consistent with rule 1.6.

18 Q. Are they a current client?

19 A. At Covington, no, they are not.

20 Q. Wouldn't it be governed by rule 1.9 then as a
21 former client?

22 A. It is unclear to me. Only reason -- Vermont's
23 rule 1.6 its plain language is not limited to current
24 clients. It is true that the first sentence of the
25 comments to the rule does strongly indicate that it is

1 Covington have no bearing on the matters that are before
2 the Public Utility Commission here. I'm not relying in
3 any way on what I learned there in terms of either
4 specific facts or how the system works.

5 Q. Okay. That cuts to the meat. How many cases
6 have you presented as a witness during your 18 years of
7 practicing in the specialized area of environmental
8 liability transfers, and in the areas of environmental
9 insurance and fixed price contracting?

10 A. Okay. When you say presented as a witness,
11 what do you mean?

12 Q. Sure. You were retained and disclosed as a
13 witness.

14 A. Well let me break those down into two
15 questions. Okay?

16 Q. Okay.

17 A. Retained. Because that's easier. And that's
18 larger. So I have probably been retained as an expert or
19 potential expert six times.

20 Q. Okay.

21 A. Give or take. Five to seven, and I think the
22 answer is six.

23 Q. Okay. And then the second part which is
24 disclosed.

25 A. Disclosed. Okay. I believe I have been

1 Q. Okay.

2 A. Let me give you a fuller answer, Dan. The
3 nuclear contamination at that site, to the best of my
4 recollection, and it may be flawed, was either excluded
5 from the insurance and the contractual liability transfer
6 or it was certainly not central. So that particular case,
7 although it did involve some radiological contamination,
8 does not have any -- let me say non-cumulative data to add
9 to my experience in this field.

10 Q. Okay. So you're not calling upon that
11 experience as part of your opinion?

12 A. I'm calling on the experience that I had at
13 the McClellan business park transfers, but not the fact
14 that it involved nuclear radiation. It could have
15 involved -- whether it had any nuclear radiation on it or
16 not has zero non-cumulative value. But I wouldn't want to
17 answer your question in a way that would say I don't draw
18 on my McClellan business park experience at all.

19 Q. Okay. But it's really the non-radiological
20 portions of McClellan business park that you're calling
21 upon?

22 A. That's true. Yes.

23 Q. How many cases have you tried as a lawyer
24 before federal or state regulators during your 18 years of
25 practice in the specialized area of environmental

1 liability transfers?

2 A. Could you repeat the question, please.

3 Q. Sure. How many cases have you tried as a
4 lawyer before federal or state regulators during the 18
5 years of practicing in the specialized area of
6 environmental liability transfers?

7 A. Posed that way, I'm not sure I've tried any.

8 Q. Okay.

9 A. I'm not sure there are any.

10 Q. Let me ask a slightly different tact on the
11 same general topic which is after leaving Collier, have
12 you done any litigational work?

13 A. A little bit. Yes.

14 Q. Okay. And where was that?

15 A. At least some in New Jersey. And there may
16 have been other as well.

17 Q. Okay. And was that in the environmental --
18 environmental field?

19 A. It was. Yes.

20 Q. Okay. And was that when you were at Primmer?

21 A. That was at Hill and Kehne.

22 Q. Okay. Apart from that New Jersey case, any
23 other?

24 A. I can't answer that definitively, but to the
25 best of my recollection as I sit here today I can't recall

1 A. That case did involve a real estate
2 environmental liability policy, but that's not all it
3 involved.

4 Q. Okay. Did any of that proceeding involve
5 liability transfers?

6 A. Yes.

7 Q. Which parts of that case?

8 A. I don't know that I'm free -- that I have
9 client consent to tell you more than that. But that case
10 is something you can pull up on Pacer or probably even
11 Westlaw and get much better information than you can get
12 from me.

13 Q. Okay. Let's talk about Lennar Mar.

14 A. Mare.

15 Q. Mare --

16 A. Like a horse.

17 Q. -- Island versus Steadfast Insurance. That
18 case didn't involve a nuclear facility; correct?

19 A. To the best of my knowledge that is correct.
20 And to the extent if it did, it has no bearing on my
21 testimony in this case.

22 Q. Okay. And did you provide consulting work, or
23 did you appear as an expert witness in that case?

24 A. I was engaged -- well let me answer your two
25 questions there. I did appear as an expert witness in

1 witness has done in the way that I would have, I can't
2 say.

3 My understanding here, I will acknowledge to
4 you, Dan, it is limited. I'm simply offering what I know
5 in this field is -- well anyway.

6 Q. That's what I'm trying to plumb is the limits.

7 A. Okay.

8 Q. And so, for example, if Entergy had a billion
9 dollars in power plant in Mississippi that was regulated
10 by the state of Mississippi, if that wouldn't necessarily
11 be available to tap into for an issue in Vermont.

12 A. It might.

13 Q. Okay. But it would certainly be something
14 that the Mississippi regulators would have a say about,
15 right?

16 A. It might. You're asking me to truly
17 speculate.

18 Q. Sure. Okay. Understood. Let's take a break.

19 A. Thank you.

20 (Recess was taken.)

21 MR. RICHARDSON: Are you ready?

22 THE WITNESS: Yes, I am ready. Yup.

23 BY MR. RICHARDSON:

24 Q. So Mike, are you aware of whether the joint

25 Petitioners produced a liability transfer contract?

1 A. They did not produce it to CLF. My
2 understanding is that they did produce it to the
3 commission.

4 Q. And you have not renew -- you have not
5 reviewed that contract; correct?

6 A. That's correct.

7 Q. But you still feel capable of opining whether
8 the contract that you haven't reviewed provides adequate
9 incentives to complete the decommissioning; is that
10 correct?

11 A. I said I do feel -- I think we talked about
12 this earlier. Let me incorporate by what I said earlier
13 but to try to answer it now, Dan. I don't believe anyone
14 -- I believe that the contract should be made public. I
15 believe that the commission should be given as much help
16 as possible in reviewing it. I know that there are
17 aspects to that contract, at least it's my understanding
18 that there are aspects to the contract that are critically
19 important to the public to understand a year ago. And
20 that did not come even to my attention until I saw the
21 state's testimony filed in late August of this year about
22 the possibility of NSDH taking early profit out. That was
23 one example among frankly 30 that I could have given for
24 things that the commission would need to watch out for for
25 these kinds of deals. And sure enough, it appears that

1 Q. Okay. So you're within the GFPC category
2 taking a very narrow category, the ones that were done by
3 TRC?

4 A. Yours is a GFPC also. It's just that it's a
5 different form and more poorly -- a poorly structured
6 form. TRC's form was a very good form. Yes.

7 Q. Okay.

8 A. It was very successful and yeah.

9 Q. So that's helpful. So what you're talking
10 about when you say that it's never been done in the
11 context of a nuclear power plant, you're referring to the
12 liability transfer that Petitioners propose here?

13 A. I'm certainly referring to that. Yes.

14 Q. Do you know if TRC's GFPCs has been done in
15 the context of a nuclear plant?

16 A. I do not believe TRC ever has. Now I have not
17 been TRC's counsel since 2000 -- you know, for over a
18 decade. But to the best of my knowledge they have never
19 done a GFPC in the context of a nuclear power plant.

20 Q. Okay. So going back to page 15. We are
21 jumping around.

22 A. Sure.

23 Q. But you listed in one of your discovery
24 responses that the Portland Bangor waste oil site in
25 Wells, Maine and the Kenosha, Wisconsin site and the