

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' SURREPLY TO "CONSERVATION LAW FOUNDATION'S OBJECTIONS TO THE ADMISSION OF CERTAIN SECOND SUPPLEMENTAL PREFILED TESTIMONY & EXHIBITS AND MOTION TO EXCLUDE OR REQUEST TO PROVIDE LIVE SURREBUTTAL TESTIMONY IN RESPONSE"

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 (together, "Joint Petitioners"), by their Attorneys, respectfully file this surreply concerning CLF's motion filed on April 6, 2018.

A surreply is necessary because of two developments that occurred after Joint Petitioners filed their opposition on the morning of April 10, 2018. *First*, CLF submitted prefiled testimony of Michael Hill the afternoon of April 10, which proceeded to address portions of Joint Petitioners' March 9, 2018 prefiled testimony that CLF's motion had argued would be unable to

be addressed due to CLF's supposed lack of time and resources. *Second*, CLF cited (and mischaracterized) several authorities for the first time in its April 11 reply brief.¹

CLF, in responding to Joint Petitioners' MOU prefiled testimony in its own April 10 MOU prefiled testimony—which CLF's motion had claimed it could not do—mooted and/or abandoned its own request to exclude the Joint Petitioners' testimony and/or to allow CLF to present live surrebuttal testimony. *See Petition of Miller*, Docket 4756, 1983 WL 190609 (Dec. 9, 1983) (Public Service Board held that a petitioner can moot its own request for relief). Specifically, in its motion, CLF argued that it would be “unfairly prejudicial and a denial of CLF's due process rights to require CLF to respond” to certain statements in the March 9 prefiled testimony of Scott State and T. Michael Twomey. CLF Mot. 6. Contrary to this claim, on April 10, 2018, in prefiled testimony by Michael Hill submitted by CLF, CLF did in fact take the opportunity to respond to several of these statements. *See Hill April 10 PFT 3:18-7:15* (responding to a question about State March 9 PFT 4:2-6 and Twomey March 9 PFT 2:18-5:10).²

Moreover, it is unfair for CLF at once to move to exclude Joint Petitioners' testimony, to address the supposedly objectionable testimony, and then to seek yet a further opportunity to address the supposedly objectionable testimony in the form of live direct testimony. CLF

¹ As a third basis for this motion, Joint Petitioners note that they have sought to oppose and brief this issue for the Commission on an expedited basis to ensure a timely decision and to avoid prejudice attaching to any party that might arise if Joint Petitioners had followed the Commission's normal timeline for filing opposition. See V.R.C.P. 78(b) (giving 14 days for a party to file an opposition). See also PUC Rule 2.206 (noting that Commission may decline to consider issues raised in an untimely manner). To the extent necessary, Joint Petitioners request permission to file this surreply to ensure that the Commission gives due consideration to the interests of the parties.

² CLF asserted in its April 11 reply (at paragraph 9) that “CLF's written testimony focused on the substance of the MOU and not responding in detail to Joint Petitioners untimely testimony.” But this is plainly belied by the portions of Mr. Hill's MOU prefiled testimony cited in text.

should not be permitted two bites at the apple to address Joint Petitioners' MOU prefiled testimony, which is precisely what CLF seeks—to respond in writing in Mr. Hill's MOU prefiled testimony and also to have the opportunity to respond in live direct testimony at the hearing. This request would provide CLF an unfair advantage that would prejudice Joint Petitioners, as well as waste judicial resources through the provision of repetitive, duplicative testimony.

In its reply brief, CLF also cites legal authorities for the first time in support of its claims that certain of Joint Petitioners' testimony should be excluded and that live surrebuttal is an appropriate remedy. None of these legal authorities support CLF's arguments, however. CLF's reliance on *In re VT Elec. Power Co. Inc, et al (NRP)* is misguided. Docket 6860, Order re Motion to Strike Testimony of Robert Blohm at 3 & fn.3, Docket 6860 (Oct 8, 2004). In that case, the Public Service Board struck the surrebuttal testimony of CLF's expert witness because the Board had previously and expressly ordered that surrebuttal testimony be “narrowly focused to address evidence in the record, and should be limited to responding to new matters which could not have been reasonably responded to in an earlier round of prefiled testimony. The prefiled surrebuttal testimony must clearly identify the testimony or exhibits that it is responding to.” *Id.* at 2. The Commission has made no similar order here with regard to MOU prefiled testimony, and even if it had, Joint Petitioners' MOU prefiled testimony would clearly be permissible as it is narrowly tailored to an explanation of the MOU, including the proposals that were omitted from the MOU and the reasons for their omission.

Separately, CLF cites prehearing memoranda in support of its argument that it should be entitled to live direct testimony at the technical hearings, but ignores that the Commission and the parties in this Docket 8880 *did not agree to live direct testimony* in any of the scheduling

orders. CLF is seeking for itself an unfair advantage that is supported neither by CLF's arguments nor by the Commission's practices.

Moreover, CLF's claim that it has "limited resources" is plainly incorrect. CLF Mot. 6, CLF Reply ¶ 7. *First*, CLF jointly proposed and agreed to the schedule in this proceeding. *See* March 5, 2018 Proposed Schedule. CLF cannot now be heard to complain about the deadlines it supported in order to unfairly advantage itself. CLF was able to file twenty pages of MOU prefiled testimony by the April 10 deadline, twice the length of the testimony proffered by Joint Petitioners. *Second*, it is unreasonable and unduly prejudicial to disadvantage Joint Petitioners and the other MOU parties because CLF's counsel and its witness have more than four weeks of planned vacation over the span of two months. *See* CLF Reply ¶ 8. Although CLF claims limited resources, it is a regional organization with at least seventeen attorneys on staff, including four in its Vermont office. <https://www.clf.org/about/our-team/>. In Docket 7862, a second CLF attorney was brought in to assist Ms. Levine. *See* Exhibit A (Docket 7862, Notice of Appearance of Zachary Griefen dated Feb. 14, 2013). So too here, another CLF attorney can be available to assist in filing additional MOU prefiled testimony by April 20 if the Commission credits any of CLF's claims.³

The Commission should deny CLF's motion to exclude and should not allow CLF live testimony at the technical hearing.

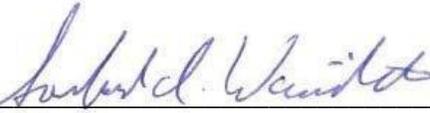
³ In replying to Joint Petitioners' opposition brief, CLF failed to respond to two central problems with its Motion, either of which should be fatal. CLF is silent in reply on Joint Petitioners' contention that the Memorandum of Understanding ("MOU") prefiled testimony of Mr. State and Mr. Twomey is related to the MOU and thus is entirely proper. CLF's reply is also silent on fact that its request for live direct testimony – effectively seeking an extension and revision of the schedule – is untimely pursuant to the Commission's "Order re: Practice Regarding Requests for Deadline Extensions" (July 14, 2017).

DATED: April 12, 2018

Respectfully submitted,

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