

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case 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. §§ 107, 231, and 232

Order entered: 04/24/2018

**ORDER RE: COMMISSION QUESTIONS AND REQUESTS AND
MOTION OF CONSERVATION LAW FOUNDATION**

As provided in the Procedural Order re: Schedule of March 7, 2018, attached are the questions and document requests of the Vermont Public Utility Commission for the parties in this case. The parties' responses to questions should be provided in the form of supplemental prefiled testimony. As set forth in the March 7 Order, responsive prefiled testimony is due from the MOU parties on May 4, 2018, and from the non-MOU parties on May 9, 2018.

We also address in this order the Conservation Law Foundation's ("CLF") objections to supplemental testimony filed by witnesses Scott State and Michael Twomey. CLF objects to testimony in which the witnesses address anticipated testimony from CLF's witness, Michael Hill. Specifically, Mr. State and Mr. Twomey testify that changes requested by CLF would constitute a material change to the terms of the MOU. CLF also objects to testimony from Mr. Twomey addressing liability transfers.

We do not find any basis for excluding the testimony offered by Mr. Scott and Mr. Twomey, and Mr. Hill's rebuttal testimony appears to address the objected-to material.¹ To the extent that CLF believes that additional testimony is required, it may submit a written supplementation to Mr. Hill's prefiled testimony addressing the testimony identified in its



¹ Michael Hill, CLF, 4/10/18 pf. at 3-7.

objections² on May 9, 2018, along with its prefiled testimony responding to the Commission's question. CLF's objections are otherwise overruled, and its motion to exclude and request to provide live surrebuttal testimony are denied.

SO ORDERED.

² CLF's Objections to Admission, filed 4/7/18, at 2.

Dated at Montpelier, Vermont, this 24th day of April, 2018.

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)	PUBLIC UTILITY
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Margaret Cheney)	COMMISSION
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)	
Sarah Hofmann)	OF VERMONT

OFFICE OF THE CLERK

Filed: April 24, 2018

Attest: 
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUBLIC UTILITY COMMISSION QUESTIONS AND REQUESTS OF PARTIES

Capitalized terms below have the meaning ascribed to them in the MOU except as otherwise provided.

QUESTIONS FOR BRIAN WINN OF DPS

DPS Oversight Responsibilities re MOU

The oversight responsibilities of the DPS under the MOU appear to be substantial and to include the following:

- review of monthly summaries of all expenditures at the Vermont Yankee site (MOU ¶ 2. f.);
- access to and right to inspect those expenditures and the books and records of three NorthStar companies as necessary (MOU ¶ 2.f.);
- review of event notifications provided by NorthStar (MOU ¶ 2.g.);
- review of annual filings provided by NorthStar (MOU ¶ 2.h. and i.);
- review of any proposed disbursement of SRT funds from the sub-account and determining whether to make an objection within 30 days (MOU ¶ 6.);
- review and approval determination related to withdrawals from the new \$55 million escrow account (MOU ¶ 2. c. (1));
- monitoring and review of compliance with the MOU and otherwise in accordance with DPS's rights under the MOU and its regulatory authority under state law; and
- taking appropriate action with respect to any questions or issues related to any of these matters including, if appropriate, filing a legal claim for relief as provided in ¶ 18 of the MOU.

The PUC also observes that the importance of an independent oversight process appears heightened because NorthStar would be both the plant owner and the entity managing and carrying out the decommissioning and site restoration process (which is different from other decommissioning efforts in which a nuclear plant owner engaged a contractor and presumably reviewed invoices and work completed to ensure contract compliance). The PUC further notes that in ¶ 10 of the MOU, DPS reserves all rights pursuant to 30 V.S.A. §§ 20 and 21 to retain advisors in support of its review processes. In your responses to the following questions, please elaborate further to the extent you believe appropriate.

1. What additional oversight resources and advisors does DPS anticipate it will require (in addition to external financial accounting assistance) to fulfill its review obligations and to help ensure that all terms and conditions of the MOU are met such that the Proposed Transaction will promote the general good of the State of Vermont? (See MOU ¶ 1)

2. Does DPS intend to allocate all the costs of retaining additional personnel in support of its review process to NorthStar pursuant to 30 V.S.A. § 21? (see ¶ 10 and last sentence of ¶ 11 of MOU)?

- a. If so, has DPS had any discussions with NorthStar regarding the annual amount of these retention costs and how NorthStar will fund these costs? Please elaborate as appropriate.
- b. If not, how will these oversight costs be funded?

3. Will DPS and its advisors have unrestricted access to the VY Station site (subject to appropriate safety and training protocols) during decommissioning and site restoration either pursuant to the MOU or applicable law?

Additional Financial Assurances in Support of Proposed Transaction

Paragraphs 2 and 3 of the MOU require NorthStar and Entergy to provide certain additional financial assurances. It appears that many of these financial assurances and the related instruments and documents could be in place or at least finalized for review by the appropriate parties in advance of the closing of the Proposed Transaction. In this regard, we note the parties' obligations pursuant to ¶ 26 and the first sentence of ¶ 22 of the MOU.

4. Does DPS anticipate that it will have the opportunity to review and sign-off on final forms of the following documents within a reasonable period prior to the closing of the Proposed Transaction: the performance bonds, the contingent letter of credit, the support agreement, the escrow agreements with respect to the escrow accounts provided for in MOU ¶ 2. c. and MOU ¶ 3.c., the Orano Guaranty, and the PLL insurance policy?

5. Does DPS anticipate that all the above referenced documents will be executed at or in advance of the closing of the Proposed Transaction and that they will all be in effect upon such closing?

6. Is it your understanding that the closing of the Proposed Transaction will be conditioned on the deposit by NorthStar of \$30 million into the escrow account provided for in ¶ 2.c. of the MOU and the contribution by Entergy to the SRT that will bring the SRT balance at the closing of the Proposed Transaction to \$60 million pursuant to MOU ¶ 3.a.?

7. MOU ¶ 2.a.(6) appears to commit NorthStar VY to a task-by-task withdrawal of funds from the NDT and appears to provide protection for the remaining balance of funds in the NDT in the event that the amount allocated to prior tasks pursuant to the pay-item disbursement schedule and all the additional sources of funds set forth in MOU ¶ 4 are insufficient or unavailable to complete prior tasks. (*See, also*, prefiled testimony of Scott State of 12/16/16, p. 23, lines 11-14, and 10/17/17, line 21 on p. 7 through line 2 on p. 8).

- a. Is this correct? Please elaborate as appropriate.
- b. What is your understanding of the decommissioning and site restoration alternatives that might still be available if, after recourse to all available

resources, there are insufficient funds to perform the prescribed tasks, especially if such circumstances involve NorthStar's insolvency?

- c. Under such circumstances, what actions and recourse do you anticipate might be available to DPS and the other State parties?

8. How does DPS intend to verify that work associated with tasks set forth in the pay-item disbursement schedule has been completed? How often does DPS intend to conduct such verification activities?

9. Paragraph 15 of the MOU states: "Nothing in this MOU shall be interpreted as prohibiting or restricting Entergy or NorthStar from complying with any requirements or orders of the NRC, or any obligation under the VY Station operating license."

- a. Please explain why it is appropriate, and will promote the general good of the State, for the PUC to approve the MOU without first knowing what the NRC requires or orders with respect to the proposed NRC license transfer?
- b. Assuming the PUC issues an order approving the MOU and the Proposed Transaction prior to the NRC's license transfer determination, what would happen if the NRC imposes requirements that affect the ability of the MOU parties to comply with the terms and conditions of the MOU? Please elaborate as appropriate.

10. What is your understanding of why ¶ 4. on page 10 of the MOU does not reference the performance bonds as a potential source of funds?

11. In ¶ 2.a.(4), (5), and (7) of the MOU, reference is made to the "VY Station Decommissioning Completion Trust." Is this a reference to the NDT? If not, what is this trust and what is its relationship to the NDT?

12. What is your understanding about whether and the extent to which each of the following would be available for decommissioning and site restoration in the event of the insolvency of NorthStar VY: (1) funds held in the NDT, SRT, and each of the two new escrow accounts, (2) proceeds from the \$25 million contingent letter of credit and the \$10 million of proceeds from NorthStar VY's claims against the DOE, (3) payments previously made under the Support Agreement, (4) claim recoveries under the performance bonds, and (5) claim recoveries under PLL insurance coverage?

Suitability of NorthStar as Owner and Operator of VY Station

In your prefiled testimony in support of the MOU of 3/9/18 (p. 3, lines 14-17), you note that the additional financial assurances do not eliminate previously identified risks "but are a reasonable and sufficient way to ensure that funds are available to address them, and provide increased certainty that decommissioning and site restoration can be completed as NorthStar has planned." In addition, in your testimony, as well as in that of Daniel Dane, in support of MOU, you both indicate that the diverse sources of additional financial assurance provided by the MOU

mitigate risks related to the continuing financial soundness of NorthStar and the possibility that NorthStar Group Services, Inc. may be unable to fully fund the Support Agreement in the future.

The MOU contains additional measures and financial assurances that appear to address contingencies specifically related to site restoration activities and others that are relevant to the availability of funds for both decommissioning and site restoration. All these measures and assurances seem intended to mitigate risks that site restoration will not be completed as planned. The MOU, however, would appear to address contingencies related to site restoration activities more fully than contingencies related to decommissioning (at least as a proportion of anticipated costs of site restoration relative to the anticipated costs of decommissioning).

13. How would you respond to any continuing concerns the PUC may have about whether the total amount of funds available to complete decommissioning will be sufficient to cover significant cost overruns or unanticipated contingencies?

14. Does DPS regard the matter of more fully addressing the adequacy and availability of the funding for decommissioning activities as being primarily a matter for the NRC rather than state entities?

15. To what extent has there been, to your knowledge, sufficient independent verification of NorthStar's overall decommissioning and site restoration cost estimates? To what extent is DPS satisfied that the analysis of NorthStar's decommissioning cost estimates by TLG as described in the prefiled testimony of Steven Scheurich of 12/16/16 (line 20 on p. 8 through line 7 on p. 9) provides a reliable basis to support NorthStar's decommissioning cost estimates? Please elaborate further in your response as appropriate.

16. To your knowledge, has there been any independent verification of the projected costs for each of the decommissioning and site restoration tasks set forth in the pay-item disbursement schedule referenced in the MOU?

17. To the extent there has been no or only limited independent verification as to the matters referenced in the preceding two questions, please explain why the reliability of such projected costs and estimates (including any significant under- or over-estimate of the projected costs of major tasks) and the seeming relative lack of detail with respect to decommissioning cost estimates related to particular tasks should not be a matter of substantial concern to the PUC in evaluating the Proposed Transaction? Please elaborate further in your response as appropriate.

18. Do you believe that NorthStar currently has or will obtain in a timely manner all the capabilities, technical expertise, and staff resources required to meet its obligations under the MOU? What is the basis for your beliefs?

Miscellaneous

19. The PUC has received and heard public comments about the public engagement process provided for in ¶ 8 of the MOU. What consideration has DPS given to the establishment of an appropriate public engagement process regarding the decommissioning and restoration of the VY Station site? Please share DPS's current thoughts about the nature, scope, and specifics of this process.

QUESTIONS FOR WARREN BREWER FOR DPS

Your prefiled testimony of 8/30/17, and the accompanying report emphasize the importance of a detailed and thorough site characterization in evaluating the work and expense that will be required to complete decommissioning. The MOU in ¶ 5.d. requires a “comprehensive site investigation,” and a plan from NorthStar within 60 days of the closing, which you describe as a “thorough and prompt characterization” in your prefiled testimony in support of the MOU.

1. The MOU does not provide a timeline for the actual site characterization activities, only the preparation of a “draft site investigation workplan” and requires completion of the characterization activities within 6 months of closing (¶ 5.d.(3)). Do you agree that this will provide a sufficient site characterization within an acceptable timeframe?

2. Please describe what you would consider to be a sufficient site characterization for the spent fuel pool and surrounding area.

3. How do you reconcile your emphasis on the importance of an early site characterization to make an accurate assessment of work and expense with the fact that the site characterization required by the MOU will occur after closing and after the costs, pay-item disbursement schedule, and available funds are fixed?

4. How does the MOU account for the possibility of unanticipated costs due to unexpected site conditions such as those you described in answers 25–27 of your 8/30/17 prefiled testimony?

5. Have you reviewed the pay-item disbursement schedule dated 9/8/16 referenced in ¶ 2.a.(6) of the MOU? If so, do you agree with the amounts budgeted by NorthStar for the listed activities?

Your prefiled testimony of 8/30/17 raises several issues regarding costs associated with spent fuel storage and repackaging, including the need for NorthStar to obtain an exemption from the NRC to use NDT funds for fuel management costs and the potential need to construct a dry transfer facility at costs of up to \$300 million.

6. Have your concerns that NorthStar will need to obtain a waiver to use NDT funds for fuel management costs been addressed? Please explain your response.

7. How does the MOU account for your concerns about the possible need to construct a dry transfer facility and the corresponding costs?

QUESTIONS FOR CHARLES SCHWER OF ANR

In his prefiled supplemental sur-rebuttal testimony of 4/10/18 on behalf of the Conservation Law Foundation, Michael Hill notes that Attachment 4 to the MOU related to the \$30 million PLL insurance product consists of a half-page proposal (p. 15, line 1) and maintains that the terms and conditions of the actual policy should be reviewed by insurance experts to ensure that the PLL insurance policy provides the desired PLL coverage (p. 15 generally and p. 18, lines 5-9).

1. Does ANR (or, to your knowledge, DPS) plan to review the actual PLL policy with the assistance of appropriate pollution insurance experts in advance of the closing to ensure that the policy provides the desired PLL coverage “for site restoration activities to address previously unknown or not fully characterized non-radiological environmental conditions identified at the VY Station site after the closing of the Proposed Transaction?” (MOU ¶ 2. e.).

2. What is your understanding with respect to how NorthStar may use the proceeds of any claim recoveries under the PLL insurance policy? Is it your understanding that the use of such proceeds would be limited to non-radiological pollution remediation and site restoration activities or may such proceeds be used by NorthStar for any decommissioning or site restoration activity? (see ¶ 2.e. and ¶ 4.a. of the MOU).

3. Mr. Hill states in his prefiled supplemental sur-rebuttal testimony of 4/10/18, that ¶16 of the MOU appears to create some ongoing post-transfer liability for Entergy regarding non-radiological hazardous materials. Do you agree with Mr. Hill that ¶16 of the MOU provides for post-transfer liability for Entergy regarding non-radiological hazardous materials? If yes, please explain your view of the scope of Entergy’s liability. If no, please explain the effect of ¶16 of the MOU on Entergy.

Within 60 days after the closing, NorthStar is required under the MOU to provide ANR with a draft site investigation workplan that complies with the I-Rule and includes all the elements identified in in ¶ 5.d.(1). No later than six months after the closing NorthStar is required to provide ANR with a site investigation report pursuant to the I-Rule and is ultimately required to take any necessary corrective actions and to remediate the site in compliance with applicable values.

4. Has ANR had any discussion with NorthStar about the technical expertise and resources NorthStar may need to obtain or retain to fully and timely comply with the MOU in terms of meeting the foregoing obligations? Please elaborate as appropriate.

5. What recourse does ANR have if it cannot reach an agreed-upon site investigation workplan or if NorthStar does not perform the site characterization to ANR’s satisfaction?

6. To what extent is it contemplated that the site investigation report pursuant to the I-Rule will identify radiological as well as non-radiological contaminants at the site?

7. What is your understanding of ¶ 2. h. of the MOU and the extent to which the annual public certification in its detailed description of work completed and the remaining schedule of corrective actions will address radiological as well as non-radiological work and actions required to complete decommissioning and site restoration?

You identified in your prefiled testimony of 8/30/17, several deficiencies in the information that NorthStar initially provided that prevented ANR from determining whether NorthStar’s cost estimates for site restoration work were accurate. The deficiencies identified included the lack of a site assessment for the site and the methods by which materials will be characterized (A14), and the lack of a detailed plan for accomplishing characterization, management, and disposal of wastes (A15).

8. What is your understanding of NorthStar's current projection for site restoration costs?

9. Do you agree with NorthStar's projection for site restoration costs?

10. Has NorthStar provided the information that you identified as lacking in your prefiled testimony of 8/30/17? If not, how did ANR determine whether NorthStar's cost estimates for site restoration were accurate?

11. Please explain the basis for your statement that the "[a]dditional financial assurance provided by Joint Petitioners under the MOU will help ensure that any unknowns or cost overruns that may arise during non-radiological site work can be addressed without compromising overall completion of the project" in light of your prior testimony that site restoration costs could not be estimated without first performing a site assessment.

QUESTIONS AND DOCUMENT REQUESTS FOR SCOTT STATE OF NORTHSTAR

1. What is NorthStar's current estimate of the approximate percentage of the costs of decommissioning and site restoration activities that will be paid to contractors engaged by NorthStar to conduct such activities from the closing date through the completion of such activities (other than the ISFSI)?

2. Based on NorthStar's projected costs for decommissioning and site restoration activities at the VY Station site (other than the ISFSI) and after taking into account the MOU, what is NorthStar's current estimate of the balance of funds that will remain in the SRT sub-account and the NDT (not including the SRT sub-account) following the completion of such activities?

3. In your prefiled rebuttal testimony of 10/17/17, you refer to the break-down of the entire decommissioning and site restoration project into approximately 900 discrete tasks (p. 10, lines 5-7) and to the limitations on NorthStar's ability to withdraw funds from the NDT in excess of the amount for each task provided for in the pay-item disbursement schedule (line 21 on p. 7 through line 3 on p. 8).

- a. To what extent will each of the approximately 900 discrete tasks be performed on a strictly sequential, task-by-task basis with the commencement of the next task contingent on the completion of the immediately preceding task?
- b. If such tasks will not be performed on a strictly sequential basis, to what extent will a significant number of these tasks be performed in parallel at the same time? Please elaborate as appropriate.
- c. Has NorthStar developed a detailed decommissioning and site restoration plan and schedule that expands on the activities listed in the pay-item disbursement schedule and includes, for example, a sequence of activities, estimated completion times, unit rates, estimated labor times, and material and equipment costs?

4. In your prefiled testimony of 12/16/16 (p. 2, lines 11 to 15), you indicate the possibility of a joint ownership structure with some of your contracting partners. Is such a joint ownership structure with respect to VY Station still possible? If so, please discuss further.

5. Please provide an update on the current status of the NRC license transfer process. What plans, if any, does NorthStar currently have to provide additional information or financial assurance related to decommissioning to the NRC?

6. Please file with the PUC a copy of version 1.0 of the pay-item disbursement schedule dated September 8, 2016 referenced in ¶ 2.a.(6) of the MOU. Any such filing (which may be made by paper filing only) shall be subject, as appropriate, to the PUC's Protective Order for Prefiled Evidence of January 11, 2018, and to the PUC's orders with respect to the Protective Agreement, including its Procedural Order of June 15, 2017. If you wish, you may file such document as an exhibit to your supplemental testimony.

QUESTIONS AND DOCUMENT REQUESTS FOR T. MICHAEL TWOMEY OF ENTERGY

1. What is Entergy's current estimate of the date by which it will complete the process of removing all spent fuel from the spent fuel pool to the dry fuel storage pads? Please elaborate on any contingencies related to the completion of such process as appropriate.

2. As of the most recent date for which such information is reasonably available, what was the balance of funds in each of the NDT and the SRT?

3. The PUC notes that NorthStar reported that the balance of funds in the NDT as of February 2017 was \$572 million (*see* exh. DPS-DSD-4, page 17). Please provide a brief accounting of expenditures and disbursements (and their purposes) from the NDT since February 2017 to the date referenced in your response to the preceding question and projected expenditures and disbursements (and their purposes) from such date to the projected closing date of the Proposed Transaction.

4. What is your understanding as to the need for specific NRC approval of NorthStar's commitment pursuant to ¶ 2.a.(6) of the MOU? Do you know of any similar commitments that have been made in connection with other nuclear decommissioning projects?

5. Paragraph 15 of the MOU states: "Nothing in this MOU shall be interpreted as prohibiting or restricting Entergy or NorthStar from complying with any requirements or orders of the NRC, or any obligation under the VY Station operating license." What would happen if the NRC imposes requirements in its license transfer decision that affect the ability of the MOU parties to comply with the terms and conditions of the MOU? Please explain as appropriate.

6. What is the Decommissioning Completion Assurance Agreement that is referenced in ¶ 3.b. and elsewhere in the MOU? What is provided for in Section 1.1 of that agreement?

7. Please provide the Commission with copies of the MIPA and the DCAA (both of which may be redacted to protect proprietary information as appropriate). If you wish, you may file the redacted copies of these agreements as exhibits to your supplemental testimony. You need not

file unredacted copies of these documents with the PUC unless the PUC subsequently requests them.

8. The PUC notes that the MOU has not yet been filed as an exhibit to the testimony of any of witnesses filing supplemental testimony in support of the MOU. Will the MOU parties seek to admit the MOU into the evidentiary record as a joint exhibit at the evidentiary hearing?

QUESTIONS FOR ROBERT SPENCER OF TOWN OF VERNON

1. In your prefiled testimony of 11/15/17, you request that various conditions be imposed in any approval of the Proposed Transaction (A.4., pp. 3 to 5). To what extent have these conditions been met in the MOU or through other understandings that the Town may have reached with NorthStar independent of the MOU?

2. Does the Town have any concerns that the clearance of underground structures to a four-foot depth below existing ground level (or any other agreed site restoration standards) will limit any potential future uses of the VY Station site?

QUESTIONS FOR MICHAEL HILL FOR THE CONSERVATION LAW FOUNDATION

In his prefiled supplemental sur-rebuttal testimony of 3/9/18 on behalf of Entergy, Michael Twomey provides examples of nuclear plant transfers that he represents are examples where the selling companies or parent entities have not been required to retain liability for decommissioning and site restoration (see pages 5-6).

1. Do you agree with Mr. Twomey's characterization of these examples? Please explain as appropriate.

PUC Case No. 8880 - SERVICE LIST

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