

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Joint Petition of NorthStar Decommissioning )  
Holdings, LLC, NorthStar Nuclear )  
Decommissioning Company, LLC, NorthStar )  
Group Services, Inc., LVI Parent Corp., NorthStar ) Docket No. 8880  
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 )

AGENCY OF NATURAL RESOURCES’ MOTION TO INTERVENE

The Agency of Natural Resources (Agency) formally seeks to intervene as a party to this proceeding. The Agency requests that the Public Service Board recognize the Agency’s intervention as of right under Board Rule 2.209(A). Alternatively, the Agency requests to intervene by permission pursuant to Board Rule 2.209(B). In support of this Motion, the Agency submits the following Memorandum of Law.

MEMORANDUM

Entergy Nuclear Vermont Yankee, LLC (ENVY) and Entergy Nuclear Operations, Inc. (ENOI) hold a certificate of public (CPG) to own, operate, and decommission the Vermont Yankee Nuclear Power Station (VY Station). Petitioners seek Board approval for Entergy Nuclear Vermont Investment Company, LLC (ENVIC) to transfer ownership of the VY Station to NorthStar Decommissioning Holdings, LLC. Joint Petition at 1. The Petitioners ask the Board to “set site restoration standards for the acquiring entities as a material part of its review of th[e] transaction” and issue other necessary approvals. *Id.* at 1, 5, 8. The Petitioners assert that the transaction will expedite radiological decommissioning and site restoration of the VY Station

by “approximately three to four decades compared to the status quo,” and that NorthStar will conduct decommissioning and dismantling and site restoration activities on parallel tracks following closing of the transaction. Id. at 2, 4. The Petitioners propose to modify the Docket 7862 Memorandum of Understanding—to which the Agency was a party—in several significant ways. Id. at 8. For example, Petitioners propose to alter how the Site Restoration Fund is currently managed, and the timing for use of those funds. Id. Petitioners also propose to cancel Entergy Corporation’s \$20 million guarantee for site restoration. Id. Among other things, Petitioners also seek Board approval to modify the terms of the Docket 7862 MOU to enable NorthStar to engage in rubbleization on site, which is currently prohibited. Id. For the reasons set forth below, the Board should allow the Agency to intervene as a party to this proceeding.

#### Intervention as of Right

Upon timely application, the Board shall permit a party to intervene as of right “when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant’s interest is not adequately represented by existing parties.” (Board Rule 2.209(A)(3)). The Agency meets those requirements here.

The Agency has substantial interests that may be adversely affected by the outcome of the proceeding. The Agency is the relevant state regulatory entity with jurisdiction over the management of non-radiological solid and hazardous waste (including the Mixed Waste Rule in its RCRA Subtitle C Hazardous Waste Program), and other federal and state environmental laws applicable to the VY Station. This jurisdiction includes primary oversight over the investigation and clean-up of releases of non-radiological hazardous materials to the surface waters,

groundwater, and lands of the State. Thus, the Agency has a substantial interest in ensuring that non-radiological contamination at the VY Station is cleaned up to State standards.

The Agency also has an interest in ensuring proper management of non-radiological waste generated during decommissioning and site restoration. Additionally, the Agency has an interest in ensuring that the VY Station is restored in a manner that protects human health and the environment. Consequently, the Agency will play a critical role in setting non-radiological standards that dictate the scope of non-radiological site investigation and characterization, non-radiological waste management, and site restoration activities.<sup>1</sup>

Further, as a party to the Docket 7862 MOU, the Agency has a substantial interest in any proceeding that may result in a modification of the terms and conditions of the MOU, or that would further define what Petitioners' obligations are under the MOU.<sup>2</sup> For example, the Petitioners propose that the Board set site restoration standards for the VY Station site (including standards for removal of structures) and modify an express prohibition of the MOU to allow rubblization on site. As a party to the MOU and as the Agency charged with oversight of non-radiological solid and hazardous waste management and other applicable environmental standards, the Agency must review any proposal to use rubble as fill at the VY Station site and determine the appropriate non-radiological waste characterization requirements and

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<sup>1</sup> The Agency's jurisdiction over site restoration and setting site restoration standards is explicitly acknowledged in Item (5) of the Docket 7862 MOU.

<sup>2</sup> Item (4) of the Docket 7862 MOU requires the parties to work "in good faith" to determine overall site restoration standards necessary to support use of the property without limitation (excepting any ISFSI and related perimeter). The MOU specifies that the restoration standards to be set shall address removal of structures and shall not permit rubblization at the VT Station site. Item (5) of the MOU requires site restoration to commence in accordance with the agreed-to site restoration standards, allowing such standards and timing for site restoration to be adjusted "by agreement of EVY, the Public Service Department, the Agency, and/or the Department of Health" in certain circumstances.

environmental standards that would apply to any structures that remain on site. Similarly, the Agency has a substantial interest in any proceeding that may result in a modification of the funding scheme for site restoration activities set forth in the Docket 7862 MOU, which is precisely what the Petitioners propose to do.

Finally, for the reasons set forth above, the Agency also has a substantial interest in ensuring that NorthStar has both the technical and financial capacity to decommission the VY Station and complete site restoration activities in accordance with the Petitioners' proposal and in a manner that protects human health and the environment. Thus, the Agency has a substantial interest that may be adversely affected by the outcome of this proceeding.

Due to the scope of the Joint Petition and the specific requests for Board action, this proceeding affords the exclusive means by which the Agency can protect its interests with respect to resolution of the Joint Petition and modifications to the Docket 7862 MOU. For example, the Agency has independent authority over the management of non-radiological waste, including the requirements for investigation and restoration of contaminated sites in Vermont. The scope of the Joint Petition includes issues that are related to this authority, and the Agency has a direct interest in this proceeding to ensure that any resulting Board order does not undermine the legal, technical, and procedural standards that the Agency is charged with administering. Further, Petitioners request that the Board determine specific standards originally intended to be resolved through negotiation of the parties to Docket 7862 MOU. Any opportunities for future modification of those standards by the Agency are unforeseeable.

No other existing party can adequately represent the Agency's specific interests in this proceeding. The Agency's areas of interests, regulatory authority, and expertise substantially differ from that of the Department of Public Service and all other parties. The Agency's staff

also has particularized knowledge and expertise related to the non-radiological and site restoration activities at the VY Station.

The Agency has timely filed this motion to intervene. For all these reasons, the Agency is entitled to intervention as of right.

#### Intervention by Permission

Alternatively, the Agency requests that the Board grant permissive intervention in this proceeding. Permissive intervention may be granted if an “applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding,” considering the following factors: (1) whether the applicant’s interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant’s interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

For the reasons stated above, the Agency meets these requirements. Further, the Agency’s request is timely and will not delay or disrupt the proceedings. On the contrary, the Agency’s technical and other expertise will inform the Board’s evaluation of this Petition. No party to the proceeding or the public will be prejudiced by the Agency’s intervention. Therefore, the Board should grant the Agency permissive intervention.

#### CONCLUSION

For these reasons, the Agency requests that the Board grant the Agency’s Motion for Intervention under Board Rule 2.209(A). Alternatively, the Agency requests Board discretion to

intervene under Board Rule 2.209(B).

Respectfully submitted,

Agency of Natural Resources



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