

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) Docket No. 8880
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)

**JOINT PETITIONERS' MOTION FOR PROTECTIVE ORDER REQUIRING
CERTAIN PREFILED TESTIMONY, EXHIBITS, AND DISCOVERY RESPONSES TO
BE SUBMITTED UNDER SEAL INTO THE EVIDENTIARY RECORD**

Joint Petitioners NorthStar Decommissioning Holdings, LLC, NorthStar Group Holdings, LLC, LVI Parent Corp., NorthStar Group Services, Inc., NorthStar Nuclear Decommissioning Company, LLC, (collectively, “NorthStar”), Entergy Nuclear Vermont Investment Company, LLC, and Entergy Nuclear Operations, Inc., (together, “Entergy”), by their attorneys, respectfully submit this motion for a protective order requiring certain prefiled testimony, exhibits, and discovery responses to be submitted under seal into the evidentiary record because they contain confidential information of one or both Joint Petitioners. These exhibits and responses are expected to be provisionally submitted under seal by the Public Service Department (“Department”) on August 30, 2017, in connection with the Department’s prefiled testimony in this Docket, pending the Commission’s determination of this motion.

PROCEDURAL BACKGROUND

On May 26, 2017, the Commission entered a protective order in this docket, which, *inter alia*, allows parties to designate as Allegedly Confidential Information (“ACI”) certain materials

requested from Joint Petitioners during the discovery process. *See* Procedural Order Re: Protective Agreement dated May 26, 2017, at 3-4. Subsequently, the Commission provisionally approved a similar but even more protective designation for one particular document, the detailed pay-item disbursement schedule. *See* Procedural Order On Motion For Special Confidentiality Protocols dated June 15, 2017. These materials were provisionally allowed to be served only upon the parties that signed the protective agreement (which the Commission approved in its May 26 order), and in the case of the detailed pay-item disbursement schedule only to the parties that qualified to receive that document.

Joint Petitioners followed the appropriate process in designating certain documents and discovery responses as ACI and, in the case of the detailed pay-item disbursement schedule, highly confidential. Those materials were served on the parties entitled to view them on or about May 31, June 20, June 21, July 3, July 11, August 2, August 3, and August 18, 2017.

Under the schedule currently in place in this docket, non-petitioners' prefiled testimony is due on August 30, 2017 (except in the case of the Town of Vernon Planning and Development Commission). On August 23, 2017, the Department gave notice to Joint Petitioners that the Department intends to discuss certain ACI in its prefiled testimony and to submit exhibits containing certain ACI in support of that testimony. Joint Petitioners in turn requested that the Department provide a list of those items so that Joint Petitioners could prepare a motion to the Commission asking that the Department's testimony and exhibits be allowed to be submitted under seal. The above-mentioned June 15 order contemplates that Joint Petitioners may file such a motion between the day that is five business days before the due date for non-petitioners' prefiled testimony, and the due date for non-petitioners' prefiled testimony. *See* Procedural Order On Motion For Special Confidentiality Protocols dated June 15, 2017, at 4 ("If NorthStar or any other

party wishes to keep confidential any material (including information contained in the Disbursement Schedule and the Deal Model Document) that another party seeks to enter into evidence in accordance with the Protective Order, a properly supported motion for protection of that information must be presented to the Board [now the Commission].”); Procedural Order Re: Protective Agreement dated May 26, 2017, at 4 (similar). If such a motion is timely filed, the party that wishes to submit prefiled testimony and/or exhibits that discuss the ACI must provisionally submit the relevant portions of the materials under seal, pending the Commission’s determination of the motion. *See* Procedural Order Re: Protective Agreement dated May 26, 2017, at 4.

In an effort to minimize the material filed under seal, Joint Petitioners have determined that four responses originally designated as ACI may now be submitted publicly.¹ Joint Petitioners also have prepared redacted versions of ACI documents the Department indicated it planned to file. As to the remainder of the items, Joint Petitioners respectfully submit this motion to allow the materials to be submitted under seal. Joint Petitioners also respectfully incorporate by reference the full set of Averments that were filed on May 31, 2017, in connection with production of ACI during discovery in this docket.

ARGUMENT

Vermont Rule of Civil Procedure 26(c), made applicable to proceedings before the Commission by PUC Rule 2.214(a), provides: “Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any Superior Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or

¹ Those responses are A.DPS:NS.2DM-1, A.DPS:NS.2DM-18, A.DPS:NS.2DS-12, and A.DPS:NS.2DS-15.

undue burden or expense, including one or more of the following ...; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge.” V.R.C.P. 26(c). Consistent with this Rule, as noted in the Procedural Background section above, the Commission’s May 26 and June 15 orders in this case contemplate that, upon a proper showing, certain material may be required to be submitted into the evidentiary record under seal.

That treatment has been authorized in other dockets as well. *See, e.g., In Re: Renewal of the Certificate of Public Good of Comcast, expiring on December 29, 2016, to provide cable television service*, Docket No. 8301, Protective Order For Confidential Treatment Of Exhibit, 2016, 2016 WL 4239380 (Vt.P.S.B. Aug 4, 2016). In *Comcast*, the petitioner demonstrated that an exhibit to its prefiled testimony “contain[ed] confidential financial information and business projections that [we]re competitively sensitive, which, if publicly disclosed, would result in significant cognizable harm and disadvantage to Comcast.” *Id.* at *1. The Commission “conclude[d] that Comcast ha[d] made a *prima facie* showing that confidential treatment [wa]s warranted for the exhibit” and “grant[ed] Comcast’s motion for a protective order for a period of two years from the date [of the order].” *Id.* The Commission has authorized longer periods of protection, including even indefinite protection. *See, e.g., Joint Petition of Consol. Commc'ns Holding, Inc., Consol. Commc'ns, Inc. et al.*, Docket No. 8881, Protective Order For Confidential Treatment Of Evidence, 2017 WL 1862358, at *3 (Vt.P.S.B. May 4, 2017). Other courts and agencies similarly hold that protective orders are often appropriate. *See, e.g., Springfield Terminal Ry. Co. v. Agency of Transp.*, 174 Vt. 341, 347–48, 816 A.2d 448, 454 (2002) (affirming denial of request for financial information submitted to the Vermont Agency of Transportation made

pursuant to Vermont's Access to Public Records Act, noting that "generally private corporate information that gives its possessor a commercial advantage over others... [is] exempt from disclosure"); *Common Point, LLC, Application for Approval to Provide Switched Access Tandem Serv. As A Competitive Access Provider*, Docket No. 2011-396, Protective Order, 2011 WL 5825209, at *1 (Me.P.U.C. Nov. 16, 2011) (granting protective order restricting access to "confidential business information" where "[t]he potential harm of public disclosure outweigh[ed] the potential benefits"); *Formax Inc. v. Alkar-Rapidpak-MP Equip., Inc.*, No. 11-C-0298, 2013 WL 2452703, at *1 (E.D. Wis. June 5, 2013) ("[D]ocuments containing sensitive pricing information, sales figures, sales dollar amounts, profit and loss data, and other financial records not normally made known to the public may be properly filed under seal.").

Similar concerns are present here, as explained below regarding each document and discovery response at issue. Joint Petitioners note that, as of the filing of this motion, they have only been able to review the exhibits and responses identified by the Department, not the prefiled testimony that the Department has not yet filed. As to any such prefiled testimony that discusses ACI, Joint Petitioners understand that the Department will file the complete testimony (including any portions that arguably discuss ACI) under seal, and will file publicly a version that contains only those portions (if any) that do not arguably discuss ACI. Joint Petitioners will then meet and confer with the Department promptly in an attempt to make available a more complete (less redacted) public version.

Attachment A.DPS.EN.1-14.18: This document is an internal Entergy email concerning credit assessments of NorthStar and another counterparty that Entergy was considering before it selected NorthStar. Entergy is required by a confidentiality agreement with the counterparty to keep the counterparty's identity confidential. Entergy did, however, obtain the counterparty's

specific permission to produce the document in its entirety to the Department only, and Entergy did so. Entergy also was able to create a version of the document that redacted the counterparty's name, which was produced at the same time as the unredacted version to all parties that signed the protective agreement. That version bears the label "Attachment A.DPS.EN.1-14.18 R." Even with that redaction of the counterparty's name, the document contains non-public financial information of NorthStar. NorthStar is not a public company and its financial information (including revenue and operating margin) are not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no further redaction is possible that would make the document amenable to being produced publicly. The Department has the option of filing the redacted version with the Commission and providing it to the parties that have signed the protective agreement. As to the unredacted version Attachment A.DPS.EN.1-14.18, the Commission should order that it be submitted under seal and made available only to the Commission. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

Attachment A.DPS.EN.1-17.2: This is a PowerPoint presentation created on or about October 27, 2016, as part of the effort to obtain certain Entergy corporate approvals of the transaction with NorthStar. Page EN-VYND 0012034 of the document contains dollar figures that Entergy has assigned to various risks it would face if it continued to own Entergy Nuclear Vermont Yankee, LLC and/or the Vermont Yankee Nuclear Power Station. Those dollar figures are not public and are highly sensitive because, *inter alia*, potential counterparties on future decommissioning projects at Entergy's other plants could use them to gain an advantage in negotiating with Entergy on such projects. Similarly, Page EN-VYND 0012044 contains

financial information that Entergy has not publicly disclosed and was not required to disclose under the securities laws even though Entergy Corporation is a public company. Entergy has prepared a redacted version of this document, “Attachment A.DPS.EN.1-17.2 R,” which Entergy is providing to all parties in this Docket and which the Department may wish to submit publicly into the evidentiary record. Because Entergy (through affiliates) owns several other currently operating nuclear plants that are expected to shut down over the next several years (although possibly as late as 2025), and the timeframes for decommissioning and potential decommissioning-related transactions for those plants are not yet known, Entergy proposes that this document be kept under seal until 2030.

Attachment A.DPS.JP.1-22.3: This document is an internal Entergy spreadsheet that, like Page EN-VYND 0012034 discussed above, estimates dollar values for several types of risk that Entergy would face if it continued to own Entergy Nuclear Vermont Yankee, LLC and/or the Vermont Yankee Nuclear Power Station. These dollar figures are not public and are highly sensitive because, *inter alia*, potential counterparties on future decommissioning projects at other plants could use them to gain an advantage in negotiating with Entergy on such projects. Entergy has prepared a redacted version of this document, “Attachment A.DPS.EN.1-22.3 R,” which Entergy is providing to all parties in this Docket and which the Department may wish to submit publicly into the evidentiary record. Because Entergy (through affiliates) owns several other currently operating nuclear plants that are expected to shut down over the next several years (although possibly as late as 2025), and the timeframes for decommissioning and potential decommissioning-related transactions for those plants are not yet known, Entergy proposes that this document be kept under seal until 2030.

Attachment A.DPS.JP.1-38.1: This document is an Entergy spreadsheet that provides detailed descriptions of several types of risk that Entergy would face if it continued to own Entergy Nuclear Vermont Yankee, LLC and/or the Vermont Yankee Nuclear Power station. These descriptions are not public and are highly sensitive because, *inter alia*, potential counterparties on future decommissioning projects at other plants could use them to gain an advantage in negotiating with Entergy on such projects. Entergy has prepared a redacted version of this document, “Attachment A.DPS.EN.1-38.1 R,” which Entergy is providing to all parties in this Docket and which the Department may wish to submit publicly into the evidentiary record. Because Entergy (through affiliates) owns several other currently operating nuclear plants that are expected to shut down over the next several years (although possibly as late as 2025), and the timeframes for decommissioning and potential decommissioning-related transactions for those plants are not yet known, Entergy proposes that this document be kept under seal until 2030.

Attachment A.DPS.NS.1-57.2265: This document is the detailed pay-item disbursement schedule, which the Commission provisionally ruled in the June 15 order is eligible for special treatment above and beyond even the protections afforded by the ordinary protective agreement.² This schedule sets forth the approximately 900 sub-tasks into which NorthStar has organized the Vermont Yankee project. NorthStar expended substantial effort and resources to determine how to break down the Project into these smaller sub-tasks and how much funding is needed to accomplish each one. This highly sensitive information is known only to NorthStar’s management team and regulatory counsel, was developed at NorthStar’s expense, and is not known to others in NorthStar’s industry or to the public in general. It is akin to the secret formula for Coca-Cola,

² The Department has indicated that, unlike the other documents and discovery responses discussed in this motion, the Department will only discuss Attachment A.DPS.NS.1-57.2265 in its prefiled testimony, and will not seek to move that document into evidence.

which can never be made public without ruining Coca-Cola's competitive advantage based on its secret formula. Were it to become known to NorthStar's competitors, they would likely be able to adopt it at NorthStar's expense and detriment, to use it unfairly to compete for future projects. NorthStar would potentially lose the opportunity to earn hundreds of millions of dollars of revenue, along with reasonable profit thereon, if its work product was made available to its competitors. A 90-line item version of the pay-item disbursement schedule has been produced under regular confidentiality designations as Attachment A.DPS.NS.1-77.1. Because the need for secrecy of this document extends well into the future for as long as NorthStar competes in this industry, NorthStar cannot now propose a date for when the detailed document can be made public.

Attachment A.DPS.NS.1-57.2264: This document is the detailed deal model of NorthStar, a 16-page document that contains cost allocations for specific tasks (though aggregating some of those tasks relative to the detail set forth in the detailed pay-item Disbursement Schedule), and then shows how the primary funding sources for this Project (i.e., the Nuclear Decommissioning Trust and the Site Restoration Trust) will be utilized to pay for those costs, and in what sequence over time. This document is a working model, meaning that parties can change the figures to determine how the model works (NorthStar's core confidential business model). Disclosure to NorthStar's competitors of the Deal Model, like disclosure of the detailed pay-item disbursement schedule, would threaten NorthStar's competitive advantage on future projects by enabling competitors to adopt NorthStar's plan without incurring the costs of developing it and to under-bid NorthStar. The Deal Model was provided to Entergy during due diligence on this transaction, with Entergy strictly bound by a Non-Disclosure Agreement not to disclose it to anyone else; NorthStar did not provide the Deal Model to the NRC. A four-page summary version of the Deal Model was already filed publicly, Exhibit JP-SES-Supp-1, Enclosure 4. Because the

need for secrecy of this document extends well into the future for as long as NorthStar competes in this industry, NorthStar cannot now propose a date for when the detailed document can be made public.

Attachment A.DPS.NS.1-24.12: This document sets forth various financial data for NorthStar Group Holdings, LLC. NorthStar Group Holdings, LLC is not a public company and its financial information is not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Specifically, among other things, a competitor could use the financial data as an advantage in bidding against NorthStar by telling the prospective counterparty about NorthStar's financial condition. Accordingly, no further redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

Attachment A.DPS.NS.1-24.21: This document sets forth various financial data for NorthStar Group Services, Inc. NorthStar Group Services, Inc. is not a public company and its financial information is not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no further redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the

public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

Attachment A.DPS.NS.2-20.1: This is a June 12, 2017 credit agreement between NorthStar and certain lenders. It sets forth, *inter alia*, the terms on which NorthStar can borrow from those lenders, and the amounts that can be borrowed. The document is not a public document. Were it to be publicly disclosed, it would likely harm both NorthStar's competitive advantage in its industry (by providing competitors better information on which to negotiate their own credit agreements) and the lenders' competitive advantage (by providing their competitors better information on which to negotiate future lending transactions). This document would never be made public in the ordinary course of NorthStar's business, and its lenders would not expect it to be public either. A redacted version of this document has been prepared and served publicly as Attachment A.DPS.NS.2-20.1 R. The redacted portions deal with financial information and inter-lender relationships that NorthStar believes it would need to go back to its lender group (10 banks) to get approval to release. NorthStar has left in for public review the current terms of its credit, which is the key material that the PUC and parties should be interested in reviewing. The complete unredacted document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Because the need for secrecy of this document extends well into the future for as long as NorthStar competes in this industry and the lenders compete in their industry, NorthStar cannot now propose a date for when the detailed document can be made public.

Attachment A.DPS.NS.2-21.1: This document contains NorthStar Group Services, Inc.'s consolidated financial statements and an accompanying accountant's report. NorthStar Group Services, Inc. is not a public company and its financial information is not known to the public.

Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no further redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

Attachment A.DPS.NS.2-21.3: This document contains NorthStar Group Services, Inc.'s consolidated financial statements and an accompanying accountant's report. NorthStar Group Services, Inc. is not a public company and its financial information is not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no further redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

Attachment A.DPS.NS.2-21.5: This is a balance sheet that sets out NorthStar Group Holdings, LLC's assets, liabilities, and shareholder equity. NorthStar Group Holdings, LLC is not a public company and its financial information is not known to the public. Were that information to become public, it would harm NorthStar's ability to compete in its industry. Accordingly, no further redaction is possible that would make the document amenable to being produced publicly. This document should be submitted in the evidentiary record under seal and made available only

to the parties that have signed the protective agreement and already were served the document during discovery. Joint Petitioners respectfully submit that the sealed version of the document may be released to the public after two years following the closing of this transaction, and may not ever be released if the transaction does not close.

Responses A.DPS:NS.2DM-11, A.DPS:NS.2DM-16, and A.DPS:NS.2DM-27, A.DPS:NS.2DM-28: These responses were served confidentially because they make specific reference to confidential information, including specific dollar amounts, contained within Attachment A.DPS.NS.1-57.2264 (Deal Model). They should be submitted into the evidentiary record under seal for the same reasons as set forth above for that document. NorthStar has designated two responses in this discovery response set public because the responses did not contain special dollar amount or specific details from the Deal Model. *See supra*, at 3 n.1.

Response A.DPS:NS.2DS-5: This response was served confidentially because it makes specific reference to confidential information, including specific dollar amounts, contained within Attachment A.DPS.NS.1-57.2265 (detailed pay-item disbursement schedule). Specifically, the referenced figures include NorthStar's estimator formula for the items identified and cannot be share with its competitors. It should be submitted into the evidentiary record under seal for the same reasons as set forth above for that document. NorthStar has designated two responses in this discovery response set public because the responses did not contain special dollar amount or specific details from the detailed pay-item disbursement schedule. *See supra*, at 3 n.1.

CONCLUSION

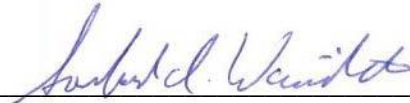
The Department's prefiled testimony and exhibits should be required to be filed under seal to the extent they discuss (or reproduce) the documents described above.

DATED at New York, New York, this 29th day of August, 2017.

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

Attorneys for Entergy Nuclear Vermont Investment
Company, LLC, Entergy Nuclear Operations, Inc.,
and Entergy Nuclear Vermont Yankee, LLC

By:  _____

Sanford I. Weisburst*
Ellyde R. Thompson*
Ingrid E. Scholze*
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7170
sandyweisburst@quinnemanuel.com

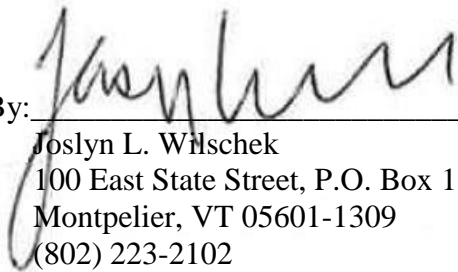
*admitted *pro hac vice*

John Marshall
Downs Rachlin Martin PLLC
90 Prospect Street
St. Johnsbury, VT 05819-2241
(802) 748-8324
jmarshall@drm.com

Daniel Richardson
Tarrant, Gillies & Richardson
44 East State Street
P.O. Box 1440
Montpelier, Vermont 05601-1440
(802) 223-1112
drichardson@tgrvt.com

PRIMMER PIPER EGGLESTON & CRAMER PC
Attorneys for NorthStar Decommissioning
Holdings, LLC, NorthStar Nuclear
Decommissioning Company, LLC, NorthStar

Group Services, Inc., LVI Parent Corp., and
NorthStar Group Holdings, LLC

By: 

Joslyn L. Wilschek
100 East State Street, P.O. Box 1309
Montpelier, VT 05601-1309
(802) 223-2102
jwilschek@primmer.com