



("Protocol Order"). Specifically, if we applied the Protocol Order to the PUC consultant, NorthStar would have 10 days to assess whether the prospective consultant's ability to access NorthStar's highly confidential material (namely, the approximately 900-item pay item disbursement schedule that the Commission has already approved for special treatment in this Docket) will pose a risk of competitive harm to NorthStar or present bias:

To the extent that NorthStar believes access to the Disbursement Schedule by any expert or consulting expert should be precluded, NorthStar may, within 10 days of the filing of any such list, file an objection stating reasons why such expert or consulting expert should not have access to the Disbursement Schedule.

Protocol Order at 3. Upon making such a determination, NorthStar would submit an objection to the Commission within the 10-day period if necessary. As NorthStar has explained, the disbursement schedule document is particularly sensitive because it contains NorthStar's proprietary approach to performing decommissioning and site restoration of a commercial nuclear power plant; if disclosed to NorthStar's competitors in the industry, it would remove NorthStar's competitive advantage

Any hired PUC consultant should also be required to follow the protocols as approved by the PUC in its June 30, 2017 Procedural Order Re: Special Protocol For Protection of Disbursement Schedule and Other Matters in terms of the procedures for maintaining the confidentiality of the disbursement schedule ("Special Protocols").

The Vermont Supreme Court has described as "universally recognized" the principle that "a person is entitled to a full and impartial hearing before a court that is not biased or prejudiced against him." *Emerson v. Hughes*, 117 Vt. 270, 279 (1952). "This rule applies to an administrative officer exercising quasi-judicial functions." *Id.* This principle applies with special force in the

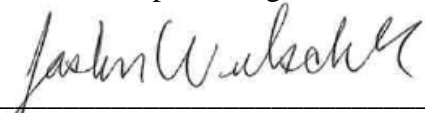
context of selecting a court- or agency-appointed non-testifying consultant or advisor. “[E]xperts in the relevant field, particularly if it is a narrow and highly-specialized one, may be aligned with one of the parties; therefore, the district court must make every effort to ensure the technical advisor’s neutrality, lest the advisor develop into, or give the appearance of being, an advocate for one side.” *Association of Mexican-American Educators*, 231 F.3d at 611 (Tashima, J., dissenting); *see also, e.g., Federal Trade Comm’n v. Enforma Natural Prods., Inc.*, 362 F.3d 1204, 1214 (9th Cir. 2004) (adopting Judge Tashima’s recommendation that process for retaining a non-testifying consultant should include “address[ing] any allegations of bias, partiality, or lack of qualification”).

In sum, NorthStar respectfully requests the Commission to implement the Protocol Order process before allocating any costs to Petitioners and executing a contract with a consultant, and require any consultant to follow the requirements regarding confidentiality in the Special Protocols.

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Docket No. 8880  
NorthStar's Limited Objection  
To Public Utility Commission's  
Retention Of Consultant  
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