

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: 01/11/2018

PROTECTIVE ORDER FOR PREFILED EVIDENCE

I. INTRODUCTION

On August 29 and November 30, 2017, the joint petitioners¹ filed motions for a protective order related to prefiled testimony and exhibits of the Department of Public Service (“Department”) to the extent such testimony and exhibits discuss or reproduce allegedly confidential information contained in certain discovery responses, attachments to discovery responses, and depositions. The August 29 motion related to certain prefiled testimony and exhibits that the Department was expected to file on August 30, 2017, and the November 30 motion related to certain sur-rebuttal testimony and exhibits the Department was expected to file on December 1, 2017.

On August 30 and December 1, 2017, the Department filed in ePUC public copies of the testimony and exhibits with redactions of the allegedly confidential information for which a protective order is sought by the joint petitioners. The Department also separately filed with the Commission non-redacted copies of its testimony and exhibits in sealed envelopes pursuant to the Commission’s Procedural Order of May 26, 2017. In considering the motions for a

¹ The joint petitioners include the NorthStar petitioners -- NorthStar Decommissioning Holdings, LLC, NorthStar Nuclear Decommissioning Company, LLC, NorthStar Group Services, Inc., LVI Parent Corporation, and NorthStar Group Holdings, LLC (collectively “NorthStar”) -- and the Entergy petitioners -- Entergy Nuclear Vermont Investment Company, LLC and Entergy Nuclear Operations, Inc. (collectively, “Entergy”).

protective order, the Commission has to determine whether the proffered evidence should be treated as confidential and kept under seal and, if so, subject to what protection and conditions.

None of the other parties in this case filed a response to the motions, and, as such, they are unopposed.

The Commission has reviewed the motions and supporting materials and concludes that, with a few exceptions, the movants have made a *prima facie* showing in both of their motions that confidential treatment is warranted for the information at issue. Accordingly, the Commission grants the movants' motions for a protective order subject to the exceptions and limitations on duration of such confidential treatment set forth in this Order.

In addition, the Commission observes that both of the motions include a commitment for the joint petitioners to "meet and confer with the Department promptly following the filing of redacted public prefiled testimony and exhibits by the Department in an attempt to make available a more complete (less redacted) public version."² There is nothing in the record that indicates the results of these attempts to make more information available to the public. The Commission encourages the parties to continue to discuss and consider whether any redacted portions of the Department's prefiled testimony and exhibits can be removed from the protection of this Order prior to the evidentiary hearings in this case.

II. DISCUSSION AND CONCLUSIONS

To promote full understanding of the basis for its decisions, the Commission has actively taken steps to limit the amount of information subject to protective orders. The Commission has encouraged parties to remove material from that protection to the extent possible. The Commission requires petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel

² Joint petitioners' motion for protective order of 8/29/17 at 5; joint petitioners' motion for protective order of 11/30/17 at 5.

for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.³

Generally, the Commission resolves disputes about information only when there is a disagreement about its confidential nature.⁴ However, even when the motion is uncontested the Commission will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal. In determining whether to protect allegedly confidential information, the Commission considers four issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Does the matter sought to be protected contain critical energy infrastructure information (CEII)?
- (3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown “good cause” for invoking the Commission’s protection?⁵

In this case, the movants request that portions of prefiled testimony and exhibits discussing or reproducing allegedly confidential information contained in certain identified discovery responses, attachments to discovery responses, and deposition transcripts be kept sealed for various durations.⁶ In their motions, the movants reference specific allegedly confidential discovery attachments, responses and deposition transcripts (which are listed below) that the Department had indicated to the movants that it planned to discuss or include in its prefiled testimony and exhibits. A protective order is sought with respect to redacted portions of the Department’s prefiled testimony and exhibits that include the following categories of information.

³ *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 (“*Entergy Docket*”), Order of 11/9/01 at 5-6.

⁴ *Id.* at 6.

⁵ *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

⁶ In their motions, the joint petitioners make reference to these discovery responses as documents that “should be submitted in the evidentiary record under seal.” This Protective Order addresses only allegedly confidential documents and information included in the Department’s prefiled testimony and exhibits.

(a) Certain financial statements and financial data for NorthStar Group Holdings, LLC. and other North Star entities that are not publicly available or known. Attachment A.DPS.NS.1-24.12, Attachment A.DPS.NS.1-24.21, Attachment A.DPS.NS.2-21.1, Attachment A.DPS.NS.2-21.3, Attachment A.DPS.NS.2-21.1; Attachment A.DPS.JP.3-4.1; Attachment A.DPS.JP.3-5.1; Attachment A.DPS.JP.3-6.1; Attachment A.DPS.EN.1-14.18 R.

(b) Information related to a credit agreement of June 12, 2017, between NorthStar and certain lenders. Attachment A.DPS.NS.2-20.1;⁷ J. Adix deposition transcript.

(c) Information, including specific dollar amounts, contained in NorthStar deal model document. Attachment A.DPS.NS.1-57.2264; Responses A.DPS:NS.2DM-11, A.DPS:NS.2DM-16, A.DPS:NS.2DM-27, and A.DPS:NS.2DM-28.

(d) Information, including specific dollar amounts, contained in the NorthStar pay disbursement schedule that is subject to the Procedural Order of June 15, 2017. Attachment A.DPS.NS.1-57.2265; Attachment A.DPS.NS.1-77.1;⁸ and Response A.DPS:NS.2DS-5.

(e) Information about waste disposal and pricing. Attachment A.DPS.JP.3-43.1; Response A.DPS.JP.3-43.

(f) Information in an internal Entergy email concerning credit assessments of NorthStar and another counterparty that Entergy was considering before it selected NorthStar. Attachments A.DPS.EN.1-14.18⁹ and A.DPS.EN.1-14.18 R.

(g) Information in internal Entergy documents (a power point presentation and spreadsheets) describing, assessing, and assigning dollar value estimates to various risks Entergy would face if it continued to own Entergy Nuclear Vermont Yankee, LLC (“ENVY”) and/or the Vermont Yankee Nuclear Power Station (“VY Station”). Attachment A.DPS.EN.1-17.2, Attachment A.DPS.JP.1-22.3, Attachment A.DPS.JP.1-38.1.

⁷ The movants propose that 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.” However, the Department did not file this document as an exhibit to its prefiled testimony and, as such, this document has not been offered as evidence. Only redacted information in the public versions of the Department’s prefiled testimony and exhibits related to the credit agreement is subject to this Protective Order.

⁸ This discovery attachment is a 90-line item version of the pay-item disbursement schedule that “has been produced under regular confidentiality designations.” Motion for protective order of 8/29/17 at 9.

⁹ This is an unredacted version of a discovery attachment. The movants propose that “the Commission should order that it be submitted under seal and made available only to the Commission.” Motion for protective order of 8/29/17 at 6. As noted above, this Protective Order addresses only allegedly confidential documents and information included in the Department’s prefiled testimony and exhibits.

(h) Information in the J. Adix and S. Scheurich deposition transcripts.

The Commission has reviewed the motions and supporting materials and has applied the existing standard. We conclude that the movants have made a *prima facie* showing that confidential treatment is warranted for the above categories of information as explained and set forth in the motions and the averments of the joint petitioners that were incorporated by reference in the motions, except in the case of the redacted portions of Mr. Scheurich's deposition transcript for which the movants did not meet the burden of presenting a *prima facie* case for confidential treatment. This exception relates to the redacted portions of the sur-rebuttal testimony of Mr. Brewer on page 17 (lines 10 to 12) and page 18 (lines 3 to 6) and excerpts from Mr. Scheurich's deposition transcript that were filed by the Department as Exhibit DPS-WKB-32-Confidential.¹⁰

The movants have provided no specific basis for why the redacted portions of the Scheurich deposition transcript excerpts should be protected or of any cognizable harm that could result from their disclosure. In arguing for the confidentiality of deposition transcripts, the movants discuss the Adix deposition¹¹ and the Scheurich deposition transcripts together. The only statements that the movants provide in support of confidential treatment of the redactions is as follows:

The identified portions of deposition transcripts the Department intends to use involve confidential information about Entergy and NorthStar's respective business plans and cost estimates for the decommissioning and about NorthStar's credit agreements. The relevant portions of the deposition transcripts have been marked confidential because they contain confidential information that, if released, could cause harm to either or both Entergy or NorthStar, including for the reasons discussed supra regarding NorthStar's credit agreement.¹²

No basis is presented in the November 30 motion for confidential treatment of information related to Entergy's business plans and the cost estimates for decommissioning to the extent

¹⁰On January 3, 2018, in response to a request by the Commission on January 2, the joint petitioners filed a redacted copy of the excerpts from Mr. Scheurich's deposition transcript included in Department Exhibit DPS-WKB-32 that indicated the portions of the exhibit for which they seek a protective order.

¹¹ In the case of Mr. Adix's deposition transcript, the public version of Exhibit DPS-DPS-37 only redacts specific information related to the North Star credit agreement for which the movants have made a *prima facie* case for confidential treatment.

¹² Joint petitioners' motion for protective order of 11/30/17 at 10.

discussed in Mr. Scheurich's deposition excerpts (Exhibit DPS-WKB-32) or Mr. Brewer's sur-rebuttal testimony.

In addition, the Commission's review of the specific redactions made in prefiled testimony has identified two instances in Mr. Dane's prefiled testimony in which the redacted information does not appear to be confidential. These instances are Mr. Dane's prefiled testimony of August 30, 2017, at page 32 (lines 7 to 19), which provides a general and non-specific discussion of NorthStar's deal model, and at page 45 (lines 1 to 10), which discusses the representation of various amounts in nominal and real dollars.¹³

With respect to the redacted portions of Mr. Dane's and Mr. Brewer's prefiled testimony and the redacted portions of Mr. Scheurich's deposition transcript provided to the Commission on January 3, the Commission is willing to consider further argument before unsealing such information and requiring the filing in ePUC of prefiled testimony and an exhibit that do not contain such redactions. Any such further filing by movants must be made on or before January 16, 2017.

Finally, the movants propose confidential treatment of indefinite duration with respect to certain information in the evidence proffered by the Department. The Commission seeks to avoid protective orders of indefinite duration whenever possible as such orders impose a burden on the Commission and the state archives to maintain confidential treatment of official documents without a prescribed expiration date. In this case, the moving parties have not demonstrated that there is good reason for to grant indefinite protection. The Commission believes that the burden should be on parties advocating for confidential treatment to file a motion to extend the duration of confidential treatment, if they believe confidential treatment is still warranted, before the expiration of a reasonable period for confidential treatment.

The Commission also has some specific concerns about the confidentiality of NorthStar financial statements and data in the event that the proposed transactions are approved and closed. After NorthStar acquires ENVY, it will own ENVY and the VY Station and will be responsible for decommissioning and site restoration. At this time, the Commission cannot assent to the confidential treatment of NorthStar financial statements and data (even for two years) without

¹³ In this regard, the Commission also notes that Mr. State replies to the testimony of Mr. Dane on the issue of real and nominal dollars on page 3 of his rebuttal testimony of 10/17/17.

further consideration of whether such confidential treatment will continue to be appropriate following such acquisition. Accordingly, this Protective Order provides for confidential treatment of such financial statements and data, if the proposed transactions are approved and completed, for 90 days after the closing of the acquisition of ENVY. The 90-day period is intended to provide time after the closing for NorthStar to file a motion to extend the term of the Protective Order with respect to such financial statements and data and for the Commission to fully consider the appropriateness of allowing continued confidential treatment of financial information about NorthStar following its assumption of the obligations “to operate and perform decommissioning and site restoration at the VY Station.”¹⁴

Set forth below are the periods of confidential treatment sought by the movants and the corresponding periods that are established by the Commission in this Protective Order.

(a) The movants propose that redacted information concerning NorthStar financial statements and financial data discussed or included in the Department’s prefiled testimony and exhibits may be released to the public two years after the closing of the proposed transaction, and may not ever be released if the transaction does not close. Subject to the terms and conditions of this Protective Order, the Commission determines that any such information subject to this Protective Order shall be kept under seal until 90 days after the closing of the acquisition of ENVY by NorthStar or, if the acquisition does not close, for seven years from the date of this Protective Order.

(b) NorthStar does not propose a date for when redacted information concerning the June 2017 credit agreement (including the redacted portions of Mr. Adix’s deposition transcript excerpts) can be made public. Subject to the terms and conditions of this Protective Order, the Commission determines that such information shall remain under seal for seven years from the date of this Protective Order.

(c) NorthStar does not propose a date for when redacted information related to the deal model document can be made public. Subject to the terms and conditions of this Protective Order, the Commission determines that such information shall remain under seal for seven years from the date of this Protective Order.

¹⁴ Petition filed by joint petitioners on 12/16/16 at 8.

(d) NorthStar does not propose a date for when redacted information related to the pay disbursement schedule can be made public. Subject to the terms and conditions of this Protective Order, the Commission determines that such information shall remain under seal for seven years from the date of this Protective Order.

(e) NorthStar does not propose a date for when redacted information concerning waste disposal and pricing may be made public. Subject to the terms and conditions of this Protective Order, the Commission determines that such information shall remain under seal for seven years from the date of this Protective Order.

(f) The movants propose that redacted information related to credit assessments of NorthStar and another counterparty that Entergy was considering before it selected NorthStar be released to the public two years after the closing of the proposed transaction, and may not ever be released if the transaction does not close. Subject to the terms and conditions of this Protective Order, the Commission determines that such information shall be kept under seal for two years following the closing of NorthStar's acquisition of ENVY, and for seven years from the date of this Protective Order, if the transaction does not close.

(g) Entergy proposes that redacted information related to describing, assessing, and assigning dollar value estimates to various risks Entergy would face if it continued to own ENVY and/or the VY Station be kept under seal until 2030, and the Commission determines, subject to the terms and conditions of this Protective Order, that such redacted information shall be kept under seal until 2030.

As discussed above, any of the joint petitioners may move to extend the duration of this Protective Order as it relates to any of the above information prior to expiration of any applicable period for protection if they believe confidential treatment of such information is still warranted at that time.

III. ORDER

IT IS HEREBY ORDERED that the allegedly confidential testimony and exhibits filed by the Vermont Department of Public Service in this case shall be treated as follows:

1. On or before January 18, 2018, the Department shall file revised redacted versions of its prefiled testimony and exhibits that remove from seal the portions of the testimony and

exhibits that the Commission has determined in this Order are not subject to confidential treatment. To the extent that the joint petitioners or any joint petitioner files a motion with the Commission by January 16, 2018, requesting that the Commission reconsider the removal of any such information from seal, the Department's filing referred to above shall continue to redact any information that is subject to such request for reconsideration.

2. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any testimony or documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and case number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Commission except by order of the Commission. Notwithstanding such a statement, the members of the Commission, any employee or consultant specifically authorized by the Commission to assist the Commission in this proceeding, and any Hearing Officer appointed in this case may have access to such sealed confidential information, but shall not disclose such information to any person.

3. At any hearing or conference in this proceeding, no persons, other than those who have agreed to be bound by this Order and any Protective Agreement approved in this case, and those whom the Commission has expressly authorized to have access to this confidential information, shall be permitted to give, hear, or review testimony given or held with respect to this confidential information.

4. Each Commission stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Commission stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Commission, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

5. The Commission retains jurisdiction to make such amendments, modifications, and additions to this Order as it may, from time to time, deem appropriate.

6. Any party or other person may apply to the Commission for an amendment, modification, or addition to this Order.

7. In the event of a challenge to the Commission's determination in this Order as to the confidentiality of the relevant information, the burden of proof shall remain with the parties seeking confidential treatment.

SO ORDERED.

PSB Case No. 8880 - SERVICE LIST

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