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 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 Docket No. 8880

SUMMARY OF SUPPLEMENTAL PREFILED TESTIMONY OF T. MICHAEL TWOMEY

Mr. Twomey’s supplemental testimony addresses the commitments and obligations of Entergy Nuclear Vermont Yankee, LLC (“ENVY”), Entergy Nuclear Vermont Investment Company, LLC (“ENVIC”), and Entergy Nuclear Operations, Inc. (“ENOI”) (together, “Entergy”) under the Memorandum of Understanding, filed with the Public Utility Commission on March 2, 2018.

Mr. Twomey sponsors the following exhibits:

Exhibit JP-TMT-5: Millstone Massachusetts D.T.E. 00-68 Order
Exhibit JP-TMT-6: Seabrook Massachusetts D.T.E. 02-33 Order
Exhibit JP-TMT-7: State of New York Public Service Commission Order Authorizing Asset Transfer, Case 01-E-0040

1 Exhibits JP-TMT-4 and JP-TMT-5 include page numbers that were not included on the original documents but have been added to the Exhibits to facilitate citing references.
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Docket No. 8880

SUPPLEMENTAL PREFILED TESTIMONY OF T. MICHAEL TWOMEY

Q1. Are you the same T. Michael Twomey who submitted prefilled testimony in this Docket on December 16, 2016, and on October 17, 2017?

A1. Yes.

Q2. Is there any topic that you wish to discuss in relation to the submission of a Memorandum of Understanding in this Docket?

A2. Yes. I would like to address the commitments and obligations of Entergy Nuclear Vermont Yankee, LLC (“ENVY”), Entergy Nuclear Vermont Investment Company, LLC (“ENVIC”), and Entergy Nuclear Operations, Inc. (“ENOI”) (together, “Entergy”) under the Memorandum of Understanding (“MOU”) filed in this Docket on March 2, 2018. Under the MOU, Entergy agrees, inter alia, to provide the financial assurances set forth in Paragraph 3 if the Commission approves the proposed transaction.
without material change to the MOU’s terms. In so doing, I will address my
understanding of the position taken by Conservation Law Foundation (“CLF”), which did
not sign the MOU. CLF’s position, if adopted by the Commission, would constitute a
material change to the MOU.

**Q3. Do the terms of the MOU fully adopt the positions taken by CLF?**

**A3.** No, not as I understand CLF’s position. For example, CLF’s witness Mr. Hill proposes
that NorthStar be required to obtain insurance in higher amounts and different forms from
the various financial assurances required by the MOU. Mr. State’s second supplemental
prefiled testimony explains that these demands, if imposed, would constitute material
changes to the MOU, permitting NorthStar to withdraw from the MOU and terminate the
proposed transaction. For another example, Mr. Hill proposes that “[t]he entity seeking
to transfer environmental liabilities … should not be fully released from its liabilities.”
Hill PFT 7:9-10; *see also*, *e.g.*, Hill PFT 8:1-7. As I will discuss further in my testimony,
this proposal that the selling entities (such as, here, ENVIC and/or its ultimate parent
Entergy Corporation) retain unnamed and unspecified liabilities, if adopted, would also
constitute a material change to the MOU and would permit Entergy to withdraw from the
MOU and terminate the proposed transaction.

**Q4. Before turning to the issue of the selling entities here, please explain whether
ENVY’s liability for decommissioning and site restoration will be transferred in the
proposed transaction and the MOU.**

**A4.** Under the status quo, ENVY is responsible for decommissioning and site restoration, and
its principal resources to accomplish those tasks are the Nuclear Decommissioning Trust
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and Site Restoration Trust. The Vermont Public Service Board (now the Commission)
understood, in approving the sale of the Vermont Yankee Nuclear Power Station
(“Vermont Yankee”) to ENVY in 2002, that ENVY was a limited liability company and
that there would be no general recourse to ENVY’s parents and/or affiliates. As the
Board recognized in the Docket 6545 final Order, ordinary rules of limited corporate
liability mean that only ENVY as an LLC entity—and not its parents or affiliates—has
responsibility for the VY Station. See Docket 6545, Order dated June 13, 2002, ¶ 131
(“An LLC is similar to a traditional corporation in that they both limit the legal liability
of the owners of the entity.”).

The proposed transaction in this Docket contemplates a sale of ENVY as an
entity, from ENVIC to NorthStar Nuclear Decommissioning Holdings, LLC. After the
sale, ENVY will be renamed NorthStar Vermont Yankee, LLC (“NorthStar VY”). The
transferred entity (ENVY, renamed NorthStar VY) will continue to have the
responsibility and liability to perform decommissioning and site restoration after closing
of the transaction just as it has that responsibility and liability now.

Q5. Does Entergy Corporation currently have any liability with respect to Vermont
Yankee, and if so will that liability be transferred or eliminated as part of the
proposed transaction and MOU?

A5. Under the status quo, Entergy Corporation does currently have certain liabilities, which
are described in my opening prefiled testimony at 8:16-10:6. These liabilities represent
specific commitments that Entergy Corporation made over the years, and they exist as an
exception to the rule that Entergy Corporation is not generally liable for the debts of the separate entity, ENVY.

Under the proposed transaction, one of these liabilities (the $20 million guaranty of the Site Restoration Trust) will be terminated only because Entergy will contribute enough (approximately $30 million) to bring the Site Restoration Trust balance to $60 million, which allows for termination, pursuant to the Docket 7862 MOU, of the Entergy Corporation guaranty of the Site Restoration Trust. The second liability (the contingent guaranty regarding the Nuclear Decommissioning Trust of the lesser of $40 million or 10% of the remaining Nuclear Decommissioning Trust balance), which is within the NRC’s jurisdiction, is contemplated to be canceled as part of the NRC’s potential approval of the license transfer application. The third liability (the guaranty of the $145 million in credit facilities) will remain in place, as described in my opening prefiled testimony at 10:9-15.

Under the MOU, Entergy is providing new financial assurances above and beyond those to which it had committed in the originally proposed transaction in this Docket. Those new assurances are described in paragraph 3 of the MOU. And NorthStar is providing financial assurances above and beyond those to which it had committed in the originally proposed transaction in this Docket. Those new assurances are described in paragraph 2 of the MOU.

Entergy Corporation never had general liability concerning Vermont Yankee under the status quo, and it is not assuming (and certainly not retaining) any such general liability under the MOU. To the extent that such a requirement were imposed upon
Entergy Corporation, Entergy would consider that a material departure from the terms of
the MOU and exercise its right to withdraw from the MOU under paragraph 13 and not
proceed with the proposed transaction. In that event, the status quo would remain and the
site would not be decommissioned or restored for several decades.

Q6. **In past transfers of nuclear plants, have the selling company or its parent entities**
been required to assume or to retain liability for decommissioning and site
restoration?

A6. No. The company selling a nuclear plant and/or that company’s parent entities have
generally not agreed, or have not been ordered, to assume or to retain liability for
decommissioning and site restoration after the sale. Indeed, when ENVY acquired
Vermont Yankee, neither Vermont Yankee Nuclear Power Corporation, which owned the
plant prior to the sale, nor its utility company owners, agreed, or were ordered, to retain
any such liabilities. As the Vermont Public Service Board noted in its June 13, 2002,
Order in Docket 6545 approving the sale of Vermont Yankee to ENVY, “ENVY agrees
to assume all liability associated with decommissioning Vermont Yankee; the
management, storage, transportation and disposal of Spent Nuclear Fuel …; and any
other post-shutdown disposition of the facility or any other acquired asset. * * * The
Sale Agreement transfers the decommissioning fund to ENVY. At the same time, *ENVY
assumes responsibility for paying for decommissioning.*” Docket 6545 Order at 31-32, 34
(emphasis added).

Sales of numerous other nuclear plants have similarly not required the company
owning the plant and/or its parent entity(ies) to assume or to retain liability for
decommissioning and site restoration. The Vermont Public Service Board’s Docket 6545 final order in fact noted that ENVY’s assumption of all decommissioning liabilities after the sale was “consistent with normal industry practice in nuclear plant transfers.” *Id.* at 34.

As further example, in approving the sale of New England Power’s interest in the Seabrook nuclear plant located in New Hampshire, the Massachusetts Department of Telecommunications and Energy explained that “FPLE Seabrook [*i.e.*, FPL Energy Seabrook, LLC, the buyer/transferee] will assume the liabilities associated with each seller’s ownership interest, including, among other things, all on-site environmental liabilities, spent nuclear fuel disposal liabilities, and decommissioning liabilities.”

Exhibit JP-TMT-6 at 4.

A similar transfer of liabilities occurred in the sales of the Pilgrim, Millstone, and Indian Point 2 nuclear power plants (in the case of Pilgrim and Indian Point 2, the sales were to Entergy affiliates). Exhibit JP-TMT-4 at 14 (“For Boston Edison’s ratepayers, the divestiture transaction involves the elimination of future risk associated with the continued operation of Pilgrim, including the future risk of changes in Pilgrim’s decommissioning costs.”); Exhibit JP-TMT-5 at 12 (“Dominion will assume substantially all liabilities associated with the operation of Millstone, including decommissioning of the units. The elimination of the risk of operation and future decommissioning mitigates potential future costs that may otherwise be paid by ratepayers.”); Exhibit JP-TMT-7 at 6 (Indian Point 2) (“In particular, they point out that Entergy will assume the financial, operating, decommissioning, environmental and market risks for the nuclear facilities.”).
Q7. Does that complete your supplemental testimony?

A7. Yes, at this time.