

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	
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Order entered: 05/09/2018

ORDER ON OBJECTIONS AND MOTION TO EXCLUDE

An April 27, 2018, 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. (collectively “Joint Petitioners”) filed with the Vermont Public Utility Commission (the “Commission”) an objection and motion to exclude certain prefiled testimony from the Conservation Law Foundation (“CLF”) and requesting a ruling *in limine* directed to the testimony of CLF’s witness, Michael Hill. In this order, we deny the relief requested by the Joint Petitioners.

I. PROCEDURAL HISTORY

On March 2, 2018, the parties to this proceeding except for CLF (the “MOU Parties”) filed a Memorandum of Understanding (“MOU”) with the Commission.

On March 9, 2018, the MOU Parties submitted supplemental prefiled testimony addressing the MOU and prefiled testimony that was previously filed with the Commission.

On April 10, 2018, CLF submitted prefiled surrebuttal testimony responding to the MOU Parties’ March 9 supplemental testimony.

On April 27, 2018, the Joint Petitioners filed objections and a motion to exclude certain prefiled supplemental surrebuttal testimony of Mr. Hill. CLF's response is due on May 11, 2018.

II. DISCUSSION AND CONCLUSIONS

The Joint Petitioners raise two main arguments in their motion. First, the Joint Petitioners argue that Mr. Hill is attempting to rely on deposition questions that the Commission previously determined were inadmissible on relevance grounds.¹ We disagree with the Joint Petitioners' assertion. While Mr. Hill mentions the word "deposition," he does not rely on any questions asked during his examination. The Joint Petitioners identify a total of six lines, none of which present deposition questions as evidence. Instead, Mr. Hill discusses the Joint Petitioners' written responses to discovery requests and documents used as exhibits by the Joint Petitioners during Mr. Hill's deposition. Therefore, the Joint Petitioners' objection to Mr. Hill's testimony at lines 4:11-13 and 5:18-20 is overruled.

The Joint Petitioners' second argument is that the Commission should exclude portions of Mr. Hill's prefiled testimony and rule *in limine* that Mr. Hill cannot testify about topics beyond his expertise or subjects that he has not already addressed in his MOU prefiled testimony. The Joint Petitioners' second argument consists of 3 separate objections, which we address in order.

The Joint Petitioners' first objection is that Mr. Hill's prefiled testimony at lines 6:5-16 and 9:1-15 exceeds the scope of his expertise because Mr. Hill admitted that he is not an expert in liability transfers in the context of nuclear decommissioning projects. As the Joint Petitioners recognize, however, Mr. Hill has explained that he has experience in liability transfers for environmental cleanups in non-radiological contexts and offers his expertise in that capacity. Mr. Hill explains that his testimony addresses how liability transfers are structured in non-radiological contexts to provide examples of "lessons learned" that may apply to nuclear decommissioning projects. We find Mr. Hill's testimony at lines 6:5-16 and 9:1-15 relevant, useful, and within the scope of his expertise. Therefore, the Joint Petitioners' objection to these passages is overruled.

¹ Order of 3/8/18 at 15.

The Joint Petitioners' second objection asks the Commission to restrict Mr. Hill's testimony to aspects of the proposed transaction that he addressed in his MOU testimony.² As the Joint Petitioners recognize, PUC Rule 2.213 and the March 7, 2018, Procedural Order in this case require direct and rebuttal testimony to be prefiled in written format. Our recent order required the same with respect to the supplemental rebuttal testimony requested by CLF.³ Because no party has been granted permission to provide live direct or rebuttal testimony, the scope of Mr. Hill's testimony is already limited by what is or will be prefiled, making any further order from the Commission seem unnecessary. To the extent that the Joint Petitioners cross-examine Mr. Hill on any of the topics that the Joint Petitioners have identified as beyond the scope of Mr. Hill's prefiled testimony, however, Mr. Hill will be permitted to respond during his re-direct examination.

The Joint Petitioners' final objection is to Mr. Hill offering opinions on any confidential documents that he did not review. The Joint Petitioners' objection does not identify any specific opinion offered by Mr. Hill in the passages that they identify (lines 10:3-13:2 and 13:3-19), but refers only to the headings of those passages and asserts that Mr. Hill employed an unreliable methodology in his discussion. A review of the identified passages of Mr. Hill's testimony shows that they largely mirror portions of Mr. Hill's pre-MOU testimony with some additional discussion based on information that he learned from testimony provided by State witnesses. Mr. Hill explains that his testimony is based on his experience with non-radiological liability transfers for environmental cleanups and information about the proposed transaction that he learned from the testimony of State witnesses.⁴ Compared with his pre-MOU testimony, to which the Joint Petitioners did not object, the underlying bases for Mr. Hill's opinions are only improved by Mr. Hill's reliance on the testimony of the State witnesses and we see no reason to exclude them as speculative now. The Joint Petitioners can explore any perceived deficiencies in Mr. Hill's testimony on cross-examination.


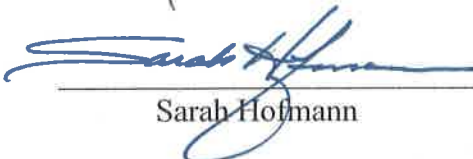
SO ORDERED.

² The Joint Petitioners' objection asks us to limit Mr. Hill to testimony in his "MOU PFT." The Commission does not understand the Joint Petitioners to be asking to exclude the entirety of Mr. Hill's pre-MOU prefiled testimony and would reject such a request.

³ Order of 4/24/18 at 1-2.

⁴ Hill pf. at 11:14-20.

Dated at Montpelier, Vermont, this 9th day of May, 2018.

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)	PUBLIC UTILITY
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Margaret Cheney)	COMMISSION
)	
)	OF VERMONT
)	
Sarah Hofmann)	

OFFICE OF THE CLERK

Filed: May 9, 2018

Attest:


Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 8880 - SERVICE LIST

Parties:

William James Brotherton
Abenaki Nation of Missisquoi
100 Grand Avenue
Swanton, VT 05488
william@brothertonlaw.com

(for Abenaki Nation of Missisquoi)

Lawrence Christopher Company
Windham Regional Commission
139 Main Street Suite 505
Brattleboro, VT 05301
cccompany@windhamregional.org

(for Windham Regional Commission)

David G Carpenter
Facey Goss & McPhee PC
PO Box 578
RutlandRutland, VT 05702
dcarpenter@fgmvt.com

(for Town of Vernon Planning and Economic
Development Commission)

Nathaniel Custer
Wilmer Cutler Pickering Hale & Dorr, LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
nathaniel.custer@wilmerhale.com

(for Vermont Department of Public Service)

Richardson P Daniel
Tarrant, Gillies & Richardson
P.O. Box 1440
Montpelier, VT 05601
drichardson@tgrvt.com

(for Entergy Nuclear Operations, Inc.) (for
Entergy Nuclear Vermont Investment
Company, LLC)

Joshua Diamond
Vermont Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
joshua.diamond@vermont.gov

(for Vermont Office of the Attorney General)

William Driscoll
Associated Industries of Vermont
wdriscoll@aivt.org

(for Associated Industries of Vermont)

James Dumont
PO Box 229
Bristol, VT 05443
dumont@gmavt.net

(for New England Coalition on Nuclear
Pollution, Inc.)

Felicia H. Ellsworth
Wilmer, Cutler, Pickering, Hale and Dorr, LLP
60 State Street
Boston, MA 02109
Felicia.Ellsworth@wilmerhale.com

(for Vermont Department of Public Service)

Jordan Gonda
Vermont Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05620
Jordan.Gonda@vermont.gov

(for Vermont Agency of Natural Resources)

Mark Gordon
Wilmer Cutler Pickering Hale & Dorr, LLP
60 State Street
Boston
Boston, MA 02109
mark.gordon@wilmerhale.com

(for Vermont Department of Public Service)

Bonnie Heiple
Wilmer, Cutler, Pickering, Hale and Dorr, LLP
60 State Street
Boston, MA 02109
Bonnie.Heiple@wilmerhale.com

(for Vermont Department of Public Service)

Stephanie Hoffman, Esq.
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601
steph.hoffman@vermont.gov

(for Vermont Department of Public Service)

Richard Holschuh
Elnu Abenaki Tribe
117 Fuller Drive
Brattleboro, VT 05301
rich.holschuh@gmail.com

(for Elnu Abenaki Tribe)

Robert C. Kirsch
Wilmer, Cutler, Pickering, Hale and Dorr, LLP
60 State Street
Boston, MA 02109
Robert.Kirsch@wilmerhale.com

(for Vermont Department of Public Service)

Sandra Levine, Esq.
Conservation Law Foundation
15 East State Street
Suite 4
Montpelier, VT 05602
slevine@clf.org

(for Conservation Law Foundation)

Christopher Looney
WilmerHale
60 State Street
Boston, MA 02109
christopher.looney@wilmerhale.com

(for Vermont Department of Public Service)

John Marshall, Esq.
90 Prospect Street
P.O. Box 99
Saint Johnsbury, VT 05819-0099
jmarshall@drm.com

(for Entergy Nuclear Operations, Inc.) (for
Entergy Nuclear Vermont Investment
Company, LLC)

Jonathan B. Oblak
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
jonoblak@quinnemanuel.com

(for Entergy Nuclear Operations, Inc.) (for
Entergy Nuclear Vermont Investment
Company, LLC)

James Porter, Esq.
Vermont Department of Public Service
112 State St
Montpelier, VT 05620
james.porter@vermont.gov

(for Vermont Department of Public Service)

Janet Rasmussen
Town of Vernon Planning Commission
52 Southern Heights Drive
Vernon, VT 05354
janetrasmussen1@aol.com

(for Town of Vernon Planning and Economic
Development Commission)

Ingrid Scholze, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
ingridscholze@quinnemanuel.com

(for Entergy Nuclear Operations, Inc.) (for
Entergy Nuclear Vermont Investment
Company, LLC)

Roger Longtoe Sheehan
Elnu Abenaki Tribe
Elnu Tribe Headquarters
5243 VT Route 30
Jamaica, VT 05343
gitceedadann@yahoo.com

(for Elnu Abenaki Tribe)

Ellyde R. Thompson
Quinn Emanuel Urquhart & Sullivan LLP
51 Madison Avenue
22nd Floor
New York, NY 10010
ellydethompson@quinnemanuel.com

(for Entergy Nuclear Operations, Inc.) (for
Entergy Nuclear Vermont Investment
Company, LLC)

Sanford I. Weisburst
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue
22nd Floor
New York, NY 10010
sandyweisburst@quinnemanuel.com

(for Entergy Nuclear Operations, Inc.) (for
Entergy Nuclear Vermont Investment
Company, LLC)

Joslyn L. Wilschek, Esq.
Wilschek Iarrapino Law Office, PLLC
35 Elm Street
Suite 200
Montpelier, VT 05601
Joslyn@ilovt.net

(for NorthStar Decommissioning Holdings,
LLC) (for NorthStar Nuclear
Decommissioning Company, LLC) (for
NorthStar Group Holdings, LLC) (for LVI
Parent Corp.) (for NorthStar Group Services,
Inc.)

Jeffrey C. Wimette
International Brotherhood of Electrical
Workers, Local 300
3 Gregory Drive
South Burlington, VT 05403
jcw@ibewlocal300.org

(for International Brotherhood of Electrical
Workers, Local 300)

John Zaikowski
Vermont Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05620-3901
John.Zaikowski@vermont.gov

(for Vermont Agency of Natural Resources)