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**

INITIAL BRIEF OF JOINT PETITIONERS

JOINED BY INTERVENOR ELNU ABENAKI TRIBE

June 11, 2018

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INTRODUCTION

In the face of persistent low wholesale energy prices resulting from historically low natural gas prices, the Vermont Yankee Nuclear Power Station ("VY Station") shut down at the end of 2014. The next and last stage of the plant's life is decommissioning and site restoration.

In 2002, when the Public Service Board (now the Public Utility Commission ("PUC")) approved the sale of the VY Station to Entergy Nuclear Vermont Yankee, LLC ("ENVY"), the PUC recognized that the VY Station site might be placed in SAFSTOR. Under the current ownership of ENVY by Entergy Nuclear Vermont Investment Company, LLC ("ENVIC"), that is what will happen: the plant will remain in SAFSTOR for decades and be decommissioned (and the site restored) by 2074. Under the proposed transaction in this docket (a sale of ENVY from ENVIC to NorthStar Decommissioning Holdings, LLC), however, decommissioning and site restoration would start as early as 2019 and be completed (with the exception of the Independent Spent Fuel Storage Installation ("ISFSI") and the VELCO switchyard) as early as 2026 (and no later than 2030), decades before ENVY plans to do so under the status quo.

NorthStar[1], with vast experience in the type of work required for decommissioning, has proposed a detailed, item-by-item schedule for every step of the decommissioning and site restoration of the VY Station that projects completion on this expedited schedule. A new set of financial assurances, which are not in place under the status quo, assures that NorthStar can complete the project on schedule even in the unlikely event that unknown contamination is

[1] As used in this brief, "NorthStar" has the meaning ascribed to the term in the Memorandum of Understanding (Exh. PUC-2) and refers to NorthStar Decommissioning Holdings, LLC; NorthStar Group Holdings, LLC; NorthStar Nuclear Decommissioning Company, LLC ("NorthStar NDC"); NorthStar Group Services, Inc., LVI Parent Corp.; and, to the extent discussion refers to the post-closing ownership of the VY Station, NorthStar Vermont Yankee, LLC ("NorthStar VY").

discovered during the work. The PUC should find the proposed transaction promotes the general good of the state.

Over the past 18 months, while this proceeding has been pending, the transaction has gained broad support among state agencies, intervenors, and the public. Joint Petitioners, the state agencies, and every active intervenor—with one exception (Conservation Law Foundation ("CLF"))—have entered into a Memorandum of Understanding ("MOU") that requires numerous financial assurances that will ensure that NorthStar completes the project on time and with full protection of the environment.[2] These parties also have agreed upon site restoration standards that will allow for an efficient decommissioning while thoroughly remediating all non-radiological contaminants and providing radiological release standards more protective than those required by the U.S. Nuclear Regulatory Commission ("NRC") regulations. The MOU gives the state agencies additional oversight over the expenditure of funds for decommissioning and site restoration and imposes rigorous site characterization requirements.

None of the additional financial assurances, additional oversight mechanisms, or agreed-upon site restoration standards is available under the status quo. The only party to oppose the transaction—CLF—has failed to compare the proposed transaction to the status quo, instead asserting that the proposed transaction is not as good as some unrealistic transaction imagined by CLF, which no party is offering to undertake, and which no party has any obligation to undertake. CLF also fails to acknowledge that prior nuclear plant sales, including the sale of the VY Station to ENVY in 2002, involved just what it faults under its erroneous understanding of the transaction here—a release of the seller from the obligation to perform decommissioning and site restoration.

[2] The MOU and attachments were filed as Exh. PUC-2. Characterizations or summaries of MOU provisions in this brief in no way modify or otherwise affect the MOU.

Entergy Petitioners do agree with CLF that, to the extent applicable state or federal laws could impose liability for contamination that occurred during ENVY's ownership of the VY Station from 2002 until closing (which would turn on as-yet unknown facts), the proposed transaction should not release those liabilities, and the Entergy Petitioners have not asked the PUC for such a release. And Joint Petitioners also have no objection to CLF's proposal that the Department of Public Service ("DPS") engage an insurance-law expert to review the Pollution Legal Liability ("PLL") insurance policy—one of many financial assurances required by the MOU—to confirm that its terms are consistent with the MOU and sufficiently protective. But CLF's objections, advanced by a purported expert who has no apparent understanding of the keen desire of the Town of Vernon to facilitate prompt decommissioning and re-use of the VY Station site, should not be relied upon by the PUC to block a transaction that will serve the public good and is supported not only by the Town of Vernon Planning and Economic Development Commission, but also by DPS, the Agency of Natural Resources ("ANR"), the Attorney General's Office, New England Coalition against Nuclear Pollution ("NEC"), the Elnu Abenaki Tribe, the Abenaki Nation of Missisquoi, and Windham Regional Commission. The relief requested by the Joint Petition should be granted.

I. GOVERNING STANDARD

The Joint Petition seeks approval of the acquisition of controlling interests that will result in transfer of ownership of ENVY (to be renamed NorthStar Vermont Yankee, LLC ("NorthStar VY")), from ENVIC, to NorthStar Decommissioning Holdings, LLC ("NDH"). The Joint Petition also seeks under 30 V.S.A. § 231 an amendment of the certificate of public good ("CPG") held by ENVY and Entergy Nuclear Operations, Inc. ("ENOI") to rename ENVY as NorthStar VY and to replace ENOI as a co-holder of this CPG with NorthStar Nuclear Decommissioning Company, LLC ("NorthStar NDC") as the operator of the VY Station site. Joint Petitioners also seek the

PUC's consent under 30 V.S.A. § 232 for ENVY (renamed NorthStar VY after closing) to issue a promissory note covering the amount that ENVY expended prior to closing to construct the second ISFSI pad and to transfer spent nuclear fuel ("SNF") from the spent fuel pool to that pad.

Under the applicable statutory framework, the principal question before the PUC is whether the proposed transaction will promote the general good of the state. 30 V.S.A. §§ 107, 231(a), 232(a). "Unlike a proceeding under Section 248, in which the statute requires that an applicant demonstrate that it meets each of the Section 248(b) criteria, under Section 231, the only dispositive standard is the general good of the State." Docket 7862, *Am. Pet. of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for amendment of their Certificate of Public Good and other approvals required under 30 V.SA. § 231(a) for authority to continue after March 21, 2012, operation of the VY Station, including the storage of SNF*, Order of 3/28/14, at 38 ("Docket 7862, Order of 3/28/14"). Section 232 in turn requires a finding that the issuance of notes is consistent with the public good. 30 V.S.A. § 232(a). The PUC determines the criteria for assessing the general good of the state on a case-by-case basis. Docket 7862, Order of 3/28/14 at 17. In general, the PUC will "apply certain suitability standards, which involve, as appropriate, assessments of technical and managerial competence, of financial strength and soundness, and of matters related to reputation and conduct (often stated as whether the owner, manager or operator will be a fair partner for Vermont)." *Id.* (quotation omitted). The fair partner inquiry "encompasses past business activity, regulatory performance, business reputation, and fairness towards customers." *Id.* at 38. The PUC also will analyze the benefits of the transaction in comparison to the status quo. Docket 6545, *Investigation into General Order No. 45 Notice filed by Vt. Yankee Nuclear Power Corp.*, Order of 6/13/02 at 38.

II. APPROVAL OF THE PROPOSED TRANSACTION WILL BENEFIT THE GENERAL GOOD OF THE STATE

As described in the accompanying Proposal for Decision, the proposed transaction will promote the general good of the state. The financial assurances required by the MOU in addition to the trust assets that will be held by NorthStar VY provide ample resources to decommission and restore the VY Station site. The prior track record of NorthStar to undertake large and complicated projects safely and efficiently, and NorthStar's engagement of subcontractors experienced in decommissioning a commercial nuclear reactor and managing spent nuclear fuel ("SNF"), satisfy the technical expertise inquiry. Both NorthStar's history of regulatory compliance and NorthStar's engagement with a wide range of Vermont stakeholders strongly indicate that NorthStar will be a fair partner. And the comparison of the proposed transaction to the status quo makes clear that the proposed transaction will benefit the residents of Vermont through earlier decommissioning, site restoration, and site reuse, led by an entity experienced in demolition and remediation.

A. The Financial Assurances Package Ensures Sufficient Resources Are Available For Decommissioning

1. The Funds In The Nuclear Decommissioning And Site Restoration Trusts Are Sufficient To Complete Decommissioning Under The NorthStar Plan

NorthStar has developed a method of decommissioning that allows for the funding of radiological decommissioning and concurrent site restoration within a minimum target combined balance of the nuclear decommissioning trust ("NDT") and site restoration trust ("SRT"). The record shows that, based on the current knowledge of the conditions at the VY Station site, NorthStar can execute its plan and complete decommissioning and site restoration using these funds.

As the PUC repeatedly has recognized, decommissioning of the VY Station site will be funded by the NDT. *See* Docket 7862, Order of 3/28/14 ¶ 210 ("Radiological decommissioning

activities will be funded by the Decommissioning Trust Fund."); *id.* ¶ 212 (finding that the purpose of the NDT is "to ensure that the radiological remediation of the VY Station site and termination of the Plant's operating license is successfully completed, *i.e.*, decommissioning, as defined by the NRC"). The MOU recognizes as much. MOU ¶ 2(a)(1)-(2).

As to the radiological portion of decommissioning, the NRC requires that funds in the NDT be sufficient to allow for the completion of decommissioning. *See* Docket 7862, Order of 3/28/14 ¶¶ 210-13. The NRC prohibits licensees from performing any decommissioning activities that would result "in there no longer being reasonable assurance that adequate funds will be available for decommissioning." 10 C.F.R. § 50.82(a)(6)(iii). In addition, the NRC permits decommissioning trust withdrawals only if such withdrawals "would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license." 10 C.F.R. § 50.82(a)(8)(i)(C). As to site restoration, any surplus in the NDT remaining after the termination of the NRC operating license may be used for site restoration, along with the funds in the specific VY Station SRT. Docket 7862, Order of 3/28/14, ¶¶ 221, 233.

It is a fundamental premise of the proposed transaction that NorthStar plans to accomplish radiological decommissioning and site restoration within the combined balance of the NDT and SRT. NorthStar has developed a deal model that outlines the cash flows associated with the project, along with a pay-item disbursement schedule ("PIDS") that lists 900 tasks necessary to accomplish concurrent radiological decommissioning and site restoration. Joint Petitioners' Proposal for Decision ("PFD") ¶¶ 52-54, 90. These documents indicate that the funds available will allow NorthStar to complete decommissioning and site restoration. PFD ¶¶ 52-54, 88-90. Indeed, NorthStar is not required to close the transaction unless the combined NDT and SRT

balances meet the required minimum target amount. Scott State, Joint Petitioners ("State") pf. at 34. Further, as owner of the site, NorthStar is incentivized to complete each task on budget. *See* PFD ¶ 90.

The setting of the site restoration standards that the parties agreed upon in the MOU allows NorthStar to understand the extent of the work that it must perform and to ensure that sufficient funds are available to meet its site restoration obligations. *See* State pf. at 27. Through NorthStar's agreement in the MOU to certain site restoration standards, NorthStar has confirmed that it can meet these standards on schedule and on budget. *See* PFD ¶¶ 130-144; State pf. at 27. And NorthStar VY will advise DPS of expenditures from the SRT, and DPS will have 30 days to approve or object to any proposed SRT withdrawals. MOU ¶ 6(d).

Under these circumstances, the funds in the SRT and NDT—and NorthStar's detailed plan for using those funds—provide adequate assurance for the completion of decommissioning and site restoration. But even if there is some possibility that those funds will be inadequate, numerous and diverse additional financial assurances are required by the MOU to ensure that the project will be completed on time. Before addressing those assurances, Joint Petitioners briefly discuss the NRC's review of the proposed transaction and how that review (and decision) should be sequenced relative to the PUC's review.

2. Joint Petitioners Agree That The PUC May Wait To Rule On This Petition Until The NRC Rules On The License Transfer

The PUC requested that the parties' post-hearing briefs address whether the PUC could or should await the NRC's decision on the license transfer application before the PUC issues a final order on the relief requested by the Joint Petition in this docket. Tr. 5/14/2018 at 133. As described below, Joint Petitioners suggest that the PUC should await the NRC's decision.

By way of background, in February 2017, the Joint Petitioners in this docket filed an application with the NRC for a transfer of the NRC license to NorthStar. To approve the license transfer, the NRC must decide, among other things, that NorthStar has demonstrated adequate financial assurance for radiological decommissioning and that NorthStar's plan for funding SNF management is sound. *See* 10 C.F.R. § 50.75; 10 C.F.R. § 50.80(b)(1)(i); 10 C.F.R. § 50.82(a)(8)(vi). In this regard, the NRC will have reviewed and considered the PIDS approach, the available funds in the NDT, and other financial assurances that have been proposed to the NRC. Exh. JP-SES-SUPP-1 at 3. Thus, if the NRC approves the license transfer, that approval would provide confirmation that the resources will allow for timely radiological decommissioning of the VY Station site as planned by NorthStar.

The NRC's review remains ongoing. Joint Petitioners have answered the NRC's second set of requests for additional information. Joint Petitioners understand the PUC may want to await the NRC decision before issuing a decision in this docket. Because this timing may push a PUC decision beyond the July 31, 2018 date specified in the MOU (MOU ¶ 13), Joint Petitioners will need to coordinate with the MOU parties to agree to an approach modifying or waiving this condition, and Joint Petitioners expect to be able to report on a resolution by the time of filing their reply brief.[3]

[3] The NRC proceeding also will resolve the question of funding for SNF management. As part of the PIDS, NorthStar has estimated the annual cost of SNF management, with a cap of $20 million withdrawn from the NDT at one time. PFD ¶ 58. Because the DOE is in partial breach of its obligations under the standard contract to take possession of SNF for disposal, NorthStar expects to recover SNF management costs from the DOE, either through a settlement or litigation. The funds withdrawn from the NDT will be replenished from DOE recoveries. PFD ¶ 59. NorthStar committed to the NRC that it will obtain certain performance bonds for SNF management if it does not reach a settlement with the DOE. Exh. JP-SES-19 at Att. 2, p.7.

3. Beyond The Funds In The NDT And SRT, The Resources Available For Decommissioning And Site Restoration Under The Proposed Transaction Provide More Than Adequate Financial Assurance

Beyond the funds in the NDT and SRT, the financial assurances available under the proposed transaction, as incorporated in and expanded by the MOU, provide more than sufficient means to ensure the completion of decommissioning and site restoration in the case of budget overruns or discovery of currently unknown onsite conditions.

(a) Additional Funding Sources For Decommissioning And Site Restoration, As Enhanced By The MOU, Are Robust

As described in the Proposal for Decision, the proposed transaction carries with it robust financial assurances for the completion of decommissioning and site restoration. In the unlikely event the decommissioning and site restoration cost more than expected, other available financial resources will ensure the project's completion.

First, as part of the MOU, Entergy[4] agrees to contribute sufficient funds to bring the balance of the SRT to $60 million at closing (based on the current balance in the SRT, Entergy's contribution should be approximately $30 million). *See* MOU ¶ 3(a). This additional contribution was not contemplated by the sale agreement for the proposed transaction since it was added as part of the MOU, and thus these funds are not part of the required minimum target NDT/SRT combined balance at closing for the purposes of the sale agreement. Thus, as of the closing of the transaction, NorthStar already will have approximately $30 million more than it anticipated when developing the project estimate.

Second, the decommissioning and site restoration will be backed by a $140 million parent support agreement from NorthStar Group Services, Inc. ("NSGS"). PFD ¶¶ 71, 96. NSGS is a

[4] Under the MOU, Entergy refers to ENVIC, ENVY, and ENOI. *See* MOU at 1.

stable company with a strong financial outlook across diverse lines of business. PFD ¶¶ 105-106. During the pendency of this proceeding, a recapitalization further strengthened NSGS's financial resources and solidified additional ownership support for the VY Station site decommissioning and site restoration. PFD ¶ 106.

Third, approximately $400 million in tasks will be backed by performance bonds or some other performance guaranty. PFD ¶¶ 60, 61, 70, 94. This additional layer of work completion assurance further ensures that the tasks associated with decommissioning and restoring the VY Station site will be finished on time and on budget, without exceeding the estimated costs for the project. PFD ¶ 61.

Fourth, to protect against cost overruns due to schedule delays, if certain start and completion milestones are not met, NorthStar will obtain a $25 million letter of credit payable to a trust that will be used to complete decommissioning. PFD ¶¶ 49, 70, 95.

Fifth, NorthStar will create an escrow account with $30 million at closing, with an additional $25 million to be deposited during the first several years of the project. PFD ¶¶ 75, 98. These funds are released to NorthStar only if the conditions set forth in MOU ¶ 2(c)(2) are satisfied.

Sixth, NorthStar VY will deposit $10 million from expected litigation proceeds of the Round 3 DOE claim for recovery of ISFSI operations and SNF management into the decommissioning completion trust. PFD ¶¶ 73, 97.

Seventh, another $40 million of the Round 3 DOE litigation proceeds may be deposited into a second escrow account for use on the project if certain conditions are not met, with such funds to be released to Vermont Yankee Asset Retirement Management, LLC ("VYARM") only under certain conditions. PFD ¶¶ 77, 100.

Eighth, Orano USA LLC ("Orano") will provide a $25 million guaranty, which will remain in place until certain conditions are satisfied. PFD ¶¶ 76, 101.

Finally, NorthStar will obtain a $30 million PLL policy, which may be called upon to fund remediation of previously unknown or not fully characterized non-radiological environmental conditions. PFD ¶¶ 74, 103.

In each of these respects, and certainly in all of them together, the MOU (and a potential order by the PUC incorporating the MOU) will provide "material benefits to the state that would not be attainable for Vermonters absent the MOU." Docket 7862, Order of 3/28/14 at 3. Together, the current NDT and SRT, augmented by all of these financial backstops, provide more than adequate assurances that NorthStar will have sufficient resources to complete the decommissioning and site restoration of the VY Station site during the promised expedited timeframe.

(b) The Escrow Funds Are Protected From Bankruptcy

The PUC specifically requested that the parties' post-hearing briefs address how the two escrow agreements provided for in the MOU would be treated in the event that NorthStar VY declared bankruptcy. Tr. 5/14/2018 at 133. Before answering that question, Joint Petitioners wish to note two preliminary points. First, the NDT and SRT, and the suite of additional financial assurances required by the MOU, make it unlikely that NorthStar VY would become insolvent or declare bankruptcy. Second, even if there were concerns that the escrow agreements would be unavailable for use on the decommissioning and site restoration project in the event of a NorthStar VY bankruptcy (as explained below, there are not), the escrow agreement (and other financial assurances beyond the NDT and current SRT) would remain improvements over the status quo of ENVIC's ownership of ENVY, since the status quo contains no such financial assurances at all.

Turning to the PUC's question, the answer is that the escrow agreements will be fully available for use in the project in the unlikely event that NorthStar VY declares bankruptcy before satisfaction of the conditions of release of the escrow agreements. The conditions applicable to release of the first escrow agreement to NorthStar are set forth in the MOU at paragraph 2(c)(2) and provide that:

> NorthStar may terminate the escrow account, and any funds remaining in the escrow account may be withdrawn by NorthStar and used for any purpose in its sole discretion, after: (i) NorthStar completes partial site release of the VY Station site (with the exception of the ISFSI and VELCO switchyard) as approved by the NRC pursuant to 10 C.F.R. § 50.83 or an approved license termination plan; and (ii) NorthStar has submitted all corrective action construction completion reports for the VY Station site (with the exception of the buildings and structures identified in Paragraph 5(f)) to ANR and ANR determines that no additional site investigation or corrective actions are required, except long-term monitoring, pursuant to the process set forth in the Investigation and Remediation of Contaminated Properties Rule dated July 27, 2017 ("I-Rule").

The funds in the second escrow account, once its conditions are met, are released to VYARM, not to NorthStar VY. Those conditions are set forth in the MOU at paragraph ¶ 3(d) and provide:

> The Round 3 Retained DOE Litigation Proceeds referred to in Paragraph 3(c) shall remain in the escrow account to be used for funding decommissioning and/or site restoration activities at the VY Station site in the event and to the extent that NDT funds are insufficient or unavailable to complete such activities, consistent with Paragraph 4. The Round 3 Retained DOE Litigation Proceeds shall remain in the escrow account until the earlier of the following:
>
> (1) The conditions in Paragraph 3(c) have each been met at the time, or, in the case of Paragraph 3(c)(1) and (3), either before or at the time, a request to release the funds has been made by NorthStar, Entergy, or VYARM; or
>
> (2) NorthStar completes partial site release of the VY Station site (with the exception of the ISFSI and VELCO switchyard) as approved by the NRC pursuant to 10 C.F.R. § 50.83 or an approved

> license termination plan, and NorthStar has submitted all corrective action construction completion reports for the VY Station site (with the exception of the buildings and structures identified in Paragraph 5(f)) to ANR and ANR determines that no additional site investigation or corrective actions are required, except long-term monitoring, pursuant to the process set forth in the I-Rule.

Thus, as set forth in the MOU, NorthStar VY has only a conditional interest in the first escrow agreement before the conditions are met; during that period, it has no right to take the funds for itself. And as to the second escrow agreement, NorthStar VY does not even have a conditional interest; only VYARM does.

Federal bankruptcy law generally treats a bankruptcy estate as having the same degree of property interests as the debtor had under state law prior to bankruptcy. 11 U.S.C. § 541(a)(1); *Butner v. United States*, 440 U.S. 48, 55-57 (1979). Vermont law recognizes the sort of limited/conditional interests in an escrow agreement that the MOU prescribes for NorthStar VY as to the first escrow account. *See, e.g.*, *Herbert v. Pico Ski Area Mgmt. Co.*, 2006 VT 74, ¶ 6 (endorsing Superior Court's finding that "because the Herberts failed to satisfy the condition of the escrow, they could not establish ownership of the funds"). If NorthStar VY were to declare bankruptcy, only that limited property interest could pass into the bankruptcy estate, not any right to take the funds in the escrow account without satisfaction of the condition of the escrow. The U.S. Court of Appeals for the Tenth Circuit's decision in *LTF Real Estate Co .Inc. v. Expert S. Tulsa, LLC*, 619 F. App'x 779 (10th Cir. 2015) (unpub.) (Gorsuch, J.), is instructive. There, LTF purchased from Expert South an undeveloped commercial site under a contract that required Expert South to make certain improvements to the site. *Id.* at 781. To ensure Expert South would honor this commitment, the parties agreed that Expert South would place certain money in escrow, and would be able to remove the money from escrow only in chunks as it completed segments of the improvements. *Id.* Expert South then declared bankruptcy before finishing the improvements

and hence without satisfying the conditions for release to Expert South of all the monies from the escrow. *Id.* The Tenth Circuit held that the escrowed funds did not enter the bankruptcy estate as property of the estate, explaining:

> Where (as here) a party places money into escrow under an agreement for the protection of someone else, the money remains in the possession and control of a third-party escrow agent, and the escrowing party is entitled to receive the funds (or some portion of them) only after fulfilling certain conditions as yet unmet at the time of the bankruptcy, we are confident that Oklahoma courts would hold that the escrowing party does not retain an unqualified interest in the funds.

Id. at 782. Other courts and the leading treatise agree. *See, e.g.*, *Herbert v. Pico Ski Area*, 2004 Vt Super LEXIS 33, at *14 (Sup. Ct. 2004) ("[B]ankruptcy courts have considered escrow funds to be outside the bankruptcy estate"), *aff'd*, 108 VT141 (2006); *In re NTA, LLC*, 380 F.3d 523, 531 (1st Cir. 2004) ("In general, an estate holds only the same contingent rights to the escrowed property that the debtor held prior to filing for bankruptcy."); *In re Weatherite*, 46 F.3d 1149, at *3 (9th Cir. 1995) (unpub.) ("We are . . . unpersuaded by the Trustee's arguments that the escrow account is property of the estate. . . . Once the escrow account was created, Weatherite was left with only a contingent right to these funds . . . ."); 5-541 *Collier on Bankruptcy* § 541.09A (15th ed. rev. 2004) ("In general, most courts have held that assets in escrow are not property of the estate, even though the debtor may have certain rights under an escrow agreement and, therefore, in the assets escrowed.").

Accordingly, here, if NorthStar VY were to declare bankruptcy before the conditions for release of the monies in the first escrow account are satisfied, the monies would not enter the bankruptcy estate, and would not be subject to the automatic stay under 11 U.S.C. § 362. Instead, they would sit outside bankruptcy and would be fully available for use in the project under the terms provided for in the MOU. The same is true as to the second escrow account, although there,

as noted, NorthStar VY does not even have an interest in the funds once the conditions are met; instead, VYARM does.[5]

(c) The MOU's Oversight Provisions Strengthen The Likelihood That The Funds Available Will Be Sufficient

The MOU also contains certain oversight provisions that will help to ensure adequate funding for decommissioning and site restoration of the VY Station. The oversight provisions generally fall into two categories—reporting obligations, which will keep the Vermont regulators informed on the progress of decommissioning—and enforcement provisions, which allow the PUC and the Vermont state agencies to require NorthStar to call upon the financial backstops.

As to the reporting obligations, the MOU contains numerous provisions targeted at ensuring the funds in the NDT and SRT remain sufficient to complete the remaining tasks. PFD ¶¶ 88-107. For the Orano guaranty to terminate, ANR must have approved a site investigation report for each operable unit and NorthStar must have certified, with confirmation from DPS, that the NDT balance remains higher than the combined remaining estimated costs for license termination and site restoration. PFD ¶ 101. In a similar vein, DPS will have the ability to review and comment on the PLL policy prior to closing. Tr. 5/10/2018 at 125. The MOU also provides a means by which the State can monitor the financial health of NSGS and its ability to fund the

[5] Finally, even if the above discussion in text were assumed to be incorrect, and the funds in either escrow account somehow did become property of the estate, they would still be available for use on the project and would not be able to be paid to NorthStar VY's unsecured creditors. That is because courts treat these types of environmental cleanup costs as administrative expenses that receive priority under 11 U.S.C. § 507. *See, e.g., Commonwealth of Pa., Dep't of Enviro. Res. V. Conroy*, 24 F.3d 568, 570 (3d Cir. 1994) ("[T]he costs incurred by the [state's environmental agency] in contracting for cleanup of the printing facility were properly classified as administrative expenses"); *id.* (citing and discussing similar holdings in *In re Chateaugay Corp.*, 944 F.2d 997, 1009-10 (2d Cir. 1991); *In re Wall Tube & Metal Products, Co.*, 831 F.2d 118, 123-24 (6th Cir. 1987); *see also Midlantic Nat'l Bank v. N.J. Dep't of Enviro. Protection*, 474 U.S. 494, 506-07 (1986) (11 U.S.C. § 554 does not preempt a state law that, in a reasonable effort to promote public health or safety, prohibits the abandonment of property containing hazardous wastes)).

Support Agreement. PFD ¶ 84. And the state agencies have the right to retain advisors to support their review and oversight of the project. PFD ¶ 81.

As to the enforcement provisions, the PUC will have authority to order NSGS to utilize the funding set aside in the support agreement under certain circumstances. PFD ¶ 96. DPS has authority to approve or object to NorthStar's use of funds from the SRT. PFD ¶ 82. And NorthStar must have the permission of the DPS Commissioner and the ANR Secretary to make withdrawals from the escrow accounts established pursuant to MOU ¶ 2(c). PFD ¶ 99.

Under the MOU, the State agency parties will be kept informed as to the status and funding of the decommissioning and site restoration. PFD ¶¶ 85-86. If needed, the PUC and state agencies will have the ability to mandate the prudent use of the SRT and financial backstops. PFD ¶ 96. The combination of these monitoring and enforcement provisions provides an additional form of assurance that sufficient funds will be available to complete decommissioning and site restoration.

B. NorthStar Has The Technical Capability To Manage And Complete The Project

Given the breadth of NorthStar's expertise and experience, and its engagements of Waste Control Specialists, LLC ("WCS") and Orano for the key specialized tasks in the project, DPS agrees with Joint Petitioners that NorthStar has "engaged or has expressed sufficiently detailed plans to engage (both internally and through its teaming partners) resources with relevant expertise in the technical and managerial aspects of a commercial reactor decommissioning project." Brian Winn, DPS ("Winn") surreb. pf. at 2. The PUC too should find that NorthStar possesses the necessary technical expertise to own and decommission the VY Station site.

As the record reflects, NorthStar has vast experience leading complex demolition and decontamination projects at a large number of sites. PFD ¶¶ 108-120. Not only is NorthStar a leader in the remediation of non-radiological hazardous materials likely to be found at the VY

Station site, such as asbestos, lead paint, and PCBs, but NorthStar possesses a significant amount of experience in radiological decommissioning. PFD ¶¶ 111-112. NorthStar and its predecessors have performed demolition and decommissioning work at numerous nuclear sites throughout the United States, including university and Department of Energy sites, which required NorthStar personnel to dismantle and remove nuclear reactors and to decontaminate radiologically-contaminated surfaces, components, and debris. PFD ¶¶ 111-112.

NorthStar also has worked with certain experienced entities with specialized expertise in various areas of decommissioning, waste removal, and engineering. PFD ¶¶ 113-119. Notably, Orano (formerly AREVA Nuclear Materials, LLC) will conduct the reactor vessel work including the decontamination, segmentation, and completion of the reactor portion of the decommissioning project. PFD ¶ 114. Orano has a wealth of experience undertaking these tasks and recently conducted this work for a reactor vessel in Germany very similar to the VY Station. PFD ¶ 115. Orano also has unparalleled experience managing SNF waste and will handle long-term SNF management at the VY Station. PFD ¶ 119.

NorthStar's engagement of WCS provides a reliable means for the packaging, characterization, removal, transportation, and disposal of waste. PFD ¶¶ 116-117. As the only facility capable of handling each of the categories of low-level radioactive waste, NorthStar's engagement of WCS not only provides a necessary technical capability but also a useful synergy with Vermont's relationship with the WCS facility as part of the Vermont-Texas Compact. PFD ¶ 116. Burns and McDonnell is an experienced and well-regarded engineering firm that will provide engineering, decontamination, and other support for the VY Station site decommissioning and site restoration. PFD ¶ 118.

This technical expertise will allow the NorthStar Petitioners to complete the decommissioning and site restoration on-time and on-budget, decades earlier than under the current ownership.

C. NorthStar Will Be A Fair Partner

The record in this proceeding also demonstrates that NorthStar will be a fair partner. NorthStar has a strong track record of regulatory compliance in other jurisdictions and NorthStar's engagement and coordination with various stakeholders in Vermont indicates the new owner and operator of the VY Station will conduct themselves reputably in Vermont.

NorthStar has a strong record in the projects it has undertaken, in which NorthStar has successfully complied with all applicable regulations, including NRC regulations, environmental regulations, and workplace safety regulations. PFD ¶ 123. Because NorthStar through NorthStar VY will be the owner of the VY Station and undertake the majority of the decommissioning work itself, NorthStar has an incentive to maintain a good working relationship with state regulators. PFD ¶ 124.

NorthStar already has shown a commitment to work with stakeholders in the state, as demonstrated by the MOU itself. *See* Winn MOU pf. at 7. That Joint Petitioners reached agreement with the state agencies and a wide-range of other organizations that intervened in this proceeding is evidence that NorthStar will be a fair partner for Vermont. Docket 7862, Order of 3/28/14 at 42 (noting that willingness to enter into the MOU and the commitments made therein are relevant to the fair partner inquiry). The MOU also contains numerous provisions evincing NorthStar's intent to be a fair partner, providing for a public engagement process, for the retention of a cultural expert to develop a cultural resource plan in consultation with the Elnu Abenaki and the Abenaki Nation of Missisquoi, and for cooperation with the Town of Vernon to maintain future use of the site in a manner consistent with the Vernon Town Plan. PFD ¶¶ 125-129. NorthStar

has developed good relationships with the local and regional governing entities, demonstrating it will be a good neighbor in its ownership of the VY Station site.

D. The Proposed Transaction Is Superior To The Status Quo

The PUC has acknowledged that an analysis of the benefits of the transaction as compared to the status quo is appropriate in determining the general good of the state. *See e.g.*, Docket 6545, Order of 6/13/02 at 37-39. Conducting such an analysis in this docket makes clear that the proposed transaction has numerous benefits not present or attainable under the status quo, which further supports approval of this transaction.

First, the proposed transaction provides greater financial assurances. As described in Part II.A, *supra*, the financial resources available to complete decommissioning and site restoration under the proposed transaction are nearly $1.3 billion. PFD ¶¶ 88-107. These resources far exceed the resources available under the status quo. Under the current ownership, the only resources available for radiological decommissioning are the NDT and a parent guarantee from Entergy Corporation of "up to 10% of the remaining trust fund balance or $40 million, whichever is less," if the NRC requires it. PFD ¶ 19. The only resources available for site restoration under the current ownership are the SRT, which contains approximately $30 million, and a $20 million Entergy Corporation guarantee that would be eliminated if the SRT reached a balance of $60 million. PFD ¶¶ 17-18. Entergy Corporation has no general parent liability for decommissioning or site restoration, as the PUC recognized in Docket 6545. PFD ¶ 15.

By contrast, the financial assurances package available if the transaction is approved is far superior. Under the proposed transaction, NorthStar will use the NDT and SRT pursuant to the PIDS, backed by a $140 million parent support agreement, performance bonds, the escrow accounts, the PLL policy, the decommissioning completion trust, and the Orano guaranty. *See supra* Part II.A.

The below comparison demonstrates the additional assurances as compared to the status quo—excluding the $400 million in performance bonds or other guarantee:

Financial Assurances Under Status Quo Compared to Proposed Transaction
(Not discounted to present value)

Status Quo	Proposed Transaction
NDT + SRT as of Jan. 1, 2019 (balance as of 3/31/18 of approx. $591 million)	NDT + SRT as of Jan. 1, 2019 (balance as of 3/31/18 of approx. $591 million)
Entergy parent guarantees of $20 million for SRT, and up to $40 million or 10% of remaining balance in NDT for decommissioning, assumed available in 2053	NorthStar parent support agreement of $140 million available as of Jan. 1, 2019
	Contribution to SRT to bring balance to $60 million as of Jan. 1, 2019 (approx. $29 million)
	$55 million, plus earnings, in escrow account, $30 million of which is in account on Jan. 1, 2019, and $25 million of which is assumed in account by 2025
	$10 million from Round Three DOE claim assumed received in 2023
	$40 million from Round Three DOE claim assumed received in 2023
	$30 million Pollution Legal Liability insurance policy as of Jan. 1, 2019
	$25 million guaranty from Orano USA, LLC as of Jan. 1, 2019
TOTAL: (approx. $ 651,000,000)	TOTAL: (approx. $ 920,000,000)

Compare PFD ¶¶ 16-18, *with* PFD ¶¶ 88-107.[6]

Second, under the proposed transaction, most of the VY Station site will be decommissioned and restored by 2030 (and perhaps as early as 2026), decades before the Entergy Petitioners contemplate even starting (or are required to start) the work, particularly given that Entergy's estimate is premised on assumptions about the growth of the NDT that might prove to be inaccurate. PFD ¶¶ 25-29, 38, 47. Earlier decommissioning and site restoration will bring jobs to the region, accelerate economic development of the Vernon area, provide certainty around any contamination on the site, and ensure clean-up in the near-term, rather than decades into the future.

[6] The numbers in this comparison are not discounted to present value. The fact that, under the status quo, decommissioning and site restoration will not occur for decades diminishes the present value of the assurances available under the status quo. *See* T. Michael Twomey, Joint Petitioners ("Twomey') reb. pf. at 4-6.

PFD ¶ 146-148. Earlier decommissioning and site restoration also will free a large majority of the VY Station site for beneficial reuse, to the benefit of the local community, regional stakeholders, and the State of Vermont. PFD ¶ 146. Delayed decommissioning and site restoration under the status quo would result, relative to the proposed transaction, in a net loss to Vermont and its residents, especially the residents of the Town of Vernon.

Third, the MOU provides the state agencies with oversight unavailable under the status quo. In contrast to NorthStar's concurrent approach to decommissioning and site restoration, ENVY and ENOI would proceed first with radiological decommissioning, which is subject to exclusive NRC jurisdiction, and only undertake site restoration following termination of the NRC license. PFD ¶ 28. Because, under NorthStar's plan, decommissioning and site restoration tasks will proceed concurrently, NorthStar acknowledges in the MOU that "the term 'site restoration' may apply to the period of time during which radiological decommissioning is being conducted and/or prior to the time radiological decommissioning has been completed to the satisfaction of the NRC." MOU ¶ 21. The MOU also provides for oversight and reporting mechanisms that would govern the project to ensure that all stakeholders are involved and informed from commencement to completion of decommissioning. PFD ¶¶ 84-86, 125-129.

Fourth, the proposed transaction substitutes an owner whose core business is demolition and remediation for an owner whose core business is operating power plants. The NorthStar family of companies and its subcontractors have vast experience in demolition and decontamination and will use that experience to complete decommissioning in a timely and efficient manner. *See supra* Part II.B.

Finally, the MOU provides the State of Vermont certainty as to the site restoration standards that will apply to the decommissioning and restoration of the VY Station site. The MOU

describes in detail the applicable site restoration standards under the proposed transaction, which contain clear provisions establishing the radiological dose limit, the removal of underground structures to four feet, and the permissible use of concrete as fill material, if certain criteria are met. PFD ¶¶ 130-144. The MOU also provides for a comprehensive site investigation and requires a corrective action plan in accordance with the Investigation and Remediation of Contaminated Properties Rule. PFD ¶¶ 79, 134. These MOU provisions resolve issues that remain disputed under the current ownership in a manner beneficial to the State.

In sum, the comparison between delayed decommissioning and site restoration under the status quo and earlier decommissioning and site restoration under NorthStar's plan shows that the proposed transaction is preferable to the status quo.

III. CLF'S WITNESS MICHAEL HILL HAS FAILED TO REBUT THE MOU PARTIES' SHOWING THAT APPROVAL OF THE TRANSACTION WILL PROMOTE THE GENERAL GOOD OF THE STATE

As the Joint Petitioners have demonstrated, and as the MOU confirms, approving the proposed transaction will promote the general good of the state. Ignoring all of the benefits attendant to the transaction, CLF declined to enter into the MOU and instead, through its expert, Michael Hill, seeks to thwart approval of the transaction through the discredited and unprecedented idea that the current owner ENVIC (and indeed its ultimate parent, Entergy Corporation) should have continuing liability for decommissioning and site restoration. The PUC should give no credit to Mr. Hill's unsupported positions, which seek to needlessly encumber the proposed transaction and render earlier decommissioning unviable. Mr. Hill has made no argument, nor can he, that the proposed transaction would not promote the general good of the state.

A. Hill Neglected To Assess The Proposed Transaction In Comparison To The Status Quo

Throughout his testimony, Mr. Hill takes the position that the proposed transaction should not be approved, reasoning that it will not promote the general good of the state. Michael Hill ("Hill") pf. at 31; Hill MOU pf. at 7; Tr. 5/14/2018 at 70-71. But Mr. Hill reaches this conclusion only by failing to analyze the proposed transaction as compared to the status quo. In neglecting to examine the tenets of the proposed transaction, Mr. Hill provides no useful assistance to the PUC.

As a preliminary matter, Mr. Hill has rejected the premise that the options before the PUC are approving the proposed transaction or continuing with the status quo of SAFSTOR followed by decommissioning undertaken by a contractor in several decades. *See* Tr. 5/14/2018 at 70-71. Indeed, Mr. Hill testified that he does not know the details of the status quo decommissioning plan. *See* Tr. 5/14/2018 at 61. Mr. Hill's failure to understand the options available for decommissioning the VY Station site undermines his own testimony. As described *supra*, the proposed transaction contains greater protections than the status quo to ensure a successful decommissioning.

For instance, Mr. Hill bases his opposition to the proposed transaction in part on his having witnessed "environmental liability transfers fail due to structural problems related to flaws in contractual incentives, insurance, and failures in oversight." Hill pf. at 5-6. Mr. Hill, however, has neglected to analyze the mechanisms in place to ensure that this particular transaction does not fail. As described *supra*, the MOU provides to state regulators both monitoring and enforcement capabilities, which exceed that available under the status quo. *See supra* at II.A(3)(c).

In addition, Mr. Hill advocates for speculative financial assurances, including insurance, that are unnecessary as explained in Part III.B, *infra*, and may not be available. But Mr. Hill is "not aware either way," of the insurance coverage under the status quo. Tr. 5/14/2018 at 84. And

Mr. Hill acknowledges that he has not analyzed the financial assurances available under the status quo. Tr. 5/14/2018 at 63-64.

Finally, despite the fact that Mr. Hill argues that the Entergy entities should remain liable for decommissioning and site restoration, he does not know what liabilities the Entergy entities have. Tr. 5/14/2018. at 15-17. Thus, for all of his talk about "chicken pox" and "baton" transfers, Mr. Hill in unaware whether his characterization of the proposed transfer is accurate.

As Mr. Hill admits, the PUC does not have the option of approving a hypothetical, pie-in-the-sky transaction. Tr. 5/14/2018 at 70 ("Q. And, Mr. Hill, no entity has proposed or agreed to pursue the decommissioning and restoration of Vermont Yankee under any scenario that you have advocated for, correct? A. Not to my knowledge. No."). Mr. Hill's failure to examine the merits of the proposed transaction in comparison to the status quo renders his conclusions about the general good of the state baseless.

B. Hill Failed To Consider The Entire Suite Of Financial Assurances And Oversight Under The Proposed Transaction

As Mr. Hill explained in his initial prefiled testimony, the proposed transaction should carry with it "clear, robust and independently-provided insurance and other financial assurance tools." Hill pf. at 32. Yet, while Mr. Hill repeatedly emphasized the importance of financial assurances, Mr. Hill never considered the entire suite of financial assurances required by the MOU for the proposed transaction.

As an initial matter, Mr. Hill admits that he did not analyze or even address all of the financial assurances under the MOU. He declined to receive access to the complete deal model and PIDS. Hill pf. at 17; Hill MOU pf. at 10-11. Mr. Hill apparently did not review the Membership Interest Purchase and Sale Agreement, even though a public version of the sale contract with minimal redactions is available. MOU pf. at 10; Exh. JP-SES-SUPP-1 at Encl. 1.

And, at the technical hearings, Mr. Hill revealed that the basis for his expert opinion was limited due to the amount of time he was willing or able to devote to this proceeding. *See* Tr. 5/14/2018 at 64. Thus, Mr. Hill did not consider or address the $55 million in escrowed funds available to fund decommissioning and site restoration under the MOU. *Id.* at 68. He did not discuss or analyze the increased funding available under the NorthStar parent support agreement in his MOU testimony. *Id.* at 65. He did not address the contribution by Entergy of approximately $30 million to the SRT to bring the balance to $60 million. *Id.* at 66. Nor did Mr. Hill analyze or discuss the potential to-be-escrowed funds from the Round 3 DOE recovery. *Id.* at 66-67.

Instead, in his MOU testimony, Mr. Hill criticizes purported drafting deficiencies that he identifies in the form of certain financial assurances. Hill MOU pf. at 13-19. But such criticism ignores the fact that the MOU requires NorthStar to obtain, for instance, the PLL policy and the Orano guaranty. And there is ample time for DPS to retain an expert to review and comment on these documents before closing, allowing DPS to identify any deficiency. Given the multiple, diverse financial assurances and the adequate opportunity for DPS to ensure that they are adequately documented before closing, there is simply no reason to think that the additional financial assurances will not be fully protective of Vermont.

Given Mr. Hill's failure to analyze the substance of the entire suite of financial assurances, Mr. Hill cannot support his position that the assurances are inadequate. Accordingly, the PUC should give no weight to Mr. Hill's conclusions on financial assurances.

C. Entergy Is Not Asking To Escape CERCLA Or 10 V.S.A. § 6615 Liability If Such Liability Attached During Entergy's Tenure Of Ownership

Mr. Hill's lack of understanding of the transaction also is apparent from his failure to identify the specific liability he believes the Entergy entities should not be permitted to transfer. Indeed, Mr. Hill does not know what liability exists, but only "assume[s]" such liability does exist.

Tr. 5/14/2018 at 15-17. As Joint Petitioners explained, no general corporate liability attaches to any Entergy entity. And no Entergy entity is seeking a release from liability under CERCLA or 10 V.S.A. § 6615, to the extent such liability may exist.

As Mr. Hill made clear in his prefiled testimony, he is not advocating for newly imposed liability on any Entergy entity. Hill MOU pf. at 8-9. Therefore, Mr. Hill's argument must be limited to actual, existing liabilities. In apparent recognition of this fact, Mr. Hill explains that "at least the liabilities of ENVIC (ENVY's immediate parent) are proposed to be released." Hill surreb. pf. at 4. But Mr. Hill has not identified any particular ENVIC liability. And, in fact, as Mr. Hill explained, he has based his position on the fact that, "through this matter I do see that it is ENVIC and other Entergy entities that are applying for a license transfer and they are seeking to release themselves of liabilities. So it is my assumption that they do have liabilities." Tr. 5/14/2018 at 16.

With regard to the liability for decommissioning and site restoration of the VY Station, in 2002, the PUC approved the transfer of that responsibility to ENVY in Docket 6545 as a limited liability company. PFD ¶¶ 13-15. Under ordinary rules of limited corporate liability, only ENVY and not its parents or affiliates has responsibility for the VY Station. PFD ¶ 15; *see also* Docket 6545, Order of 6/13/02 ¶ 131 ("An LLC is similar to a traditional corporation in that they both limit the legal liability of the owners of the entity."). Thus, only ENVY has the liability for decommissioning and site restoration, which it will retain as the renamed NorthStar VY.

To the extent Mr. Hill's testimony may be interpreted as seeking to ensure that the proposed transaction does not release any Entergy entity from any existing liability under federal law (*e.g.*, CERCLA) or state statute (*e.g.*, 10 V.S.A. § 6615), nowhere has any Entergy entity sought to transfer, remove, or otherwise alter such liability. As Mr. Schwer testified, certain state and federal

laws apply to prior owners of environmental sites, and the applicability of those laws will not be altered as a result of the proposed transaction. *See* Tr. 5/10/2018 at 134-135. To the extent that environmental liabilities under state or federal law attach to an entity as a result of activities or contamination during the period in which that entity owned or operated the VY Station site, those liabilities will not be altered.

D. Even If Mr. Hill's Understanding Of The Transaction Were Accurate, Mr. Hill Could Not Deny That Nuclear Plant Sellers Have Released Themselves Of The Liability To Decommission And Restore The Site

As explained, *supra*, only ENVY has liability for decommissioning and site restoration and it will retain such liability under the proposed transaction when it is renamed NorthStar VY. No other Entergy entity has any liability, other than any potential liability that may exist under CERCLA or 10 V.S.A. § 6615, of which they do not seek release. Notwithstanding this fact, Mr. Hill has characterized this transaction as a liability transfer for which he contends there is no precedent. Even assuming Mr. Hill's understanding of the transaction were accurate (it is not), Mr. Hill's testimony reveals the limits of his "expertise" in this area. Specifically, in his initial prefiled testimony, Mr. Hill made clear: "I am not expert in the history of attempted or actual liability transfers in the context of nuclear plants." Hill pf. at 13 n.8. Thus, it is not surprising that Mr. Hill has testified only that he is unaware of any liability transfer. Hill MOU pf. at 2 *("[T]o my knowledge*, Entergy's proposal for Vermont Yankee would be the first time any seller of a nuclear power plant has been released of liability.") (emphasis added). In forming his conclusion that the transaction proposed here is unprecedented, Mr. Hill did not review orders relating to the transfer of other nuclear power plants, including the prior transfer of the VY Station site. *See* Tr. 5/14/2018 at 37, 42. Given Mr. Hill's lack of expertise and failure to review any documents that would support his conclusion, it is no surprise that Mr. Hill is wrong.

As Joint Petitioners explained, there are numerous instances of nuclear plant sales where the selling entity has been released of liability to decommission and restore the site of the nuclear plant. *See* T. Michael Twomey, Joint Petitioners ("Twomey") MOU pf. at 5-6. In fact, in Docket 6545, the prior owners of the VY Station—Vermont Yankee Nuclear Power Corporation ("VYNPC")—were released of, and transferred, liability for decommissioning and site restoration to the purchaser, ENVY. Docket 6545, Order of 6/13/02 at 34 ("The Sale Agreement transfers the decommissioning fund to ENVY. At the same time, ENVY assumes responsibility for paying for decommissioning. This is consistent with the normal industry practice in nuclear plant transfers; 13 of the 15 nuclear plant transfers to date have included such a transfer."). Indeed, that transfer of liabilities was an express purpose of and reason for approving the transaction. *Id.* at 35 (discussing "the value of *shedding* the future liabilities for decommissioning" and that the sale eliminates VYNPC's liability for increasing decommissioning costs, which could be passed to ratepayers) (emphasis added).

Although Mr. Hill claims the prior transfer was a "mistake[]" *see* Tr. 5/14/2018 at 33, and that all former owners should remain on the hook for the costs of decommissioning and site restoration, *see id.* at 117-118, no such re-imposition of such liabilities on VYNPC or any other prior owner is contemplated by the proposed transaction. Nor have the selling company or its parent entities been required to assume or retain decommissioning and site restoration liability in past sales of nuclear power plants. *See* Exh. JP-TMT-6 (Seabrook Massachusetts D.T.E. 02-33 Order) at 4-5 (concluding the buyer "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"); Exh. JP-TMT-4 (Pilgrim Massachusetts D.T.E. 98-119 Order) at 14 (approving sale of Pilgrim station and noting the sale

that "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") (emphasis added); Exh. JP-TMT-5 (Millstone Massachusetts D.T.E. 00-68 Order) at 12 (approving sale in which the buyer agreed to "assume substantially all liabilities associated with the operation of Millstone including decommissioning of the units"); Exh. JP-TMT-7 (State of New York Public Service Commission Order Authorizing Asset Transfer, Case 01-E-0040) at 6 (approving sale of Indian Point Unit 2 to Entergy as buyer on the basis that "Entergy will assume the financial, operating, decommissioning, environmental and market risks for the nuclear facilities"). Mr. Hill is not able to identify any retention of decommissioning and site restoration liabilities on the part of the seller after the sales of Seabrook, Pilgrim, Indian Point Unit 2, and Millstone. Tr. 5/14/2018 at 46.

Although Mr. Hill purports to draw a distinction between operating and non-operating plants, that distinction is meaningless because he can point to no guarantee that a plant, when transferred to a new owner, would continue to operate for any period of time, or would be obligated or expected to use income from operation to make additional contributions to the decommissioning trust fund. Tr. 5/14/2018 at 49-50. In fact, consistent with Mr. Hill's lack of expertise in this area, Mr. Hill was not aware that the PUC explicitly considered a possible early shutdown of the VY Station site in Docket 6545. *Id.* at 50-51. Furthermore, that a plant is operating does not ensure that it is better able to pay for decommissioning than a shut-down plant, and Mr. Hill admitted that he was not aware how operating merchant plants were treated with regard to putting money aside for decommissioning. *Id.* at 52-53.

Instead of reviewing relevant nuclear plant sale orders to examine the treatment of decommissioning liability, Mr. Hill instead relies upon a news article regarding the Zion Nuclear

Power Station decommissioning project, in which the ownership of the plant will revert to the prior owners. Mr. Hill PUC pf. at 6. Mr. Hill never explains exactly what liabilities for decommissioning and site restoration revert to the prior owners—if any do. And Mr. Hill fails to note that the very article he cites indicates that, despite the fact that the Zion site consists of two reactors versus the single reactor at the VY Station, the financial assurances available for decommissioning at Zion were smaller and less diverse than those available under the proposed transaction and MOU,[7] and that the Zion decommissioning project is, according to the article, on time and on budget. *See* Exh. CLF-MOH-16 at 2.

E. Mr. Hill's Criticisms of the Proposed PLL Policy Will Be Cured As the Policy Is Finalized and Reviewed By DPS

As to the recommendations that Mr. Hill makes that are conceivably within the scope of his expertise, Mr. Hill recommends that an insurance expert should review the PLL policy before closing. *See* Hill MOU pf. at 16. Mr. Hill indicated that, once the policy is negotiated, an expert review of the policy would require only a few hours. Tr. 5/14/2018 at 108. Should the PUC wish to accept this recommendation, there will be ample time prior to closing for DPS to have an insurance-law expert review the policy.

Separately, Mr. Hill has identified specific requirements he believes the PLL policy should contain. *See* Hill MOU pf. at 15.[8] Certain of Mr. Hill's criticisms about the PLL policy will be addressed in the finalizing of the PLL policy prior to closing. For instance, NorthStar represents

[7] Exh. CLF-MOH-16 ("EnergySolutions backed the project with a $200 million letter of credit.").

[8] "Among other terms, regulators must be assured that the policies: include the governments as Named Insureds; are reasonably assignable should the Transferee fail and the work needs to be completed by others; cannot be cancelled or even modified without prior regulator consent; and do not contain other terms that undercut protections to the public."

that it intends to have the State of Vermont named as an additional insured.[9] Likewise, with regard to assignability, the policy will include the provision that carrier's consent to assignment will not be unreasonably withheld, delayed or denied, and a provision that the carrier may cancel the policy only for fraud or misrepresentation, the inability to pay the deductible, a material change in use, or non-payment. The review of the policy will allow for DPS to ensure these conditions are included. Given the ample time for review of the policy, and the lack of any indication that any of the PLL terms will undercut protections to the public, Mr. Hill's criticism provide no basis for denying approval of the proposed transaction.

CONCLUSION

The PUC should approve the proposed transaction and issue an amendment to the Certificate of Public Good held by ENVY and ENOI on the terms described in the proposed order in the accompanying Proposal for Decision.

DATED: June 11, 2018

Respectfully submitted,

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By: _____
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[9] NorthStar further represents that the insurance carrier cannot add the State of Vermont as a "named insured" because of a potential conflict of interest arising from the State of Vermont's regulatory oversight and potential enforcement of the environmental clean-up of the site.

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