

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 8880

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| 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: 07/06/2018

**PROCEDURAL ORDER RE: POSTPONEMENT OF DECISION  
ON JOINT PETITION PENDING RULING BY NUCLEAR REGULATORY COMMISSION**

By this Order, the Vermont Public Utility Commission (“Commission”) advises the parties that it is postponing any decision on the above-captioned joint petition until after the United States Nuclear Regulatory Commission (“NRC”) issues a ruling with respect to the proposed transfer of the applicable NRC license.

At the evidentiary hearings in May, the Commission requested that the parties’ briefs address, among other things, the following:

whether the Commission should wait until the NRC decision on the license transfer before we issue a final decision in this matter, and . . . if the Commission decides to delay its final decision until after the NRC decision, what would be the appropriate procedures to follow in this case after such NRC decision.<sup>1</sup>

**Responses of Parties**

*Department of Public Service.* Although the approval of both the Commission and the NRC are required prior to the closing of the transactions proposed by the Joint Petitioners, the Vermont Department of Public Service (“Department”) notes that the Commission and NRC proceedings involve different standards and focus on different subject matter and that the

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<sup>1</sup> Tr. 5/14/18 at 133 (Cheney).

Commission's determination is independent of, and does not depend on, the outcome of the NRC proceeding. The Department also notes that the NRC decision could conflict with certain aspects of the Memorandum of Understanding ("MOU") or a final Commission Order and might necessitate further proceedings and amendments to the Commission Order if the Commission Order were issued prior to the NRC's determination. The Department concludes that "the Commission should discharge its authority as it sees fit" and that the Department "would not object if the Commission decided to wait for a NRC decision before issuing its own."<sup>2</sup>

The Department also proposed the following procedures after an NRC decision.

The Department also recommends that the Commission direct Joint Petitioners (and permit other parties) to file a letter within a short period of time following the NRC decision. In that letter, Joint Petitioners should explain whether the NRC decision affects in any way the parties' commitments under the MOU, supported, if appropriate, by supplemental briefing. If based on that letter (or any similar submittal from another party), the Commission believes that some or all of additional prefiled testimony, technical hearings, public hearings, or legal briefing is needed, it could order that additional process.<sup>3</sup>

*Agency of Natural Resources.* While observing that the Commission's decision does not depend on the outcome of the NRC proceeding related to the license transfer request and that the Commission has authority to issue its decision regardless of the timing of the NRC's determination, the Vermont Agency of Natural Resources ("ANR") does not "see an issue with the Commission waiting for an NRC decision to be issued prior to issuing a decision on the Joint Petition."<sup>4</sup> ANR also observes that:

If the Commission decides to issue a decision prior to the NRC determination, the Commission may reserve jurisdiction to be able to review a subsequent NRC determination and to make any amendments to its (the Commission's) Order, if necessary and appropriate. In the event that the Commission renders a decision in advance of the NRC, the Commission may also direct Joint Petitioners, and permit other parties, to submit supplemental briefing to address the NRC determination, any effect the determination may have on the commitments and rights under the MOU, and any additional process that may be necessary to address any such issues.<sup>5</sup>

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<sup>2</sup> Department's brief of 6/11/18 at 41.

<sup>3</sup> *Id.*

<sup>4</sup> ANR's brief of 6/11/18 at 21.

<sup>5</sup> *Id.* at 21-22.

*Vermont Attorney General's Office.* While noting its belief that the Commission “has independent jurisdiction to move forward and address the Proposed Transaction under Vermont law,” the Vermont Attorney General’s Office recommends in the event the Commission issues a decision before the NRC decision that the Commission reserve jurisdiction in this matter to review and consider the effects of any NRC decision because the NRC decision could implicate or even conflict with certain provisions of the MOU or a final order of the Commission.<sup>6</sup>

*Joint Petitioners.* In their brief, the Joint Petitioners<sup>7</sup> suggest that the Commission “should await the NRC’s decision.”<sup>8</sup> It notes that the NRC will review and consider, in connection with the proposed license transfer, North Star’s pay-item disbursement schedule approach to decommissioning, the available funds in the nuclear decommissioning trust, and other proposed financial assurances.

The Joint Petitioners expected to be able to report by the time they filed their reply brief on a resolution among the MOU parties on an approach to modifying or waiving the MOU condition related to a Commission decision by July 31, 2018. However, in their reply brief, the Joint Petitioners are only able to make specific commitments and requests on their own behalf. They commit not to withdraw from the MOU before September 28, 2018, and request that the Commission issue a decision within 30 days of notification by the Joint Petitioners of the NRC decision.<sup>9</sup>

*Conservation Law Foundation.* Conservation Law Foundation (“CLF”) asserts that the existing evidentiary record is sufficient for the Commission to deny the approvals sought by the Joint Petitioners in the petition. If the Commission “does not reject the proposed transfer, it should refrain from making a decision on this Petition until after the NRC has reached its decision.”<sup>10</sup> CLF states that a delay in the decision will promote judicial economy. If the Commission delays its decision until after the NRC ruling, CLF maintains that the Commission “should require the Joint Petitioners to identify any changes they seek as a result of the NRC

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<sup>6</sup> Brief of Vermont Attorney General’s Office of 6/11/18 at 4-5.

<sup>7</sup> The Joint Petitioners include 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.

<sup>8</sup> Joint Petitioners’ brief of 6/11/18 at 7.

<sup>9</sup> Joint Petitioners’ reply brief of 6/25/18 at 16.

<sup>10</sup> CLF’s brief of 6/11/18 at 32.

decision and allow all parties to submit supplemental testimony or briefs in response to the changes.”<sup>11</sup>

### **Discussion**

As the Department points out, the matters under consideration and the applicable standards in the NRC license transfer proceeding differ in many respects from those in this case. Nevertheless, the NRC ruling on the license transfer may have relevance to some of the issues raised by this case. In addition, as the parties acknowledge in their responses, the NRC ruling may conflict with the terms of the MOU or any Commission Order issued prior to an NRC ruling, and, as a result, may require further process and amendments to the MOU and Order.

Based on the above considerations and the absence of objection by the parties, the Commission has determined to postpone a decision in this matter until after the NRC ruling on the proposed license transfer.

Although the Commission will seek to issue a decision in a timely manner consistent with due process and its own evidentiary needs following any NRC ruling on the license transfer, the Commission is unable to commit to issue a decision in this matter within 30 days of NRC notification as requested by the Joint Petitioners. As set forth below, the Commission will invite scheduling proposals from the parties after the NRC ruling. The Commission anticipates that any remaining process, including, if necessary, any additional evidentiary hearings, would be limited to issues directly relevant to any NRC ruling and supplemental prefiled testimony filed since the evidentiary hearings in May 2018.

### **Procedural Order**

To facilitate the timely resolution of this matter following an NRC ruling, the Commission directs that:

(1) Within three days of any ruling or request for additional information by the NRC or any written response to an NRC request related to the proposed NRC license transfer, the Joint Petitioners shall file a copy of such ruling, request, or response with the Commission (which may be accompanied or later followed by supplemental prefiled testimony).

(2) If appropriate, no later than ten days after any NRC ruling on the proposed license transfer, (a) the Joint Petitioners shall file supplemental prefiled testimony related to such ruling,

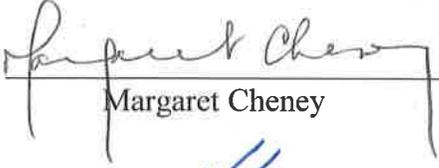
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<sup>11</sup> *Id.*

and (b) a proposed joint schedule for the remainder of this proceeding shall be filed on behalf of the parties, except that, if the parties are unable to reach agreement on a joint schedule, any party may file its own proposed schedule.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 6th day of July, 2018.

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

OFFICE OF THE CLERK

Filed: July 6, 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](mailto:puc.clerk@vermont.gov))*

PUC Case No. 8880 - SERVICE LIST

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