

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,) Docket No. 8880
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)
)

**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 exhibits¹:

- Exhibit JP-TMT-4: Pilgrim Massachusetts D.T.E. 98-119 Order
- 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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SUPPLEMENTAL PREFILED TESTIMONY OF T. MICHAEL TWOMEY

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

3 A1. Yes.

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

6 A2. Yes. I would like to address the commitments and obligations of Entergy Nuclear
7 Vermont Yankee, LLC (“ENVY”), Entergy Nuclear Vermont Investment Company,
8 LLC (“ENVIC”), and Entergy Nuclear Operations, Inc. (“ENOI”) (together,
9 “Entergy”) under the Memorandum of Understanding (“MOU”) filed in this Docket on
10 March 2, 2018. Under the MOU, Entergy agrees, *inter alia*, to provide the financial
11 assurances set forth in Paragraph 3 if the Commission approves the proposed transaction

1 without material change to the MOU's terms. In so doing, I will address my
2 understanding of the position taken by Conservation Law Foundation ("CLF"), which did
3 not sign the MOU. CLF's position, if adopted by the Commission, would constitute a
4 material change to the MOU.

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

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

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

21 A4. Under the status quo, ENVY is responsible for decommissioning and site restoration, and
22 its principal resources to accomplish those tasks are the Nuclear Decommissioning Trust

1 and Site Restoration Trust. The Vermont Public Service Board (now the Commission)
2 understood, in approving the sale of the Vermont Yankee Nuclear Power Station
3 (“Vermont Yankee”) to ENVY in 2002, that ENVY was a limited liability company and
4 that there would be no general recourse to ENVY’s parents and/or affiliates. As the
5 Board recognized in the Docket 6545 final Order, ordinary rules of limited corporate
6 liability mean that only ENVY as an LLC entity—and not its parents or affiliates—has
7 responsibility for the VY Station. *See* Docket 6545, Order dated June 13, 2002, ¶ 131
8 (“An LLC is similar to a traditional corporation in that they both limit the legal liability
9 of the owners of the entity.”).

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

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

19 **A5.** Under the status quo, Entergy Corporation does currently have certain liabilities, which
20 are described in my opening prefiled testimony at 8:16-10:6. These liabilities represent
21 specific commitments that Entergy Corporation made over the years, and they exist as an

1 exception to the rule that Entergy Corporation is *not* generally liable for the debts of the
2 separate entity, ENVY.

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

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

20 Entergy Corporation never had general liability concerning Vermont Yankee
21 under the status quo, and it is not assuming (and certainly not retaining) any such general
22 liability under the MOU. To the extent that such a requirement were imposed upon

1 Entergy Corporation, Entergy would consider that a material departure from the terms of
2 the MOU and exercise its right to withdraw from the MOU under paragraph 13 and not
3 proceed with the proposed transaction. In that event, the status quo would remain and the
4 site would not be decommissioned or restored for several decades.

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

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

21 Sales of numerous other nuclear plants have similarly not required the company
22 owning the plant and/or its parent entity(ies) to assume or to retain liability for

1 decommissioning and site restoration. The Vermont Public Service Board's Docket 6545
2 final order in fact noted that ENVY's assumption of all decommissioning liabilities after
3 the sale was "consistent with normal industry practice in nuclear plant transfers." *Id.* at
4 34.

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

11 Exhibit JP-TMT-6 at 4.

12 A similar transfer of liabilities occurred in the sales of the Pilgrim, Millstone, and
13 Indian Point 2 nuclear power plants (in the case of Pilgrim and Indian Point 2, the sales
14 were *to* Entergy affiliates). Exhibit JP-TMT-4 at 14 ("For Boston Edison's ratepayers,
15 the divestiture transaction involves the elimination of future risk associated with the
16 continued operation of Pilgrim, including the future risk of changes in Pilgrim's
17 decommissioning costs."); Exhibit JP-TMT-5 at 12 ("Dominion will assume substantially
18 all liabilities associated with the operation of Millstone, including decommissioning of
19 the units. The elimination of the risk of operation and future decommissioning mitigates
20 potential future costs that may otherwise be paid by ratepayers."); Exhibit JP-TMT-7 at 6
21 (Indian Point 2) ("In particular, they point out that Entergy will assume the financial,
22 operating, decommissioning, environmental and market risks for the nuclear facilities.").

- 1 Q7. **Does that complete your supplemental testimony?**
- 2 A7. Yes, at this time.