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**

JOINT PETITIONERS' OBJECTIONS TO THE ADMISSION OF PORTIONS OF MICHAEL HILL'S PREFILED RESPONSE TO THE PUBLIC UTILITY COMMISSION'S APRIL 24 QUESTION AND CERTAIN EXHIBITS AND MOTION TO EXCLUDE

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 (together, "Joint Petitioners"), by their Attorneys, respectfully file this objection and motion to exclude under Commission Rule 2.216(C).

INTRODUCTION

Joint Petitioners object to the admission of Exhibits CLF-MOH-14 and CLF-MOH-16 (two news articles), as well as those portions of Mr. Hill's testimony that introduce and discuss those exhibits. The exhibits are hearsay upon hearsay. While experts can sometimes rely upon hearsay when it would be prudent to do so, here the articles concern nuclear decommissioning, which Mr. Hill has already conceded is outside his limited expertise concerning insurance in non-nuclear contexts. *See* A.JP.CLF.1-26 ("I want to make clear that I am not expert in the history of attempted

or actual liability transfers in the context of nuclear plants. My hope is to provide in the nuclear context knowledge gained from the nearly two decades of experience with attempted and actual transfers of liability for *conventional* pollutants.") (emphasis in original). Mr. Hill then compounds the problem by misleadingly and/or partially describing the news articles. Accordingly, they should be excluded.

ARGUMENT

I. Hearsay Contained In and Attached as Exhibits to Mr. Hill's Prefiled Testimony in Response to Commission Questions Should Not Be Admitted

The Vermont Rules of Evidence require that opportunities for cross-examination be available to parties and litigants in order to arrive at "a full and true disclosure of the facts." 3 V.S.A. § 810. As a result, hearsay is generally not admissible. Vt .R. Evid. 802 ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court or by statute."); *Investigation Pursuant to 30 V.S.A. §§ 30 & 209 & Pub. Serv. Bd. Rule 5.110(d)*, Dkt. No. 8843, Order of 8/22/2017, 2017 WL 3843482, at *2. Newspaper articles offered for the truth of assertions contained in the articles fall squarely within the bounds of impermissible hearsay if the author or declarant is not available for cross-examination. *Amended Petition of Entergy Nuclear Vermont Yankee, LLC*, Dkt. No. 7862, Order of 2/8/2013, 2013 WL 587558, at *3 ("It is widely recognized that newspaper articles generally constitute hearsay and do not fall within any of the exceptions to the hearsay rule."). Under the Vermont Rules of Evidence, expert testimony "may not be used to circumvent the restrictions of the hearsay rules generally." *State v. Recor*, 150 Vt. 40, 48, 49 A.2d 1382, 1388 (1988); *see also Chickanosky v. Chickanosky*, 190 Vt. 435, 443, 35 A.3d 132, 138-39 (2007) (inadmissible evidence used by an expert for the "controlled circumstance" of developing an expert's report, cannot be admitted or relied upon for its substance).

A. Portions of Mr. Hill's Prefiled Testimony and Exhibits CLF-MOH-14 and CLF-MOH-16 Contain Impermissible Hearsay Not Within Any Exception

In his prefiled testimony dated May 9, 2018, in response to Commission questions, Mr. Hill offers as exhibits two newspaper articles for the truth of the matters asserted therein, without making the authors (or persons paraphrased or quoted by the authors) available for cross-examination.

Exhibit CLF-MOH-14 is a *Utility Dive* article from April 13, 2018, authored by Robert Walton. Mr. Hill offers this article as evidence that this proposed transaction is "the first attempt at a nuclear utility-to-contractor transfer." Hill PFT, dated May 9, 2018 at 5:11-12. But the article provides no source for this statement. A second portion of the article is not only hearsay, it is hearsay upon hearsay, as the article quotes a *Rutland Herald* article. And Mr. Hill incompletely (and misleadingly) describes a third portion of the article, which quotes Nuclear Regulatory Commission spokesman Neil Sheehan as stating that NRC spokesman Neil Sheehan said that "NRC staff is unable to find that the funding mechanisms proposed by applicants are adequate to provide reasonable assurance that sufficient funds will be available for the decommissioning of Vermont Yankee." Mr. Hill neglects to report that, in the NRC's April 2018 Requests for Additional Information (Exhibit JP-SES-17), the NRC followed a similar statement to Mr. Sheehan's by explaining that it has not made a final determination but rather is seeking "additional information … to clarify how NorthStar demonstrates adequate financial assurance to complete licensed activities as provided for in its license transfer application." Mr. Hill also omits to report NRC's further statement that it has not yet fully evaluated or understood the suite of financial assurances required by the MOU (Exhibit PUC-1) in this Docket. *See* RAI 4.

Neither the author of the *Utility Dive* article nor the author of the *Rutland Herald* article is available for cross-examination. Notwithstanding Mr. Hill's claim to the contrary, *see* Hill PFT,

dated May 9, 2018 at 6, fn. 4, this is decidedly not the type of evidence reasonably relied upon by prudent persons.

Exhibit CLF-MOH-16 is a *Chicago Tribune* article from January 9, 2015, authored by Julie Wernau. Mr. Hill offers this article for the truth of the assertions that (1) "[t]he company dismantling the closed Zion nuclear plant on Lake Michigan is running out of money to finish the job"; and (2) "[i]t was the first time regulators allowed a nuclear power plant owner to transfer a plant's operating license and liabilities to a third-party decommissioner." Hill PFT dated May 9, 2018 at 6. These assertions again present a double hearsay problem because the article's author relied on quotations or paraphrases of statements by other persons. Mr. Hill then adds his own gloss on the article (unsupported by anything in the article) that the transfer "was merely temporary and therefore far less risky to the public." *Id.*[1] The *Chicago Tribune* article is likewise hearsay that is outside the scope of Mr. Hill's limited non-nuclear insurance expertise.

B. Mr. Hill's Introduction and Mischaracterization of Hearsay is Prejudicial to Joint Petitioners, Attempts to Misinform the Commission, and Should Not Be Admitted

Mr. Hill's use of impermissible hearsay is prejudicial not only because Joint Petitioners are deprived of the opportunity to question the authors of the articles (or others quoted or paraphrased in the articles), but also because Mr. Hill selectively quotes the articles in a misleading way such that the hearsay evidence proffered is especially prejudicial. For example, instead of engaging with Joint Petitioners' Exhibits JP-TMT-4 through JP-TMT-7 (precedents showing that sellers of nuclear plants *divested* themselves of the liability to decommission the plant), Mr. Hill turns

[1] Mr. Hill notes that this same article was also referenced in his August 30 PFT, but in that PFT, the article was cited for the proposition that the Zion transfer was limited, not for the assertions that the company performing the decommissioning was running out of money or that the transfer was the first of its kind.

instead to the *Utility Dive* article – a third-hand report and analysis by a reporter with no apparent expertise in the field – to support the tenuous claim that somehow transfers of operating plants are different than a transfer of a non-operating plant without engaging with or acknowledging the fact that (1) operating plants owned by merchant generators (such as the VY Station once acquired by Entergy Nuclear Vermont Yankee, LLC) are not required to deposit operating income into a decommissioning trust fund, and (2) operating plants can be shuttered at any time. *See* Dkt. 6545 Order at 34, 72.

Mr. Hill also adopts and takes out of context language in the *Chicago Tribune* article that the Zion plant is "running out of money" based on this article, which is three years old, and in any event ultimately acknowledges that the project was on budget and only one phase had gone over-budget. On page 3, the article notes importantly that "[a]s of the most recent report March 27, the company did not report any shortfalls." *See also id.* ("The EnergySolutions spokesman said the company would finish the project early and as promised."). Mr. Hill misleadingly did not describe in his testimony any part of the article beyond the section expressly quoted at lines 9-27 on page 6 of his May 9, 2018 PFT. As such, Mr. Hill's use of hearsay is not only prejudicial based on Joint Petitioners' inability to question the author (or persons quoted by the article's author), but also on Mr. Hill's misleading and selective presentation of the claims in the articles.

II. The Commission Should Not Depart From the Rules of Evidence

In certain circumstances, the Commission may depart from the Rules of Evidence when it is "necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." 3 V.S.A. § 810.

That exception is unavailable in the case of Mr. Hill's prefiled testimony in response to the Commission including Exhibits CLF-MOH-14 and CLF-MOH-16.

A prudent person would not selectively quote double hearsay and hearsay information from non-experts in the form of newspaper articles, and a prudent person would not assume premises based on those articles or selectively and misleadingly quote such articles, especially when the prudent person lacks expertise in the subject matter (nuclear decommissioning) covered by the articles. A prudent person would only commonly rely upon hearsay statements with indicia of trustworthiness equivalent to those in Vt .R. Evid. 803 and 804.

Admission of Mr. Hill's prefiled testimony in response to the Commission and Exhibits CLF-MOH-14 and CLF-MOH-16 would deprive Joint Petitioners of a meaningful opportunity to test the evidence and question the declarants, and would confuse the record, based on an incomplete and at times misleading representation of the statements and claims within the hearsay articles themselves.

CONCLUSION

Joint Petitioners respectfully request that lines 5:10-6:27 of Mr. Hill's prefiled testimony in response to Commission questions not be admitted. Additionally, Joint Petitioners respectfully request that Exhibits CLF-MOH-14 and CLF-MOH-16 not be admitted.

DATED: May 11, 2018

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP
Attorneys for Entergy Nuclear Vermont Investment Company, LLC, Entergy Nuclear Operations, Inc., and Entergy Nuclear Vermont Yankee, LLC

By: 

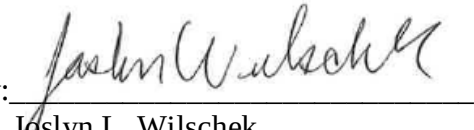
Sanford I. Weisburst*
Ellyde R. Thompson*
Jonathan B. Oblak^
Ingrid E. Scholze*
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7170
sandyweisburst@quinnemanuel.com

*admitted *pro hac vice*
^ *pro hac vice* motion pending

John Marshall
Downs Rachlin Martin PLLC
90 Prospect Street
St. Johnsbury, VT 05819-2241
(802) 748-8324
jmarshall@drm.com

Daniel Richardson
Tarrant, Gillies & Richardson
44 East State Street
P.O. Box 1440
Montpelier, Vermont 05601-1440
(802) 223-1112
drichardson@tgrvt.com

Wilschek Iarrapino Law Office PLLC
Attorneys for NorthStar Decommissioning Holdings, LLC, NorthStar Nuclear Decommissioning Company, LLC, NorthStar Group Services, Inc., LVI Parent Corp., and NorthStar Group Holdings, LLC

By: 

Joslyn L. Wilschek
35 Elm Street, Suite 200
Montpelier, VT 05602
(802) 249-7663
joslyn@ilovt.net