

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Dominion Nuclear Projects,
Inc. and Dominion Energy Kewaunee, Inc. for
Approval of the Sale of Dominion Energy
Kewaunee, Inc.'s Stock to EnergySolutions,
LLC

Docket No 9812-EI-100

**DIRECT TESTIMONY OF SCOTT STATE ON BEHALF OF NORTHSTAR GROUP
SERVICES, INC.**

1 **Q. Please state your name, title, and business address.**

2 A. My name is Scott State. I am the Chief Executive Officer of NorthStar Group Services,
3 Inc. ("NorthStar"). My business address is 370 7th Ave., New York, NY 10001.

4 **Q. Please describe your education and professional experience.**

5 A. I am a licensed nuclear engineer with a bachelor's degree and master's degree in nuclear
6 engineering and I have a master's degree in engineering management. I have been the
7 Chief Executive Officer of NorthStar since 2010. A copy of my resume is attached hereto
8 as Ex.-Northstar-State-1.

9 **Q. Have you previously testified before, or filed testimony with, state regulatory
10 agencies?**

11 A. Yes, I have testified as an expert witness in the proceedings before the Vermont Public
12 Utility Commission in connection with its approval for NorthStar's acquisition of the
13 Vermont Yankee Nuclear Power Plant and before the Florida Public Service Commission
14 in connection with its approval for a NorthStar affiliate to decommission the Crystal
15 River 3 Nuclear Power Plant.

1 **Q. Please briefly describe the duties and practice of NorthStar as a company.**

2 A. NorthStar is the world's largest demolition company and leading provider of highly
3 technical infrastructure and environmental services. NorthStar performs mission-critical
4 technical services that help its public and private sector clients across a broad spectrum of
5 projects including nuclear deconstruction and decommissioning, low-level radioactive
6 waste disposal, commercial and industrial deconstruction, response and restoration
7 services and environmental services. The Company operates an integrated platform that
8 has enabled it to establish a sterling track record of successful and timely and safe
9 execution of projects over the past 30 years. NorthStar has consequently established itself
10 as the "go-to" provider of highly technical, critical solutions across all of its services
11 lines.

12 Furthermore, the Company's national footprint of over 30 branches and platform-
13 wide shared skillsets and most technically advanced demolition fleets of equipment in the
14 United States enables it to provide local service to clients on a national scale. NorthStar
15 executes over 3,000 projects annually, with over 100,000 completed projects across all 50
16 states since inception, with the majority of projects performed on a fixed price basis.
17 These projects are performed for a broad base of customers that span the utility, power,
18 energy, government, infrastructure, education and commercial markets among others. Its
19 customer base includes utilities, government agencies, facility managers (industrial,
20 education, healthcare, etc.) and engineering and construction firms.

21 **Q. What is the purpose and scope of your testimony in this proceeding?**

22 A. I will focus my testimony on two main points: firstly, it is my opinion that the deal at the
23 center of this proceeding is likely to result in Wisconsin ratepayers grossly overpaying

1 for the decommissioning of KPS, and secondly, the utilities involved failed to act
2 prudently by not assigning the Refusal of First Right (“ROFR”) to NorthStar.

3 In my opinion, the Commission should do one of three things to protect the
4 ratepayers of Wisconsin’s interest in the remainder of the Nuclear Decommissioning
5 Trust (“NDT”). First, the Commission could order one or both of the utilities to assign
6 its right of first refusal to NorthStar. If NorthStar is able to successfully close the
7 transaction to acquire the KPS, it will pay to the utilities the previously offered sum of
8 \$25M and agree to be bound by conditions grossly lacking in the proposed transaction
9 here: NorthStar will guarantee that no more than \$550m will be transferred to a
10 subaccount for of the NDT for NorthStar’s use in decommissioning, verifiably tied to
11 actual work performed, and will provide significant financial assurances that NorthStar
12 itself will bear the risk of any costs above the \$550m transferred to the subaccount (plus
13 any earnings thereon after transfer to the subaccount, as is the case in Crystal River 3
14 and Vermont Yankee), rather than the ratepayers. NorthStar would also agree to fund an
15 escrow account up to a value of \$50M, seeded with \$20M at the closing of the
16 transaction with NorthStar’s own funds, plus 10% of all NorthStar’s billings on the
17 Kewaunee project going into the escrow until it reaches \$50M. NorthStar would also
18 offer a parent support agreement/parent guarantee, a pollution policy covering unknown
19 non-radiological environmental contamination and performance bonds where
20 appropriate for additional assurance of performance.

21 Second, absent an assignment of the ROFR, the Commission could require that
22 any entity that is to perform the decommissioning guarantee that no more than \$550m
23 will be transferred to a subaccount of the NDT for use of decommissioning, verifiably

1 tied to actual work performed, and provide significant financial assurances such that the
2 contractor or owner itself will bear the risk of any costs above \$550m, rather than the
3 ratepayers. The Commission could require the entity to fund an escrow account up to a
4 value of \$50M, seeded with \$20M at the closing of the transaction with the entity's own
5 funds, plus 10% of all its billings on the Kewaunee project going into the escrow until it
6 reaches \$50M. The entity should also offer a parent support agreement/parent
7 guarantee, a pollution policy covering unknown non-radiological environmental
8 contamination and performance bonds where appropriate for additional assurance of
9 performance. Based on the current value of the NDT fund, we expect that would result
10 in a net sum of over \$200 million being returned to Wisconsin ratepayers.

11 Alternatively, the Commission should deny the proposed transaction. The
12 proposed transaction entirely frustrates the Commission's 2005 directive to return
13 unspent funds to the ratepayers because it allows EnergySolutions to keep the unspent
14 funds simply by paying an affiliate for overpriced services.

15 **Q. Can you please describe the Proposed Transaction?**

16 A. Dominion has proposed to transfer ownership of the Kewaunee plant and its Nuclear
17 Decommissioning Trust Fund ("NDT") via sale of Dominion Energy Kewaunee, Inc. to
18 an *EnergySolutions* affiliate, which also requires a license transfer application be
19 approved by the Nuclear Regulatory Commission ("NRC"). This transfer is being
20 proposed with no evaluation or limitation on the ultimate cost of the project or risk to
21 ratepayers.

22 **Q. Will the Nuclear Regulatory Commission ensure that the NDT funds are spent**
23 **prudently?**

1 A. Absolutely not. The NRC has little to no role in supervising how funds are spent. The
2 NRC will monitor the NDT funds on an annual basis and only determine if there are
3 enough funds to complete radiological decommissioning (note this does not address
4 removal of any other environmental contaminants). With the massive excess funding in
5 the Kewaunee NDT that *EnergySolutions* will have access to, it is not likely the NRC
6 would ever have concern about the level of trust fund assets to complete the work and
7 therefore, spending can occur virtually unabated, such as excess spending above market
8 rates for disposal of low-level radioactive waste at *EnergySolutions'* affiliate disposal
9 site.

10 Mr. Levin points to several NRC regulations, presumably to give the impression
11 that the NRC's jurisdiction over NDT funds is plenary. That is simply not the case. None
12 of the regulations cited give the NRC authority to review whether an expense was
13 prudent. The NRC is almost entirely focused on safety. Its mission statement is:
14 "The NRC licenses and regulates the Nation's civilian use of radioactive materials to
15 provide reasonable assurance of adequate protection of public health and safety and to
16 promote the common defense and security and to protect the environment."

17 Ex.-Northstar-State-2, "The NRC: Who we Are and What We Do" describes, in
18 the NRC's own words, its mission in greater depth. Over and over again, the NRC
19 describes its role as guarantying the safety and security of nuclear material. Not once
20 does the NRC represent to the public that it is responsible for supervising whether or not
21 a license holder will inflate project costs to increase its profit or even whether projects are
22 managed prudently. The NRC is simply responsible for ensuring that the work gets done
23 safely.

1 To fulfill that mission, the NRC *does* have a process to ensure that a license
2 holder has sufficient resources to completely decommission a facility. However, nothing
3 about that review requires an applicant to establish its proposed plan is cost-effective,
4 reasonable or prudent. I find it notable that despite Mr. Levin's somewhat lengthy
5 testimony, he points to no specific information that EnergySolutions has provided to the
6 NRC as to the reasonableness of its planned expenditures. Nor does he cite a single
7 example where the NRC has ever told a license holder that it should spend less on a
8 decommissioning expense.

9 **Q. Has NorthStar ever been a party to a license transfer or license termination**
10 **proceeding at the NRC?**

11 A. Yes. In addition to the NRC license transfers for Vermont Yankee and Crystal River 3,
12 NorthStar has been involved in a number of license NRC license termination
13 proceedings. The License Termination Notices for each are attached hereto as Ex.-
14 NorthStar-State-3 though Ex.-NorthStar-State-7:

15 Ex.-NorthStar-State-3: University of Washington Facility Operating License (Nuclear
16 Reactor), NRC License No. R-73

17 Ex.-NorthStar-State-4: University of Arizona Facility Operating License (Nuclear
18 Reactor), NRC License No. R-52

19 Ex.-NorthStar-State-5: University of Illinois Facility Operating License (Nuclear
20 Reactor), NRC License No. R-115

21 Ex.-NorthStar-State-6: University at Buffalo Facility Operating License (Nuclear
22 Reactor), NRC License No. R-77

23 Ex.-NorthStar-State-7: VA Blotcky Facility Operating License (Nuclear Reactor), NRC
24 License No. R-57.

25 **Q. Did the NRC require a showing that NorthStar's planned expenditures were**
26 **prudent in those proceedings?**

1 A. No. The NRC, like the Commission, speaks through its written orders. None of the cases
2 I have been personally involved in required any showing whatsoever that our plans were
3 prudent or cost-effective.

4 **Q. What does ongoing NRC supervision entail with respect to trust funds?**

5 A. The required NRC annual filings do not address the prudence or reasonableness of any
6 expenditures. Attached as Ex.-NorthStar-State-8 is NorthStar's latest funding status
7 report required by the NRC for Vermont Yankee. The report simply shows, at a high
8 level, that the expected decommissioning funds will be sufficient to pay for expected
9 expenses. NRC staff has never requested any supporting documentation regarding the
10 prudence or cost-effectiveness of any costs described in our reports for Vermont Yankee.
11 Ex.-NorthStar-State-9 is the NRC's decision determining that our annual reporting
12 obligations were satisfied. It has no determination as to the appropriateness of any
13 particular expense. It simply notes that "As of the date of this letter"... the NRC has
14 determined that NorthStar has satisfied the decommissioning funding assurance
15 requirements of 10 CFR 50.82." In other words, the NRC simply found that the trust fund
16 is adequately funded. The only other regular financial reporting is a monthly notice
17 regarding the planned withdrawal from the NDT, which does not contain any line-item
18 detail, an example of which is attached hereto as Ex.-NorthStar-State-10.

19 **Q: Has EnergySolutions terminated its NRC licenses at Zion or La Crosse?**

20 A. Notwithstanding that EnergySolutions has touted its experience in this proceeding, it has
21 not been successful in terminating its Zion or La Crosse NRC licenses, and faces
22 significant uncertainty as to the cost and timing of such termination as evidenced by the
23 Requests for Additional Information (RAI's) issued by the NRC, attached hereto as Ex.-

1 NorthStar-State-11 and Ex.-NorthStar-State-12 respectively. These RAI's demonstrate
2 serious concerns raised by the NRC about stated levels of contamination remaining at
3 these sites, leading to the inescapable questions about whether *EnergySolutions* has the
4 ability to achieve license termination or the resources to do so. Notably, *EnergySolutions*
5 has admitted that the work at Zion is being funded out of its own pocket as it has
6 exhausted the NDT funds there. Unfettered access to the entire Kewaunee NDT would
7 be a boon to a company facing such hurdles. *EnergySolutions* may be in violation of
8 NRC regulation 10 CFR 50.82(a)(8)(vi) (or at least tardy in complying), which states, "If
9 the sum of the balance of any remaining decommissioning funds, plus earnings on such
10 funds calculated at not greater than a 2 percent real rate of return, together with the
11 amount provided by other financial assurance methods being relied upon, does not cover
12 the estimated cost to complete the decommissioning, the financial assurance status report
13 must include additional financial assurance to cover the estimated cost of completion." It
14 is not evident that additional financial assurance has been provided to deal with the
15 additional work required to achieve license termination on Zion and La Crosse. Further it
16 does not appear that *EnergySolutions* has created a new Decommissioning Cost Estimate
17 to account for the expected added cost to achieve license termination. The PSC should be
18 interested in the cost *EnergySolutions* expects to expend to achieve license termination at
19 Zion and LaCrosse so the PSC can evaluate what demands and financial strain will be
20 placed on *EnergySolutions*.

21 **Q. If the NRC does not supervise whether project costs are reasonable, who does?**

1 A. In NorthStar’s experience, state utility commissions are responsible for ensuring that the
2 public’s financial interests are protected. This is especially true where, as in this case, no
3 one else has any incentive or desire to be good stewards of the public’s monies.

4 **Q. Does NorthStar have any experience with state public utility commissions’ review of**
5 **proposed decommissioning projects?**

6 A. Yes. NorthStar has extensive experience working with public utility commissions in
7 multiple states to configure fair and equitable transfers of shutdown nuclear power plants
8 that assure that project performance risk is transferred to the decommissioning company
9 and not to ratepayers. The cost of those projects were at market competitive costs, thus
10 ensuring the return of excess ratepayer money.

11 **Q. Please explain how the proposed Transaction differs from what Vermont and**
12 **Florida required for the Vermont Yankee and Crystal River projects.**

13 A. In both Vermont and Florida, the relevant commissions were involved in assuring that
14 ratepayers were getting a fair deal in the proposed decommissioning approaches. In both
15 instances, the utility selling the facilities conducted extensive processes to select the best
16 option and counter-party for transfer of the facilities. For example, for the Crystal River
17 project, the Florida Public Utilities Commission extensively reviewed the selection
18 process for a vendor, finding that Duke Energy Florida’s selection of NorthStar’s
19 partnership with Orano USA, Accelerated Decommissioning Partners, was the best
20 company for the project:

21 DEF issued a request for information (RFI) to 14 nuclear
22 decommissioning vendors with experience in the United States
23 decommissioning industry in November 2017. DEF opted against
24 issuing a broad RFI to ensure that only bids from vendors with
25 proven track records in decommissioning were received. To select
26 the vendors, DEF reviewed industry activity, benchmarked plants

1 that are being decommissioned, and received input from external
2 subject matter experts. Eight of the fourteen nuclear
3 decommissioning vendors responded to the RFI.

4 Information received from the RFI was used to better understand
5 industry trends, capabilities of potential bidders, due diligence
6 expectations, and the overall project timeline. This information was
7 used to develop the RFP and to select companies to participate in
8 the RFP process. As a result of the RFI process six of the eight
9 vendors were selected to participate in the RFP process. DEF
10 excluded two of the eight vendors that responded to the RFI from
11 the RFP process because the pricing models identified in their RFI
12 responses did not provide cost certainty and were not considered
13 cost-effective or competitive, specifically with respect to risk
14 transfer and accountability for project execution.

15
16 The RFP process was initiated in May 2018 and four of the six
17 vendors responded. DEF prepared a comprehensive bid evaluation
18 process in support of the RFP process. The evaluation process
19 included a technical evaluation, a commercial evaluation, and a
20 legal evaluation. These evaluations involved an assessment of the
21 cost proposals for each bid, a determination of whether the proposed
22 cost was within DEF's budget, and what, if any, financial margin
23 would be maintained.

24
25 In addition to the direct cost quoted in the bid, the evaluation
26 included an assessment of cost certainty based on the proposed
27 transaction structure, risks accepted by the bidder versus those
28 retained by DEF, and financial assurances offered by the bidder.
29 These evaluations allowed DEF to compare vendor proposals to the
30 available funds in the NDT. In September 2018, DEF short listed the
31 two vendors whose bids met DEF's minimum technical,
32 commercial, and legal requirements: [the NorthStar joint venture
33 (ADP) and EnergySolutions]. The two selected vendors then
34 conducted an onsite due diligence process in October 2018 that was
35 more than four weeks long. From this onsite due diligence process,
36 the two vendors submitted refreshed bid proposals in December
37 2018. After assessing the refreshed bids, the DEF evaluation team
38 determined that the bid from Accelerated Decommissioning
39 Partners (a partnership between NorthStar and Orano USA)
40 ("APD"), offered the most cost certainty to DEF, including
41 responses to proposed terms and conditions.

42 This determination was based upon the direct cost quoted in ADP's
43 bid, as well as ADP's willingness to accept project execution risks
44 throughout the process, consistent with DEF's expectations, and

1 ADP's willingness to provide financial assurances that supported
2 ADP's contractual commitments. ADP was also the least cost bidder
3 of the four vendors that responded to the RFP. The Intervenor did
4 not provide arguments directly related to DEF's RFI and RFP
5 processes. DEF has conducted comprehensive RFI and RFP
6 processes and selected the least cost bidder produced by those
7 processes. Additionally, the NRC has approved DEF's selection of
8 ADP to conduct the decommissioning of DEF's CR3, thereby
9 lending further support for the reasonableness of DEF's vendor
10 selection process. Finally, the Intervenor did not raise any issues
11 concerning appropriateness of DEF's RFI and RFP processes. Based
12 on these facts, we find that DEF's RFI and RFP processes were
13 reasonable.

14 In Vermont, the public utilities commission also benefited from an extensive
15 bidding process to ensure that public funds were not wasted. In that process, both
16 *EnergySolutions* and *NorthStar* made presentations to Entergy at its New Orleans offices
17 on or about July 13, 2015, after which *NorthStar* was ultimately selected as the successful
18 bidder. *EnergySolutions* was involved in both of these bidding processes and was
19 unsuccessful, as they have been in every license transfer transaction other than the sale of
20 Three Mile Island Unit 2, which was approved by the NRC but faces continued
21 objections from stakeholders.

22 In contrast, the Proposed Transaction did not arise from any kind of competitive
23 process. Dominion may now claim that competitive bidding was not useful because
24 *EnergySolutions* is clearly the best company to decommission KNP, but in any place
25 where *NorthStar* has been allowed to compete with *EnergySolutions*, *EnergySolutions*
26 has not been chosen for the project, other than Three Mile Island 2, the reactor that was
27 involved in the well-known partial meltdown in 1979. Due to the high risk and
28 complexity of this project due to the prior accident, *NorthStar* had serious concerns about
29 unexpected and open-ended costs needed to complete this work. In other words, this

1 project was unlike the usual decommissioning project, which NorthStar viewed
2 differently because of the high-risk profile of the work.

3 **Q. How does the proposed transaction differ from your experience in other states?**

4 A. As you might expect without a competitive process, the proposed Kewaunee transfer
5 lacks key features of both the Vermont and Florida transactions that were derived from
6 the competitive processes employed by Entergy and Duke Energy, respectively. In both
7 of those transactions, a guaranteed fixed price was arrived at with excess funds being
8 segregated for return to ratepayers. Importantly, substantial financial assurances were
9 provided that are effective in transferring the risk of poor project execution to the
10 acquiring entity, rather than the ratepayers. Neither a competitively derived fixed price
11 nor adequate financial assurance were pursued or achieved in the proposed Kewaunee
12 transaction.

13 **Q. Why have other states required fixed price commitments?**

14 A. Fixed price commitments ensure the return of ratepayer funds in excess of the fair market
15 value of the cost of the work to those that contributed those funds into the nuclear
16 decommissioning trust in the first place. Absent a fixed price approach, the owner /
17 contractor has the ability and even the incentive to operate inefficiently, and in the case of
18 EnergySolutions, pay THEMSELVES for low-level radioactive waste disposal at a rate
19 far in excess of fair market value. In most states, when fossil fuel plants are being
20 decommissioned, utilities almost always require a fixed price. If no one is watching, I
21 fully expect EnergySolutions to retain excess monies in the trust fund instead of returning
22 those funds to the ratepayers.

1 **Q. How should the Commission determine what funds are “excess” and therefore must**
2 **be returned to the ratepayers?**

3 A. “Excess” means more than necessary. It does not mean, as EnergySolutions appears to
4 contend, “whatever happens to be leftover”. NorthStar is willing to guarantee that the
5 decommissioning could be completed for \$550,000,000 transferred to a segregated fund
6 at closing. NorthStar has the experience and expertise to do the job at that price. Any
7 “costs” that EnergySolutions may claim beyond the amount a competitor could
8 decommission the plant are, by definition, excess of what is necessary. As a result, the
9 Commission should find that EnergySolutions must refund the ratepayers of Wisconsin
10 any amount in the trust currently in excess of \$550,000,000 which amount will likely
11 increase over time.

12 **Q. Why have other states required financial assurances when approving similar**
13 **transactions?**

14 A. Financial assurance is how the fixed price provided by the owner / contractor is a
15 meaningful guaranteed price by requiring that enough funds, deposited by the
16 owner/contractor, are placed in escrow to cover potential cost overruns encountered by
17 the owner/contractor. Absent adequate financial assurance, a fixed price is meaningless
18 as the owner/contractor could simply default on the project with very limited recourse.

19 **Q. Is there good reason for the Commission to require a fixed price and financial**
20 **assurance to this transaction?**

21 A. Yes. Given that the NDT contains far more funds than necessary to decommission the
22 Kewaunee plant, funds that belong to ratepayers, the new owner/contractor should be

1 required to perform the decommissioning on a firm fixed price basis to preserve the
2 excess ratepayer funds. Going hand-in-hand with the firm fixed price, financial
3 assurance in the form of an escrow, funded by the new owner/contractor will provide
4 assurance that if the firm fixed price is exceeded, there are additional funds available to
5 complete the decommissioning work, putting the risk of cost overruns on the contractor,
6 where they belong, rather than the ratepayers.

7 **Q. Should the Commission be concerned about the financial health of**
8 **EnergySolutions?**

9 A. Yes. On November 18, 2021, EnergySolutions (ES) made a public announcement that its
10 long-time majority investor, Energy Capital Partners (ECP) was divesting its ownership
11 in ES to a minority investor. In the reporting on this transaction there was no indication
12 of any direct compensation to ECP, in other words, the more than 50% equity ECP
13 owned was determined to have no current cash value.

14 The new owner, TriArtisan Capital Advisors, LLC (TCA) is an advisory firm with
15 no known source of committed capital to support its investments. TCA has been an
16 advisory firm under a couple of ownership structures and most recently has two primary
17 partners and a staff of roughly 5 people. TCA has advised on and made minority
18 investments primarily in hospitality related businesses. TCA made the minority
19 investment in ES in 2018 by arranging capital contributions from third parties.
20 Subsequent to the investment, TCA has maintained its minority investor role and has not
21 contributed any capital to support ES. ECP, as the control investor, has provided
22 substantial backing to ES over the nearly 10 years it has owned ES, at one point

1 providing \$200 million in financial support to meet financial assurance obligations ES
2 had on the Zion project. ECP has about \$14 billion of assets under management.

3 ES has made regulatory filings with the NRC to notify the agency of the
4 impending proposed “indirect change of control” as is customary for this type of
5 situation. These filings were made for every license activity that ES has with the NRC
6 except for notice on the proposed Kewaunee license transfer. ES has not, to our
7 knowledge, made any notification to the Commission on this matter either. Further,
8 under the purchase agreement between ES and Dominion, there is a condition that would
9 result in the agreement being terminated in the event of a material adverse effect (MAE)
10 on ES. A change of control from a well-funded sponsor to an unfunded sponsor for no
11 cash equity payment would likely be subject to this MAE, but nothing has been disclosed
12 by ES or Dominion to the Commission to suggest an MAE has not occurred.

13 On January 3, 2022, ES provided a response to NorthStar Interrogatory No. 1-NS-
14 29 with a highly redacted description of its current liquidity. The redacted elements of
15 that response obscure the true current capacity of ES to fund ongoing and future
16 obligations. This response also pointed out that the existing ES credit facility is set to
17 expire in May of 2023. This means that under GAAP, all of the existing ES debt would
18 be deemed short-term debt as of May 2022, resulting in the company’s Current Ratio
19 skyrocketing to a level that could trigger insolvency concerns. To my knowledge, no
20 information has been provided to the Commission as to what ES is doing to extend or
21 replace its credit facilities, under what terms such an extension or replacement would be
22 achieved given its new owner has no capacity to backstop financial needs, nor any other
23 impacts that would be created by either the credit reaching the point it is deemed short-

1 term debt or how less favorable credit terms could impact ES operations and free cash
2 flow. The credit financial position ES faces along with its long-term investor exiting
3 ownership of the company and its equity is also a possible MAE that Dominion has not
4 shown it has evaluated. Any change in ownership and new debt commitments would
5 typically require a revised rating agency review with issuance of updated debt ratings,
6 which does not appear to have occurred as of yet, but would be valuable for the PSC to
7 understand and evaluate.

8 This instability in ownership and credit condition is precisely why public utility
9 commissions have required substantial, TANGIBLE financial assurances and
10 demonstrated long term liquidity as these projects run over several years and do not
11 always perform as expected, particularly when a contractor cuts corners. This is the case
12 at Zion and La Crosse where ES is facing continued requests for additional information
13 due to inadequate final status surveys of both sites and evidence of significant
14 contamination spread during decommissioning operations allowing for hot particle
15 dispersion. ES has been unsuccessful in achieving NRC license termination at these
16 sites, and in the case of Zion, has exhausted the NDT and is funding the continued
17 cleanup attempts out of its own pocket. It is unknown what it will cost to clean up the
18 dispersed radiological contamination at Zion, and since the cost is out-of-pocket for ES,
19 raises further credit concerns and additional incentive for ES to pull as much money out
20 the Kewaunee NDT as possible.

21 ES seems to be relying on a claim that the NRC determines appropriate financial
22 assurance. That is simply not the case. The NRC evaluates whether available funds exist
23 in the NDT to complete radiological license termination. Given that ES is looking to take

1 at least \$200 million more than would be required to complete the Kewaunee project, it
2 seems likely that the NRC would find adequate resources would be available. In fact, all
3 that is happening here is all of the performance risk is being transferred to Wisconsin
4 ratepayers and they are prepaying for that by giving ES an open checkbook without a
5 guaranteed fixed price.

6 **Q. Have you read the testimonies of Adam Levin, Kenneth Robuck and Gregory Wood**
7 **on behalf of EnergySolutions in this proceeding?**

8 A. Yes.

9 **Q. Generally, what is your response to their written testimonies?**

10 A. At a high level, it is my opinion that *EnergySolutions's* witnesses have failed to provide
11 an adequate basis for the Commission to approve the Transaction. They fail to give the
12 Commission a full and fair summary of relevant facts, gloss over key details, and
13 exaggerate the role of the NRC in supervising the NDT. Wisconsin ratepayers have paid
14 an extraordinary amount of money into the NDT and they deserve for their funds to be
15 spent prudently. Nothing in *EnergySolutions's* testimony changes my opinion that it is
16 very likely that the Company will spend every cent in the NDT, costing the Wisconsin
17 public more than \$200,000,000. Even if the requirement to return unspent funds did not
18 create an incentive to spend the entire fund, *EnergySolutions's* other financial needs will
19 place strong pressure on this project to provide financial support to *EnergySolutions* other
20 business.

21 **Q. Do you agree with Mr. Wood that EnergySolutions is on a strong financial**
22 **foundation?**

1 A. No, it has been publicly reported for years that *EnergySolutions* has struggled on
2 decommissioning projects that have had cost overruns, such as *Zion*, and in multiple
3 years has had negative cash flow at the company level. Their current debt levels are
4 substantially above industry norms.

5 In addition, at least a portion of their current credit facility expires in May of 2023
6 making this debt all short term in May of 2022 and driving their current ratio to an
7 unacceptable level. Absent a refinancing by this May, *EnergySolutions* could face
8 significant financial constraints from third parties including their existing lender and
9 sureties. This could include refusal to provide access to their revolving credit facility and
10 denial of bonding requests. TriArtisan Capital Advisors, LLC, the new owner of
11 *EnergySolutions* that was recently announced does not have any track record of
12 supporting a business of this type nor does it appear they have access to any outside
13 source of funding to support demands from the existing lender to pay down debt in
14 exchange for an extension of the credit facilities. If *EnergySolutions* does refinance their
15 debt or amend and extend its current facilities, it is not at all clear on what terms that
16 would occur and at what cost to the company in the future. The actual credit terms that
17 *EnergySolutions* signs up to are very important in considering the risk to project
18 execution of the *Kewaunee* project, which will require 5+ years to complete. A
19 previously mentioned, rating agencies will need to rerate *EnergySolutions'* debt, taking
20 the expiring portion of the credit facility and new ownership into consideration

21 **Q. Do you have any response to Mr. Robuck's testimony?**

22 A. Mr. Robuck simply makes self-serving assertions that his company is qualified to do the
23 project. He makes an incorrect statement that the NRC will determine if *EnergySolutions*

1 is creditworthy as that is not an element of the license transfer approval process. Much is
2 made of the history and capability of *EnergySolutions* but none of that is compelling
3 given the recent issues on a number of these self-characterized “major accomplishments”
4 and considering that qualification to do the work is not the key issue in this proceeding.
5 This proceeding should be about a qualified party doing the work in a cost effective and
6 prudent manner so as to preserve the excess ratepayer funds. Mr. Robuck points out in
7 his testimony that *EnergySolutions* will merely provide technical support for waste
8 operations (e.g.: shipping waste at elevated pricing to their Clive disposal facility),
9 transportation, demolition, project controls and reporting through the use of qualified
10 subcontractors. They will only directly oversee quality assurance, safety and radiological
11 programs. Support for spent fuel management will come from Dominion at unspecified
12 cost. Nothing is mentioned about how subcontractors are qualified or how market pricing
13 would be determined. One can do detailed cost estimates that are accurate but if a project
14 is poorly configured and improper constraints are employed, then the estimated cost will
15 be wrong. Everything about the way *EnergySolutions* performs reactor decommissioning
16 is cost inefficient, as has been demonstrated whenever they have bid on projects of this
17 type and as proven with Zion, where they exhausted the NDT entirely and to this day
18 continue to fund the work out of pocket due to their inability to achieve license
19 termination with the NRC. As stated previously, *EnergySolutions* should be providing a
20 new Decommissioning Cost Estimate to the NRC, and advise how much it is expecting to
21 expend to achieve license termination, given the potential financial burden this would
22 place on *EnergySolutions*.

1 Much is also made of the *EnergySolutions* work producing decommissioning cost
2 estimates. These estimates are boilerplate documents that are intended to provide
3 conservatively high estimates of cost. In NorthStar’s experience, they are all grossly
4 inflated which gives assurance that adequate funding is set aside for decommissioning,
5 but when the projects are actually done, the required resources are far less. By way of
6 example, NorthStar’s price to decommission Vermont Yankee is approximately 25%
7 lower than the amount shown in Entergy’s DCE, and NorthStar JV’s price to
8 decommission Crystal River 3 is approximately 35% lower than the amount shown in
9 Duke’s DCE. This demonstrates that utilities take a very conservative view of the DCE
10 prior to competitively bidding the work. On these projects, where NorthStar and
11 *EnergySolutions* have competed, the utilities awarded to NorthStar or its JV.

12 It is also grossly misleading to say that the NRC review of the License Transfer
13 Application could somehow establish *EnergySolutions*’ credit worthiness. This license
14 transfer and ultimate decommissioning is being done under what is referred to as the
15 “prepaid method”. Under this method, all *EnergySolutions* is doing is demonstrating that
16 the substantially over funded Kewaunee NDT has sufficient resources to fund the work.
17 It has nothing to do with *EnergySolutions* credit worthiness or efficiency in its spending
18 from the NDT.

19 There is nothing substantive or compelling in any of this testimony. Referencing
20 federal regulations and making self-aggrandizing claims of operational excellence (belied
21 by their performance at Zion) does nothing but make clear *EnergySolutions*’ attempt to
22 obfuscate the real issue of cost prudence and financial assurance for the benefit of
23 Wisconsin ratepayers. The only cost certainty in this proposed transaction is that

1 Wisconsin citizens are going to pay a massively excessive amount of money for this
2 project and take all the risk that it goes as planned with a new owner that has never done
3 a transaction like this and has little or no in-house capability to do the actual work.

4 **Q. Have you read the testimony of Emil Avram on behalf of Dominion Energy, Inc.?**

5 A. Yes.

6 **Q. What is your response to Mr. Avram's testimony?**

7 A. Mr. Avram's testimony demonstrates that his only goal was to offload the responsibility
8 for decommissioning KPS in the most expedient manner, regardless of whether or not the
9 Wisconsin public is well served by its sole-source/no bid approach, regardless of whether
10 Dominion's senior management was aware of this or if it was their objective. None of the
11 purported benefits he discusses are unique to EnergySolutions or require
12 EnergySolutions' participation in this transaction. Indeed, Mr. Avram spends more time
13 explaining his position as to why he had no obligation to consider the best interest of the
14 Wisconsin rate paying public than he does explaining why EnergySolutions is a suitable
15 counterparty to this transaction. I have never been party to a proceeding involving the
16 eventual decommissioning of a nuclear power plant where none of the proponents made
17 any serious effort to explain how the trust funds would be spent prudently. Mr. Avram,
18 like the Utilities' witnesses, disclaim any responsibility to safeguard nearly a billion
19 dollars of ratepayer money.

20 **Q. Mr. Avram also testifies that "NorthStar does not have sufficient experience in**
21 **Applicants' view to be entrusted with decommissioning KPS". Is EnergySolutions**
22 **the only company in the country that could be entrusted to decommission KPS?**

1 A. This statement is ludicrous and patently false. As explained above, NorthStar was
2 selected by both Entergy and Duke over *EnergySolutions* in competitive bidding
3 processes. There are multiple companies that routinely bid on and perform this type of
4 work. In fact, *EnergySolutions* has never done a project where they have transferred the
5 NRC license including taking ownership of spent nuclear fuel. NorthStar was the first
6 company to enter into a transaction like the one proposed for Kewaunee and Holtec has
7 followed on with several additional transactions following the NorthStar blueprint.

8 The normal approach for this type of transfer is generally a two-step process
9 where the owner / seller does a prequalification step to determine what parties are
10 qualified. That step then leads to a bidding process among those qualified parties.
11 NorthStar has entered into this type of process on every other nuclear decommissioning
12 project we have pursued and in every case been determined to be qualified. To say
13 NorthStar is not qualified is nonsense.

14 **Q. Have you and Mr. Avram discussed KPS in the past?**

15 A. Starting in 2014, Dominion and NorthStar engaged in discussions about KPS. Mr.
16 Avram was party to all of those discussions, and I was the lead negotiator for NorthStar.
17 Back in that timeframe, the NDT assets were far less than they are now and just adequate
18 to perform the project. NorthStar proposed a transaction that is in most ways identical to
19 what Dominion has executed with *EnergySolutions* based on the then-current NDT
20 amount. I spoke with my Mr. Avram shortly after this proposed transaction was
21 announced and he informed me he was engaging in this deal with *EnergySolutions* in part
22 because there was no economic incentive for him to assure the cost would be fair and

1 reasonable. I was surprised because Dominion had promoted NorthStar as their preferred
2 counter party to the Wisconsin Commission at a meeting in January of 2015.

3 **Q. Is Dominion's failure to pursue this Transaction on a sole source basis typical in**
4 **your experience?**

5 A. Conducting a transaction on a sole source basis is not entirely unique when one party
6 possess unique capability or resources. In the KPS case, this is not true. It is clear there
7 are multiple potential parties that could do the project. In fact, one could argue that
8 *EnergySolutions* may be the least qualified given their troubles at Zion and LaCrosse and
9 weak financial condition / ownership.

10 **Q. Why do companies normally consider multiple companies for transactions of**
11 **this magnitude?**

12 A. Conducting a competitive process when multiple qualified suppliers are available assures
13 the best terms for the stakeholders. In this case, the stakeholders are Wisconsin
14 ratepayers. I expect, based upon my experience in the industry, that any utility would
15 consider multiple qualified bidders when it is the utility's own money at stake. One has
16 to ask, why not treat this like any other regulated situation and use a competitive process?

17 **THE RIGHT OF FIRST REFUSAL**

18 **Q. Can you please describe the Right of First Refusal (ROFR)?**

19 A. In simple terms, the ROFR is an agreement that provides each of the two prior KPS
20 owners a right to re-acquire the KPS on the terms that Dominion has agreed to with a
21 third party.

22 **Q. What was NorthStar's offer purchase the ROFR?**

1 A. NorthStar offered both of the prior owners \$25 million to acquire their ROFR.

2 **Q. Why did NorthStar offer to purchase the ROFR from the utilities?**

3 A. NorthStar believes that in acquiring the ROFR, it could step into the existing transaction
4 and in a transparent manner agree to additional proffered conditions with the PSC /
5 Dominion that would reduce the overall cost of the project by about \$200 million to
6 Wisconsin ratepayers, do so at a guaranteed fixed price, and provide added financial
7 assurance to make sure Wisconsin ratepayers do not bear the risk of performance on the
8 project.

9 **Q. What are NorthStar's plans if you were to acquire a ROFR?**

10 A. NorthStar's plan if it were to acquire a ROFR would be to execute on the ROFR and step
11 into the transaction as allowed under terms of the ROFR. As the new counterparty
12 NorthStar would seek PSC approval with Dominion under the defined process and offer
13 additional proffered conditions that reduce cost and mitigate risk to ratepayers.

14 Specifically, NorthStar would provide a granular pay item schedule that would define at
15 inception every dollar that NorthStar would ever take from the NDT with a total transfer
16 to a subaccount for NorthStar's decommissioning of \$550 million. This would entirely
17 cap decommissioning costs and the excess funds would be available to return to
18 ratepayers. This would be essentially identical to the approach that was used in Florida
19 for the Crystal River 3 project as approved by the FL PSC where the NDT was over
20 funded and excess funds were segregated for return to ratepayers.

21 NorthStar would also agree to guarantee the cost on every line item of the pay
22 item schedule and provide appropriate guarantee mechanisms for each element of the
23 work and the overall project. In addition, NorthStar would agree to fund an escrow

1 account up to a value of \$50M, seeded with \$20M at the closing of the transaction with
2 NorthStar's own funds, plus 10% of all NorthStar's billings on the Kewaunee project
3 going into the escrow until it reaches \$50M. NorthStar would also offer a parent support
4 agreement/parent guarantee, a pollution policy covering unknown non-radiological
5 environmental contamination and performance bonds where appropriate for additional
6 assurance of performance. NorthStar provided all of these protections in the CR3
7 transaction and similar protections in the Vermont Yankee transaction.

8 These new proffered conditions would allow for direct PSC oversight as deemed
9 necessary and could match what is done by the State of Vermont as a starting model.
10 NorthStar would commit to complete transparency and report monthly to the PSC of
11 funds spent and work done always aligning the work done with proper spending.

12 If the former owners believe the ROFR does not allow transfer to a third party,
13 that needs to be established by a determination from a relevant independent body. The
14 ROFR clearly does not say there is such a restriction, and the PSC may be able to make a
15 determination that the ROFR does not preclude this type of transfer. If in fact a sale of
16 the ROFR is possible it should have an impact on the decision making of the former
17 owners. The NorthStar offer is still valid to pay one of the owners \$25 million for their
18 ROFR or if both want to sell then \$12.5 million each. Those funds could immediately be
19 returned to ratepayers as a down payment on the future return of funds they deserve. It
20 would seem prudent to allow as many legally defensible options to be explored as
21 possible that could benefit the citizens that have paid for the decommissioning of the
22 Kewaunee Power Station via ratemaking for decades.

1 **Q. Have you read the testimony of Jeffrey Ripp on behalf of Wisconsin Power and**
2 **Light Company (“WPL”)?**

3 A. Yes.

4 **Q. What is your response to Mr. Ripp’s testimony?**

5 A. I largely agree with Mr. Ripp’s testimony. While the testimony is factually correct in
6 nearly every regard, it is factually incorrect with regard to Q17. The analysis done by
7 WPL that concluded that the ROFR does not allow WPL to transfer the ROFR to a third
8 party is incorrect. Nowhere does the ROFR state this nor is there any reference to such a
9 restriction. If such a restriction were in place it would be clearly stated in the ROFR that
10 it is not transferable. To the contrary, Paragraph 10 of the ROFR states that the ROFR is
11 binding on each party’s “successors and assigns”. If assignment was not intended to be
12 permitted, that section would have necessarily omitted “and assigns” from the language.

13 The remainder of the testimony that justifies prudence not to exercise the ROFR
14 makes sense as WPL would be in no position to manage the decommissioning of KPS
15 and it would be a waste of many resources that add no value to the project. The reason
16 that utilities are frequently transferring ownership of these facilities to companies like
17 NorthStar is to avoid this very issue. I think the point this testimony missed is that the
18 cost to the ratepayers and ultimate return of funds to them is determined by how cost
19 effectively the new owner would conduct the work. While excess funds do go back to
20 ratepayers, that is only relevant if there are excess funds. Since WPL is in effect a
21 fiduciary for this ratepayer-contributed funding, one would have expected them to
22 consider that selling the ROFR to NorthStar could have returned an immediate \$25
23 million to their ratepayers and/or shareholders. As Mr. Ripp states, he is not an attorney

1 so it is unclear how/who decided that a provision that does not exist precluded the sale of
2 the ROFR to NorthStar, especially in light of Paragraph 10 of the ROFR, which explicitly
3 indicates that assignment was contemplated as being acceptable.

4 **Q. Have you read the testimony of Dan Krueger on behalf of Wisconsin Public Service**
5 **Corporation (“WPSC”)?**

6 A. Yes.

7 **Q. What is your response to Mr. Krueger’s testimony?**

8 A. I agree with most of what Mr. Krueger says just as I do with Mr. Ripp’s testimony. The
9 conclusion drawn on page 6, line 15 of his testimony is the same as Mr. Ripp provided
10 regarding assignability of the ROFR. Both Mr. Ripp and Mr. Krueger take the position
11 that they were advised by counsel on the assignment issue. It would be enlightening to
12 know that if the conclusion about assignability were incorrect, how WPL and WPSC
13 would view this option. Neither Mr. Ripp nor Mr. Krueger state what their employers
14 would have done if they had not drawn this incorrect conclusion about assignability. The
15 ROFR is plainly assignable. It specifically contemplates assignment and has no
16 restrictions upon assignment. My company has been party to hundreds, if not thousands,
17 of contracts. Restrictions on assignment are one of the most common, and boilerplate,
18 terms for a contract. The absence of such a term here indicates, as we have concluded,
19 that the ROFR is in fact assignable.

20 I have no disagreement with Mr. Krueger’s testimony that WPSC reacquiring the
21 facility would not make sense for the same reasons that WPL had. He, like Mr. Ripp, did
22 not present any compelling information to suggest that the NDT funds will be efficiently
23 spent and maximize return to ratepayers.

1 The only other area that I would disagree with in Mr. Krueger's testimony is with
2 regard to NorthStar pitting the utilities against each other (page 6, line 8). NorthStar
3 simply needed to make it clear that only a total of \$25 million would be paid to obtain a
4 ROFR. If both parties wanted to assign their ROFR, NorthStar would have been happy
5 to pay each \$12.5 million or some other proportional split of \$25 million, as the two
6 utilities may agree (and still would today) upon closing of a transaction to acquire KPS.

7 Both WPL and WPSC have noted that they engaged with *EnergySolutions* and
8 Dominion to obtain an option agreement to re-acquire the site after decommissioning.
9 NorthStar would have deeded the property at no cost to the local community (as it is
10 doing in Vermont) or any interested party for future development purposes rather than
11 sell it for fair market value.

12 The utilities' decision to waive the ROFR was not prudent and, if it is allowed to
13 stand, will cost Wisconsin ratepayers substantial additional money. The Commission
14 should deny the declaratory ruling and order the utilities to assign the ROFR to
15 NorthStar.

16 NorthStar's plan if it were able to acquire a ROFR would be to execute on the
17 ROFR and step into the transaction as allowed under terms of the ROFR. As the new
18 counter party NorthStar would seek PSC approval with Dominion under the defined
19 process and offer up additional proffered conditions that reduce cost and mitigate risk to
20 ratepayers. Specifically, NorthStar would provide a granular pay item schedule that
21 would define at inception every dollar that NorthStar would ever take from the NDT with
22 a total transferred to a subaccount of the NDT at closing in the amount of \$550 million.
23 This would entirely cap decommissioning costs and the excess funds would be available

1 to return to ratepayers. This would be essentially identical to the approach that was used
2 in Florida for the Crystal River 3 project as approved by the Florida PSC where the NDT
3 was over funded and excess funds were segregated for return to ratepayers.

4 NorthStar would also agree to guarantee the cost on every line item of the pay
5 item schedule and provide appropriate guarantee mechanisms for each element of the
6 work and the overall project. In addition, NorthStar would agree to fund an escrow
7 account up to a value of \$50M, seeded with \$20M at the closing of the transaction with
8 NorthStar's own funds, plus 10% of all NorthStar's billings on the Kewaunee project
9 going into the escrow until it reaches \$50M. NorthStar would also offer a parent support
10 agreement/parent guarantee, a pollution policy covering unknown non-radiological
11 environmental contamination and performance bonds where appropriate for additional
12 assurance of performance. NorthStar provided all of these protections in the CR3
13 transaction and similar protections in the Vermont Yankee transaction.

14 These new proffered conditions would allow for direct PSC oversight as deemed
15 necessary and could match what is done by the State of Vermont as a starting model.
16 NorthStar would commit to complete transparency and report monthly to the PSC of
17 funds spent and work performed, always aligning the percentage of work completed for
18 each line item with proper spending.

19 The NorthStar offer is still valid to pay one of the owners \$25 million for their
20 ROFR or if both want to sell then \$12.5 million each upon closing of the sale of KPS to
21 NorthStar. Those funds could immediately be returned to ratepayers as a down payment
22 on the future return of funds they deserve. It would seem prudent to allow as many
23 legally defensible options to be explored as possible that could benefit the citizens that

1 have paid for the decommissioning of the Kewaunee Power Station via ratemaking for
2 decades.

3 **Q. Based on your experience in the industry and your review of the proposed**
4 **transaction between Dominion and EnergySolutions, are the terms of the proposed**
5 **transaction adequate to protect Wisconsin ratepayers?**

6 A. No. The terms lack any controls whatsoever over spending from the NDT, which are
7 ratepayer funds. As explained above, a project such as this should be undertaken by a
8 qualified and competent counterparty that will agree to a market competitive fixed price
9 for the decommissioning and site restoration work, guaranteeing the return of ratepayer
10 funds, while also providing financial assurance in the form of cash out of its own pocket
11 placed in escrow to assume the risk of cost overruns. The contractor, not the ratepayer,
12 should be assuming the risk of performance. That is not the case with the proposed
13 transaction, which allows EnergySolutions to use as much of the NDT as it desires,
14 draining it dry for its own needs.

15 **Q. Does this conclude your direct testimony?**

16 A. Yes