BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

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| Application of Dominion Nuclear Projects, Inc. and Dominion Energy Kewaunee, Inc. for Approval of the Sale of Dominion Energy Kewaunee, Inc.'s Stock to Dominion, LLC | Docket No 9812-EI-100 |

# REPLY BRIEF OF NORTHSTAR GROUP SERVICES, INC.

The Commission has not abandoned all control over or interest in the nuclear decommissioning trust ("NDT") as Applicants argue. Nor should the Commission do so here. The requirement to return excess NDT funds at the conclusion of decommissioning was a fundamental component of a package of "safeguards" that were critical to the Commission's review of the 2005 transaction. Without those safeguards, the Commission unequivocally determined in 2004 that the Kewaunee Power Plant should remain under the plenary authority of the Commission. Dominion was only able to acquire the plant by committing to those safeguards. The Applicants' attempt to significantly water those safeguards down now should be rejected. Rather, the Commission should continue to protect the ratepayers' interest in the NDT fund by applying the Proffered Conditions in a manner that actually "safeguards" the public.

The Applicants essentially argue that the Commission has no authority to determine whether Proffered Condition 9 has been or will ever be complied with. EnergySolutions has said it will return excess funds – that bare assertion, according to the Applicants, is the full extent of the Commission's jurisdiction on that question. Under this view, the Commission does not even have the authority to review the entire Stock Purchase Agreement. Nor can the Commission, at least according to the Applicants, require any kind of competitive solicitation for the transaction or any part of decommissioning, impose audit requirements, or even ask why certain costs are

nearly double the market rate. Most importantly, the Applicants assert that the Commission should completely disregard the experience and expertise of NorthStar Group Services ("NorthStar") and ignore the clear evidence in the record that at least one other company could guarantee over $200 million will be returned to the Wisconsin public. Proffered Condition 9 might *allow* such a laissez faire approach to the public's interest, but it does not require it.

The Commission should decline to approve the Proposed Transaction. Alternatively, the Commission should impose conditions upon its approval that ensure the public will also have a seat at the table when hundreds of millions of dollars are divvied up.

## I. ARGUMENT

### a. Nothing in the 2005 Order Requires the Commission to blindly accept EnergySolutions "commitment" to return excess funds.

EnergySolutions argues that "the record includes extensive evidence regarding EnergySolutions' commitment to return excess funds to ratepayers."[1] The extensive evidence referred to is nothing more than a promise to return whatever funds happen to be left when the company is finished. It is true, the record "extensively" repeats this hollow commitment.

The record also shows what EnergySolutions means by its commitment. It shows that EnergySolutions will not commit to a fixed-price or any meaningful restraint on overspending. Indeed, despite its purported industry-leading expertise, EnergySolutions claims there is so much uncertainty to decommissioning that giving the public the benefit of a fixed-price commitment would be irresponsible.[2] Similarly, the record shows that EnergySolutions is not willing to segregate *any* amount of the NDT for the eventual return to ratepayers or to commit in any other way to a specified amount being returned. Nowhere in the record does EnergySolutions commit

[1] Initial Brief of EnergySolutions, pg. 2.
[2] Tr. 158: 3-13.

to competitively source waste disposal (the largest project cost component)[3] whatsoever or to bid any other portion of the decommissioning. Without logical explanation, the Applicants go so far as to assert that a fixed-price or any sort of spending constraint would somehow pose a risk to the public.[4] This absurd effort to characterize the Applicants' blank check backroom deal as being in the public's interest must be called out for what it is – an effort to fleece the Wisconsin ratepaying public.

Rather than making any sort of valuable "commitment", EnergySolutions instead asserts that ratepayers, and not industry, should bear the risk of cost overruns for decommissioning.[5] EnergySolutions is further opposed to any Commission role that might result in state oversight of how it manages nearly one billion dollars of ratepayer funds.[6] Its "commitment" is nothing more than a request that the Commission trust EnergySolutions completely.

But if the Commission is inclined to trust anything moving forward, it should trust that EnergySolutions will continue to behave as it has to date: prioritizing its business interests over the public's interest in the prudent expenditure of ratepayer funds. EnergySolutions has a history of extinguishing trust funds on its projects and should be trusted to do so again here.[7]

If EnergySolutions actually intended to be a good steward of NDT funds, it would not go to such lengths to avoid any public or Commission scrutiny. The company grossly exaggerates the role of the Nuclear Regulatory Commission ("NRC"), hoping the Commission will abrogate critical state oversight of the decommissioning process.[8] [redacted]

[redacted]

[3] Direct-NorthStar-Smith-3; Tr. 185:22-186:25.
[4] Tr. 158:3-160:7.
[5] Tr. 159:13-160:6; see also Mr. State's testimony at Tr. 184:14-185:4.
[6] See generally EnergySolutions In. Br. at 13-15.
[7] Direct-NS-State-7-8.
[8] Direct-NS-State-4:22-7:18; Tr. 173:8-176:12.

[redacted].[9] What's left over will be returned, we're told. But this is not pocket change after a child's trip to the candy store. The Wisconsin public is owed *at least $200 million*. The public is owed reasonable accounting, competitive solicitations, and a true commitment to return excess funds – not just EnergySolutions' hollow commitment to return the change.

Almost every position taken by EnergySolutions in this case shows how little its commitment will protect ratepayers. Rather than use NorthStar's offer as a baseline to determine what is excess, EnergySolutions indicates that the "unknowns will dictate what constitutes excess."[10] Not the Commission, not a comparison to a competitor's offer, but an "unknown". The Commission would be excused for having concerns with this approach. The excess funds are not a mystical, unknowable fact. The Commission can determine *today* that when a competitor swears under oath that it can and will decommission the plant by segregating all amounts in excess of $550 million, those amounts are the excess and those amounts should eventually be returned to the ratepayers. If EnergySolutions will not commit to doing so, it is telling the Commission that it will not, in fact, comply with Proffered Condition 9.

b. <u>The Commission's decision to no longer pre-approve every trust withdrawal does not mean that EnergySolutions can do whatever it wants moving forward.</u>

The Applicants place great weight on the Commission's discussion in the 2005 Order in which the Commission recognized that it would no longer review every single trust withdrawal.[11] They conclude from this statement that the Commission must have meant it would

[9] Tr. 88:1-90:14; Tr. 101:14-17.
[10] EnergySolutions In. Br. at 19. Contrast this to Mr. State's testimony: Tr. 186:5-25.
[11] Dominion In. Br. at 10 citing *In re Application for All Approvals Necessary for the Transfer of Ownership and Operational Control of the Kewaunee Nuclear Power Plant from Wisconsin Public Service Corporation and Wisconsin Power and Light Company to Dominion Energy Kewaunee, Inc.*, No. 05-EI-136 (Wis. P.S.C. Apr. 21, 2005) ("2005 Order") at 22.

have no say whatsoever in how trust funds are spent moving forward. But Commission jurisdiction is not a binary choice between extreme scrutiny and complete indifference. At the time the Commission approved the 2005 transaction, it had absolute authority over the trust and the utilities who owned the plant. In 2004, the Commission determined it was unwilling to give up that authority. The Commission only modified that decision when the important protections of the Proffered Conditions were agreed to. Much is now said about the "regulatory compact"[12], but the parties cannot rewrite that deal today and they too must meet their end of the bargain. Dominion was able to acquire a key generating asset in Wisconsin, realize substantial economic benefit from the multi-year purchase power agreement with the Utilities, and take possession of a staggering trust for decommissioning. It is true that Dominion was also relieved from the then existing obligation to obtain pre-approval for every trust withdrawal. But reading that part of the decision as relieving Dominion of any responsibility to the public to spend the money wisely is a stretch.

c. The Right of First Refusal is patently assignable.

In light of the Wisconsin Public Service Corporation ("WPSC") and Wisconsin Power and Light Company's ("WPL") (the "Utilities"), failure to even consider NorthStar's offer, the Utilities and Applicants now tie themselves in knots attempting to avoid the plain language of the Right of First Refusal ("ROFR") – that it "inure[s] to the benefit of, the parties hereto and their successors and assigns".[13] Not surprisingly, they are unable to make a coherent, much less persuasive, argument regarding assignability. For example, EnergySolutions cites only a University of Chicago Law Review article from 2001[14] that (1) merely suggests rights of first

[12] Dominion In. Br. at 11
[13] Ex.-Dominion-Avram-1pr, 102 of 115.
[14] EnergySolutions In. Br. at 27, fn 19, citing *Can a Right of First Refusal be Assigned?* 68 U. Chi.L.Rev. 985.

refusal should not be assignable, (2) concedes that they often are assignable[15] and, more importantly (3) does not contain a single reference to Wisconsin law.

Dominion and the Utilities, on the other hand, cite to *Nature Conservancy of Wis., Inc. v. Altnau* – a Wisconsin case that only further demonstrates that the ROFR is, in fact, assignable. The Utilities' arguments, in particular, are based on a wholly incorrect reading of *Nature Conservancy* and are made out of context. The actual issue in *Nature Conservancy* was not whether the ROFR was assignable, but rather whether it was an appurtenant interest or an interest in gross. *Nature Conservancy of Wis., Inc. v. Altnau*, 2008 WI App 115, ¶ 8, 313 Wis. 2d 382, 756 N.W.2d 641. The court found that the benefit of the right was tied to the interest holder's ownership of adjoining land and was thus an appurtenant interest that could not be transferred separate from the benefitted land.[16] Here, there is no question that the Utilities' beneficial interest in the ROFR is in gross.

An interest in gross is either (1) personal and not assignable or (2) assignable.[17] In *Nature Conservancy*, the court explained that the right at issue was, in fact, assignable and not personal stating: "The agreement makes this much clear by specifying that the right belongs not only to the 'grantees' but to their 'heirs, successors, and assigns.'"[18] Here, the same basic language used in the Utilities' ROFR demonstrates that the interest is manifestly assignable and not personal.

d. <u>A new or modified Bona Fide Offer will trigger the ROFR once again.</u>

Dominion's argument that the Utilities' already waived the ROFR may be technically correct as to the Proposed Transaction, but that does not stop the Commission from rejecting the

[15] "The courts *should* develop a default rule that rights of first refusal are personal, and not assignable, unless the parties' agreement clearly indicates otherwise. This approach would be preferable to relying on a case-by-case determination of the parties' intent…" 68 U. Chi.L.Rev. 985 at 986-987, emphasis supplied.
[16] "Because the right of first refusal is appurtenant to land not owned by Altnau, he does not hold the right and the circuit court properly dismissed him from the case." *Nature Conservancy*, 2008 WI App 115, ¶ 21.
[17] *Nature Conservancy*, 2008 WI App 115, ¶¶7-8.
[18] Nature Conservancy, 2008 WI App 115, ¶ 8.

Proposed Transaction or finding that the waiver was unreasonable and imprudent. Requiring Dominion to go back to the drawing board or make modifications to the Proposed Transaction will trigger the need for a new notice to the Utilities and a new decision period upon receipt of a modified Bona Fide Offer.[19] Under the Proffered Conditions, the ROFR remains in place and the Utilities may once again have the opportunity to use it prudently. Additionally, with or without the ROFR assignment and exercise, no entity could acquire KPS without being bound by the Proffered Conditions, including Proffered Condition 4 requiring Commission approval before transfer. Any unregulated assignee of the ROFR would still need Commission approval before any transfer of KPS occurred, and a proceeding like this one would need to occur.

e. <u>The Utilities did not act prudently when they waived the ROFR.</u>

Waiving the ROFR was not a decision the Utilities made with care. Nor was it a decision the Utilities were actually rushed to make as argued in their brief. [20] While the ROFR sets forth a 60-day deadline for a decision on waiver, the Utilities had actually much longer to consider their options including assignment of the ROFR. In fact, the Utilities were in negotiations months before the May 11, 2021 date the Notice of Intent to Transfer was submitted[21] and were in significantly less of a rush than claimed. There was time for them to, as the Citizens Utility Board puts aptly, conduct their own review with their own determinations, rather than relying on Dominion's representations of EnergySolutions's qualifications.[22] That they failed to seek additional information or allegedly received incorrect legal advice on assignment should not excuse their collective failure to act reasonably and prudently.

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[19] "…any transferee of a Permitted Transfer must petition the PSCW to reopen any final order in PSCW Docket 05-EI-136 for the purpose of obtaining an amended order finding that the transferee has agreed to be bound by all of the conditions proffered…" ROFR, par. 2 Ex.-Dominion-Avram-1p at 101 of 115; see also "the ROFR requires a declaratory ruling when it is exercised or waived…" Direct-WPL-Ripp-12:3-4.
[20] WPSC WPL In. Br. at 7.
[21] Direct-WPSC-Krueger-3; Direct-WPL-Ripp-9.
[22] Citizens Utility Board In. Br. at 12.

Moreover, at the same time the Utilities allegedly concluded there was no way to assign the ROFR, they were working on another real estate agreement that contained an express restriction on assignment.[23] The Utilities claim that they did not believe the ROFR to be assignable is simply not credible. Instead of considering the implications for their customers' money in the NDT, the Utilities waived the ROFR and an opportunity to have a guaranteed return of ratepayer funds without a second thought.

f. <u>The NRC does many things, but it does not and will not ensure that NDT funds are spent reasonably or prudently.</u>

Despite the Applicants' continued insistence to the contrary, the NRC simply does not regulate the prudence of NDT expenditures; its focus is on ensuring that the fund is adequately funded, not on whether those funds are spent wisely. None of the regulations cited by the Applicants provide authority for the NRC to regulate the prudence of expenditures. Nor do the Applicants point to a single example of an instance where the NRC has evaluated the prudency of an expense. If the NRC is such a prolific regulator of NDT expenditures, surely the Applicants could provide a single example of the NRC issuing an order where a cost was scrutinized. They have not because they cannot. Conversely, NorthStar's Chief Executive Officer and Chief Nuclear Officer (CEO & CNO) Scott State has provided example after example of NRC interactions that demonstrate that the NRC acts exactly as NorthStar contends: as long as there is enough money in a trust fund, the NRC will not intervene.[24]

The absurdity of the Applicants' argument is laid bare by simple example: the Commission, in fact, regulates the prudency of utility expenditures. As a result, every initial brief in this proceeding cites actual examples of the Commission evaluating such claims. Yet, no

[23] Ex.-WPSC-Krueger-1, 9 of 33, ¶14.
[24] Direct-NS-State-4:22-7:18.

proponent of this transaction can cite a single example of the NRC doing the same.

Instead, EnergySolutions relies on a broad pronouncement in a Seventh Circuit decision – *Pennington v. ZionSolutions LLC*, 742 F.3d 715 (7th Cir. 2014) – a pronouncement that was unrelated to the case's holding. It is true that Judge Posner accepted, in dicta, the argument that EnergySolutions repeats here: the NRC has plenary jurisdiction over trust malfeasance. But the actual dispute in that case did not turn on the nuances of the NRC's jurisdiction. It involved the application of Illinois trust law.[25] The Seventh Circuit found that even though the ratepayers had a "residual interest" in the trust funds, they did not have standing to litigate claims that trust funds were being wasted because they were not named beneficiaries of the trust.[26] "There is a difference between an interest and a right", the Court said as it determined that a private cause of action was not sustainable.[27] The Court also criticized the plaintiffs for not challenging the transfer of the trust to EnergySolution's affiliate before the Illinois Commerce Commission, as NorthStar and the Citizens Utility Board do here. The Court went so far to say that even if ZionSolutions was stealing money from the trust, no private cause of action could be made under Illinois law.[28] After the ICC approved the transfer, the ratepayers have no further recourse. As we now know, the Zion trust was eventually depleted without a cent being returned to ComEd's ratepayers.[29] And despite arguing to the Seventh Circuit that the NRC would review trust malfeasance, EnergySolutions still cannot provide the Commission with a single example of it having done so, let alone at Zion. The true lesson of *Pennington* is that this is the last shot for Wisconsin ratepayers. If the Commission does not act, no one else will.

[25] *Pennington v. ZionSolutions LLC*, 742 F.3d 715, 719 (7th Cir. 2014).
[26] *Pennington*, 742 F.3d at 718.
[27] *Id.*
[28] *Id.*
[29] Direct-NS-State-8:4-6.

EnergySolutions also cites the NRC's memorandum and order in *Sequoyah Fuels Corp and General Atomics* for the proposition that the NRC can assess the reasonableness of decommissioning expenditures through its "inspection and enforcement authority to challenge a licensee's improper or unreasonable expenditure of NDT funds."[30] It is notable that EnergySolutions has to go back twenty-five years to find a single example that even remotely suggests the NRC will review trust fund expenditures for prudency. Even then, the order simply does not show what EnergySolutions claims.

In *Sequoyah*, the NRC considered an appeal following the Atomic Safety and Licensing Board's ("Board") approval of two settlement agreements between NRC staff and SFC, and its parent company GA.[31] The agreements settled an NRC enforcement action against both companies that sought to hold them jointly and severally responsible for providing financial assurance for decommissioning an SFC facility.[32] The fact that a settlement agreement addressed broader concerns is hardly evidence that the NRC routinely reviews expenditures to determine that they are reasonable. Indeed, if *Sequoyah* shows anything, it shows that the NRC will not get involved unless and until imprudence threatens to entirely exhaust a trust *and* a settlement agreement provides additional authority to regulate that specific trust. The NRC specifically cited that settlement agreement as key to providing it authority over trust abuses.[33] The case is not unlike the rash of sue and settle Clean Air Act cases from the past fifteen years. Just because a party might agree to a host of actions to obtain a settlement, does not mean the EPA could have

[30] EnergySolutions Initial Brief at 15 n. 12.
[31] *In the Matter of Sequoyah Fuels Corporation and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding) 46 N.R.C. 195, 1997 NRC LEXIS 45 (Oct. 8, 1997) ("*Sequoyah*")..
[32] Sequoyah, 1997 NRC LEXIS 45 at "Background".
[33] *Sequoyah*, 1997 NRC LEXIS 45 at "Improper Disbursal of Assets" (acknowledging the "risk of improper disbursal" but agreeing with the Board that "the NRC is not left helpless in the event of any deception" on SFC's part; reasoning that an enforcement action could be launched for violation of the settlement agreement, and that if the "improper disbursements" were paid to GA or an entity with knowledge of the settlement NRC could seek reimbursement from the recipient.).

independently ordered those actions. The NRC's interest is to ensure that adequate funding is available to complete decommissioning.[34] Unless EnergySolutions's actions threaten to waste the entire trust fund, the NRC will not intervene.

g. NorthStar's offer to define excess funds today, segregate those funds, and guarantee their return is binding, credible, and supported by the record.

Both EnergySolutions and Dominion discount NorthStar's participation and proposal in this docket as nothing more than the work of a disappointed competitor.[35] They argue the Commission should disregard NorthStar's fixed-cost offer, suggesting that it is of "dubious integrity" and is hastily conceived.[36] They imply that NorthStar's offer is a gimmick or a stunt to grab attention, arguing it is proposed without factual basis or accountability.[37] These attempts to cast NorthStar as scorned and unserious are devoid of reality and represent a cynical attempt to provide the Commission with cover to shrug its shoulders and rubberstamp a blank check proposal. NorthStar is not here to play games or make a splash. As NorthStar's Chief Executive Officer and Chief Nuclear Officer Scott State repeatedly testified under oath, NorthStar's fixed-price offer to acquire the ROFR and step into the transaction subject to a $550 million cap is a firm offer.[38] NorthStar is 100% certain that KPS decommissioning is achievable by segregating $550 million in the NDT for decommissioning and retaining the excess for return to ratepayers.[39]

h. NorthStar's fixed-price offer is based on extensive industry experience and familiarity with KPS.

EnergySolutions and Dominion would have the Commission believe that NorthStar lacks sufficient experience estimating decommissioning costs and familiarity with the KPS site to

[34] Direct-NS-State-5.
[35] EnergySolutions Initial Brief at 3, Dominion Initial Brief at 20.
[36] EnergySolutions Initial Brief at 3, Dominion Initial Brief at 25.
[37] EnergySolutions Initial Brief at 3, 21, Dominion Initial Brief at 25.
[38] Direct-NS-State-24-25, 28-29; Tr. 183:3-14.
[39] Surrebuttal-NorthStar-State-5r.

make its fixed-price offer.[40] The fact is, NorthStar's proposal is credible, and the company is exceptionally qualified to make its offer and to carry out decommissioning. NorthStar was the first company to enter a transaction like the one proposed for KPS, and whenever the company has entered a competitive process for this type of transaction, NorthStar has been found qualified.[41] The fixed-price offer presented in this case has the backing and expertise of the world's largest demolition company and is based on that company's experience in state regulatory proceedings regarding decommissioning projects, its history with actually decommissioning nuclear facilities, and its familiarity with KPS and analogous plants.[42]

NorthStar's diligence regarding KPS dates back almost a decade. NorthStar engaged in advanced discussions with Dominion concerning the sale and decommissioning of KPS and expected a request for proposals regarding the same.[43] NorthStar met with Commission staff in 2014, and in 2015, it participated in joint meetings with Dominion and Commissioners regarding KPS where Dominion presented NorthStar as "technically and financially capable" with "[e]xtensive experience in nuclear decommissioning activities."[44] Any suggestion that NorthStar lacks sufficient experience to estimate decommissioning costs or the familiarity with KPS to make its fixed-price offer conveniently ignores NorthStar's history with KPS and Dominion and the company's track record of competing for and earning decommissioning projects.

NorthStar's decisions to commit $25 million of its own money to step into the ROFR and to commit the company to decommissioning KPS for $550 million were ultimately Mr. State's decisions to make.[45] The decisions were not made lightly. Since 2010, Mr. State has

[40] EnergySolutions Initial Brief at 20-21; Dominion Initial Brief at 25-26.
[41] Direct-NS-State-22.
[42] Direct-NS-State-2, 6, 9-13, 22; Surrebuttal-NorthStar-State-5r.
[43] Surrebuttal-NorthStar-State-3r.
[44] Surrebuttal-NorthStar-State-3r; Ex.-NorthStar-State-13.
[45] Surrebuttal-NorthStar-State-6r.

served as NorthStar's CEO & CNO.[46] He stands at the helm of a company that has earned a reputation for successful, timely, and safe project execution developed over the course of 30 years and more than 100,000 projects including hundreds of projects decommissioning power plants.[47] This same company has been involved in five NRC license termination proceedings, in addition to NRC license transfers for Vermont Yankee and Crystal River 3.[48] Since the early 1990's, Mr. State has led projects and companies engaged in nuclear services for utilities, decommissioning nuclear facilities, nuclear waste management, and complex environmental remediation.[49] NorthStar, and other companies Mr. State led, have worked with and on behalf of governmental and commercial clients.[50] As a member of the reactor engineering group at Prairie Island Nuclear Generating Plant, he gained intimate familiarity with a plant nearly identical to KPS.[51] NorthStar's fixed-price offer was carefully developed and is the product of a company and personnel with knowledge and expertise to see it through.

i. NorthStar's fixed-price offer is not without consequence.

NorthStar is well aware that there are consequences to its proposal, and it will be held accountable if given the opportunity to acquire KPS and decommission the facility. If the Commission denies the Proposed Transaction, NorthStar will need to obtain the Commission's approval to acquire KPS. NorthStar will be subject to the Proffered Conditions, including Proffered Condition 9 which it is adamant applies in this proceeding. Furthermore, Commissioners, staff, and intervenors will be well aware of the commitments that NorthStar has made here and will surely hold it accountable for any attempts to stray from those commitments.

[46] Ex.-NorthStar-State-1.
[47] Direct-NS-State-2.
[48] Direct-NS-State-6.
[49] Ex.-NorthStar-State-1.
[50] Direct-NS-State-2; Ex.-NorthStar-State-1.
[51] Surrebuttal-NorthStar-State-5r.

Mr. State understands that NorthStar's participation in this docket and the positions the company has taken will have lasting effects on NorthStar's future efforts to work with Dominion.[52] NorthStar has taken on that risk because the Proposed Transaction is bad for the nuclear industry, and it is bad for ratepayers.[53] This is not about a company grabbing attention or causing grief for a competitor. This is about taking a stand against a project being "awarded" where those who pay for the project stand to be taken advantage of. As Mr. State testified, the problems with the Proposed Transaction affect customers and industry alike:

> It is not good business to take advantage of a large group of individuals that have been customers for decades. It is unfair and it is bad for the industry if the cost to retire nuclear facilities is grossly overstated. Nobody wins except the contractor when the industry cost standard is inflated at the expense of ratepayers.[54]

j. Fixed-price contracts are not bad public policy as EnergySolutions claims.

NorthStar's fixed-price proposal provides certainty and will ensure return of ratepayer funds exceeding the fair market value of the cost of work.[55] The fixed-cost approach mitigates against the incentive and ability to operate inefficiently or pay for costs that exceed fair market value.[56] Combined with NorthStar's proposals for escrow and a parent guarantee, it also means the decommissioning agent bears the risk of poor execution rather than ratepayers.[57] Despite this, EnergySolutions contends that NorthStar's fixed-price offer is bad public policy.[58] This is unsurprising considering that EnergySolutions is seeking Commission approval for its preferred blank check approach to the ratepayer-funded NDT. While NorthStar and EnergySolutions have been involved in similar projects and can agree that safety is paramount, NorthStar cannot agree

[52] Surrebuttal-NorthStar-State-2r.
[53] *Id.*
[54] *Id.*
[55] Direct-NS-State-12.
[56] *Id.*
[57] Direct-NS-State-12; Tr. 183:19-23.
[58] EnergySolutions Initial Brief at 19-21.

with the complete lack of a competitive process to identify the best, most cost-effective proposal to decommission KPS.[59] NorthStar cannot agree with EnergySolutions's unwillingness to define excess ratepayer funds or to publicly inform ratepayers of the amount it expects to return to them.[60] NorthStar cannot agree with the potential for overpricing work.[61] Without appropriate regulatory safeguards in place to ensure that excess ratepayer funds are identified and decommissioning costs are not inflated, the Proposed Transaction amounts to a financial windfall at the expense of Wisconsin ratepayers and the nuclear industry. *That* is bad public policy.

## CONCLUSION

The Commission has a rare opportunity to save the Wisconsin public $200 million. The proposed sole source sweetheart deal is not reasonable. When a company takes nearly a billion dollars held in trust for the public, it should expect oversight. Instead, the Applicants have deliberately designed a transaction that gives every incentive for the public's monies to be used for their private gain. It is no wonder they take such an unreasonably narrow view of the Commission's jurisdiction. No meaningful review of this transaction would result in its approval. It is a bad deal for the Wisconsinites who have been funding the NDT for forty years. The Commission should deny the Proposed Transaction.

Respectfully submitted,

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[59] Direct-NS-State-9-12.
[60] EnergySolutions Initial Brief at 18; Surrebuttal-NorthStar-State-8r.
[61] Direct-NS-State-12; Surrebuttal-NorthStar-State-2.