BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF: **NORTHSTAR ENERGY, INC.,** **LARRY M. KOONCE;** and **PAUL M. ESPOSITO**	**ORDER ON PENDING MOTIONS** Case Nos. SD-05-0041 SD-05-0042 SD-05-0043

BY THE ADMINISTRATIVE LAW JUDGE:

This adjudicative proceeding was initiated pursuant to the issuance of an August 15, 2005 Notice of Agency Action and accompanying Order To Show Cause. Respondents – through legal counsel Craig G. Ongley and Suzanne W. Fallon – filed a September 8, 2005 response. The Division – through counsel Jeffrey Buckner – filed a September 21, 2005 request for an initial prehearing conference.

The Court attempted to conduct a prehearing teleconference with Mr. Buckner and Mr. Ongley on April 3, 2006. However, the Court was not able to directly contact Mr. Ongley at that time. The Court thus left a message, requesting Mr. Ongley to contact the Court to then prompt the prehearing teleconference.

Sparing extended detail, the Court left a second message for Mr. Ongley on June 22, 2006. The Court then conducted a prehearing teleconference on that date with the parties. The Court thus scheduled the Division's disclosure of the relevant and non-privileged contents of its investigative file to Respondents no later than July 21, 2006. Further, the parties were granted

ongoing leave to pursue settlement negotiations as to possibly resolve this case in lieu of subsequent hearing.

The Court conducted another prehearing teleconference on August 28, 2006. Respective counsel informed the Court that no settlement negotiations have yet been conducted and the parties were thus granted additional leave to pursue that possibility. The Court confirmed Respondents had received the relevant and non-privileged contents of the Division's investigative file.

The Court conducted the next prehearing teleconference on September 21, 2006. The Court scheduled the Division's disclosure of its witness and exhibit lists to Respondents by October 5, 2006. Based on the need for further review of this proceeding with the parties, the Court conducted another prehearing teleconference on December 4, 2006. The Court noted its receipt of a November 17, 2006 letter from Mr. Ongley and a November 17, 2006 email transmission from Mr. Buckner.

The Court also informed respective counsel that any motion by Respondents to dismiss this proceeding has not been adequately framed. The Court thus scheduled the submissions on such a motion. Respondents were to file the motion by December 22, 2006, the Division's response thereto would be due on January 17, 2007 and Respondent's final reply was to be submitted by January 31, 2007.

Respondents' motion was duly filed on December 22, 2006. The Division filed an opposing memorandum to that motion, a motion for judgment on the pleadings and a supporting memorandum thereto on January 8, 2007. The Division next filed a January 26, 2007 request for a ruling on both motions.

Respondents filed a February 6, 2007 reply to the Division's statement of relevant facts and the Division's motion. The Division filed a February 28, 2007 reply supporting its motion for judgment on the pleadings. The Court conducted oral argument on the pending motions on March 8, 2007. Such argument was taken telephonically with Mr. Buckner representing the Division and Mr. Ongley appearing on behalf of Respondents. The Court took the motions under advisement at the close of oral argument, advising respective counsel that the Court had serious doubt as to the merits of either motion.

The Division subsequently filed a May 22, 2007 supplemental authorities and brief as to the pending motions. Respondents filed a June 8, 2007 objection to that supplemental submission, urging it was untimely and improper. Respondents also asserted that oral argument on the motions had been concluded and the Court had neither requested nor allowed any additional briefing. The Court subsequently conducted another teleconference with respective counsel. The Court informed counsel that it had not anticipated any further written submissions would be made on the pending motions.

However, the Court also informed counsel that the Division's supplemental submission would be received and Respondents could file a reply thereto. The Court thus granted Respondents leave until August 10, 2007 to file that reply. The Division next filed a July 27, 2007 request for a ruling on the pending motions. Respondents' reply to the Division's supplemental submission was duly filed on August 10, 2007.

Based on the Division's supplemental submission and Respondents' reply thereto, the Court determined that supplemental oral argument of a limited nature would be warranted before the Court could conclude its review and resolve the pending motions. That supplemental oral argument was conducted on December 14, 2007 by telephone with Mr. Buckner and Mr. Ongley.

The Court thus took the pending motions under advisement at the conclusion of the supplemental oral argument.

The Division filed a June 10, 2008 request for a ruling on the pending motions. That request included additional case law offered by the Division with regard to the pending motions. Respondents did not file any objection or reply to the Division's June 10, 2008 submission. The Division next submitted an August 27, 2008 request for a ruling on the pending motions.

Given the extended prehearing history of this case and the motion practice described herein, the Court concluded the additional arguments and/or case law set forth in the Division's June 10, 2008 request for a ruling on the pending motions should be entirely disregarded . Based on a review of the submissions properly filed by the parties and the oral arguments conducted in this proceeding, the Court now enters the following:

CONCLUSIONS OF LAW

Respondents contend the Division lacks subject matter jurisdiction to proceed with this action because Respondent Northstar Energy, Inc. is not an issuer of securities and has never sold any of its securities in Utah or elsewhere. Respondents also contend federal law preempts the Division's purported regulation of offerings under Securities and Exchange Commission Regulation D, Rule 506.

Specifically, Respondents allege they are not the issuers of the securities under review. Respondents dispute whether the website of Respondent Northstar Energy, Inc. constitutes any general solicitation in violation of Regulation D, Rule 502. Respondents contend the Northstar Las Raices Multiwell Prospect Joint Venture is an entity separate and distinct from Respondent Northstar Energy, Inc. under Texas law. Respondents' urgence that this proceeding should be dismissed is primarily based on Respondents' assertion that federal law preempts the Division's

attempt to proceed with this action. Respondents have filed the affidavit of Mr. Esposito in support of their motion.

The Division vigorously opposes Respondents' motion. The Division urges the Court to focus on the specific allegations of its pleading. The Division contends the Court should presume the constitutionality of the state statute in question, grant the Division's motion and leave Respondents to seek relief on appeal.

Moreover, the Division contends there is no underlying support for any factual assertions made by Respondents. The Division claims there is no difference between Respondent Northstar Energy, Inc. and the entity referred to herein as Northstar Las Raices Multiwell Prospect Joint Venture. The Division urges there are no foundational facts set forth in Mr. Esposito's affidavit as support for his averment regarding the identify of the issuer in this proceeding. The Division also asserts Respondents' submissions on their motion are bizarre and frivolous.

Regarding its motion for entry of judgment on the pleadings, the Division reiterates that the factual allegations of the Order to Show Cause have not been disputed by Respondents. The Division thus claims judgment against Respondents may be properly entered as a matter of law. Respondents contest the Division's assertions and urge that testimony can readily be offered in dispute of the Division's factual allegations.

During the March 8, 2007 oral argument, the Court directed various questions to both parties based on its review of the submissions made prior to that oral argument and the responses to the Court's inquiries during that argument. The Court initially informed the Division and Respondents that it appeared there were at least two fundamental factual disputes and that the Court had serious doubts whether either Respondents' motion to dismiss or the Division's motion for judgment on the pleadings had merit and should be granted.

Specifically, the Court informed the parties that it appears there is an essential factual dispute regarding whether Respondent Northstar Energy, Inc. was the issuer of the securities in question or whether the joint venture issued those securities. Based on the oral argument, it appears that, under Texas law, there is a distinction between Respondent Northstar Energy, Inc. and the joint venture. The Division asserts no such distinction exists under Utah law. However, no argument was offered by the parties as to the controlling law applicable in that regard for purposes of this proceeding.

The Court also noted there is a dispute as to whether the website under review – given its content – constitutes a general solicitation of securities. That issue appears to be a mixed question of fact and law and the Court seriously questions whether such a matter can be properly addressed and resolved in the context of these motions.

Given the foregoing, the Court subsequently determined a brief supplemental oral argument was warranted and such supplemental argument was thus taken on December 14, 2007. Based on that additional argument, the Court remains convinced there are the above-stated fundamental factual disputes which necessarily preclude granting either of the two motions in question.

The Court readily acknowledges the Division and Respondents believe this case can be resolved through the respective motions which have been filed, particularly regarding claims as to subject matter jurisdiction vis-a-vis the nature and scope of the federal exemption under Regulation D, Rule 502. Nevertheless, the Court is convinced an evidentiary hearing is properly necessary to afford both the Division and Respondents with the adequate opportunity to fully present and support their respective claims and defenses. The Court concludes the hearing

should be conducted as soon as reasonably possible following the issuance of this Court's rulings on these motions.

ORDER

WHEREFORE, IT IS ORDERED Respondents' motion to dismiss this proceeding is denied, consistent with the views expressed herein.. It is further ordered the Division's motion for judgment on the pleadings is similarly denied.

The Court will conduct a prehearing teleconference with respective counsel within ten (10) days from the mailing date of this Order. During that conference, the Court will schedule the parties' exchange of witness and exhibit lists, address the anticipated duration of the hearing and accordingly schedule that hearing.

Dated this 29th day of October, 2008.

J. Steven Eklund
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that on the 3RD day of NOVEMBER, 2008, a true and correct copy of the foregoing Order on Pending Motions was mailed via certified mail, postage prepaid to the following:

Craig G. Ongley
Dykema Gossett PLLC
Comerica Bank Tower
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A copy was hand delivered to the following:

Jeffrey Buckner
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160 E. 300 S., Fifth Floor
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Keith Woodwell
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PAMALA RADZINSKI

Pamala Radzinski
Executive Secretary