



Taunton Municipal Lighting Plant

Serving A Public Power Community

April 10, 1991

U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Chief, Policy Development and Technical Branch
Office of Nuclear Reactor Regulation

RE: Public Service Company of New Hampshire; Transfer of
Ownership Interest and Transfer of Management, Docket
No. 50-443; Federal Register Notices of February 28 and
March 6, 1991

Dear Commission:

Taunton Municipal Lighting Plant ("Taunton"), a Joint Owner
of Seabrook and a Massachusetts Municipal Light Department, hereby
submits its comments relating to the antitrust issues raised by
the proposed transfer of the license for the operation of the
Seabrook Station, as described in the Commission's notices
published February 28, 1991 at 56 Fed. Reg. 8373-75 and March 6,
1991 at 56 Fed. Reg. 9372-74, 9384.

Taunton adopts and incorporates herein the comments submitted
by the Massachusetts Municipal Wholesale Electric Company
("MMWEC") on April 1, 1991 pursuant to the above referenced
notices. A copy of MMWEC's comments is attached hereto. Like
MMWEC and certain other Joint Owners (whose Seabrook shares total
approximately 30%), Taunton is not a signatory to the July 19,
1990 Agreement.

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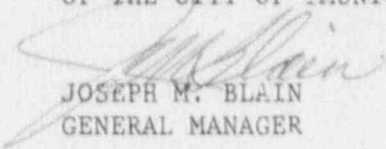
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For the reasons set forth in MMWEC's comments, the Commission must act to prevent Northeast Utilities from maintaining a situation inconsistent with the policies of the antitrust laws. At a minimum, the Commission should condition approval of the license transfer to require appropriate amendment of the Joint Ownership Agreement and to prohibit North Atlantic Energy Corporation, North Atlantic Energy Services Corporation and their affiliates from freeing themselves from liability for misconduct.

Very truly yours,

MUNICIPAL LIGHT COMMISSION
OF THE CITY OF TAUNTON



JOSEPH M. BLAIN
GENERAL MANAGER

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April 1, 1991

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Chief, Policy Development and Technical Branch
Office of Nuclear Reactor Regulation

Re: Public Service Co. of New Hampshire; Transfer
of Ownership Interests and Transfer of Management,
Docket No. 50-443; Federal Register Notices of
February 28 and March 6, 1991

Dear Commission:

The Massachusetts Municipal Wholesale Electric Company ("MMWEC"), a joint owner of Seabrook and a Massachusetts joint action electric power agency, hereby submits its comments relating to the antitrust issues raised by the proposed transfer of the license for the operation of the Seabrook Station, as described in the Commission's notices published February 28, 1991 at 56 Fed. Reg. 9373-75 and on March 6, 1991 at 56 Fed. Reg. 9372-74, 9384.

The transfers sought in this case are associated with Northeast Utilities' ("NU") proposed acquisition of Public Service Company of New Hampshire ("PSNH"). The Nuclear Regulatory Commission ("Commission") has declared that it will

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consider the FERC proceeding concerning this proposed acquisition "to the maximum extent possible." The Administrative Law Judge ("ALJ") in the FERC proceeding has already determined that the competitive structure of the New England electric utility industry would be changed as a result of the merger and the accompanying license transfer. Northeast Utilities Service Company (RE: Public Service Company of New Hampshire), 53 FERC para. 63,020 at p. 65,215 (1990). Such a change clearly constitutes a greater than de minimis license modification warranting further antitrust review.

The Director of the Office of Nuclear Reactor Regulation (the "Director") should find that significant changes in the licensee's activities and proposed activities, inconsistent with the policies of the antitrust laws, have occurred after the Attorney General's Advice Letter on Seabrook issued December 4, 1973. See South Carolina Electric and Gas Company, (Virgil C. Summer Nuclear Station, Unit No. 1), 13 NRC 862, 864, n.3 (setting forth criteria for a finding of significant changes).

Conditions imposed on the merger by the FERC ALJ will not resolve adequately antitrust issues for purposes of the Atomic Energy Act. FERC's standard of review requires only that the applicant show that the merger is compatible with the public interest. Utah Power & Light Co. (Opinion No. 318), 45 FERC para. 61,095 at p. 61,278-279 and 61, 299 (1988). Anticompetitive acquisitions are permitted under this standard. Florida Power & Light Co., 8 FERC para. 61,121 at 61,457 (1979).

However, the Atomic Energy Act requires the NRC to guard against an acquisition creating or maintaining a situation

inconsistent with the policies of antitrust laws, irrespective of any compelling public interest. 42 U.S.C. §2135. The Commission must independently evaluate the anticompetitive situation and impose appropriate conditions beyond those imposed by FERC. The NRC staff has already recognized that conditions additional to those imposed by the FERC ALJ are required by the Atomic Energy Act. In this regard, the NRC staff conditioned the proposed transfer to prohibit North Atlantic Energy Service Corporation ("NAESCO") from marketing or brokering Seabrook power.

NU's acquisition of PSNH's share of Seabrook is intertwined with and would exacerbate the anticompetitive situation, already found to exist by the FERC ALJ. NU currently controls a substantial percentage of New England's power supply and surplus generating capacity. The merger will further extend NU's control over the surplus generating capacity in New England, because NU will gain control of, *inter alia*, PSNH's 35.6% share of Seabrook capacity. See 53 FERC at p. 65,215. The rest of New England is or will be capacity deficient. In addition, the merger will expand and in some ways perfect NU's control over transmission and therefore its ability to control or stymie other New England utilities' access to power supply alternatives. Thus, there is an important nexus between the Seabrook nuclear license and the anticompetitive situation sufficient to warrant independent NRC action. Compare Kansas Gas and Electric Company, 1 NRC 559, 569 (1975); Consumers Power Company, 6 NRC 892, 917 (1977).

As to Seabrook specifically, the FERC ALJ's consideration was limited to synergies of NU's takeover of PSNH.

The FERC ALJ did not address the anti-competitive aspects of NU's management and operation of Seabrook. This issue should be addressed in the Commission's review of the requested license transfers.

NU has used its market power to insulate and exculpate itself from liability associated with its acquisition of PSNH's Seabrook interest and its takeover as Managing Agent to operate Seabrook. Unlike PSNH, which owned and operated Seabrook as part of its overall utility operations, NU proposes to sever both the ownership function and management function of Seabrook from each other and from its acquisition of PSNH's non-Seabrook assets. It proposes to amend facilities license No. NPF-86 to permit:

(1) ownership of PSNH's Seabrook interest by a subsidiary, North Atlantic Energy Corporation (NAECO) with no assets other than the former PSNH Seabrook interest; and (2) management of Seabrook through the newly created NAESCO, a subsidiary with no assets at all.

NU's anticompetitive market power is demonstrated by the July 19, 1990 Agreement which, among other things, provides for NAESCO to take over as Managing Agent to operate Seabrook. See Exhibit 1 to the application. NU won support for the July 19, 1990 Agreement from other joint owners, United Illuminating Company ("UI") and New England Power Company ("NEP"), by entering into settlement agreements, which provide UI and NEP with special transmission benefits in exchange for UI and NEP acquiescence in NU's acquisition of PSNH.

The July 19, 1990 Agreement exculpates NAESCO and its affiliates from liability for breach of the Joint Ownership

Agreement and related agreements except for their willful misconduct. The exculpatory clause purportedly would not only free NAESCO and its affiliates from harm done directly to MMWEC but also from responsibility for third party claims by others against MMWEC for any harm related to Seabrook. MMWEC cannot insure any reckless or negligent conduct of the Managing Agent or its affiliates. When MMWEC has objected to the exculpatory clause contained in the various agreements presented to the joint owners for approval, NU has repeatedly responded that the clause was agreed to in the July 19, 1990 Agreement. Yet MMWEC and certain other joint owners (whose Seabrook ownership shares total approximately 30%) are not signatories to the July 19, 1990 Agreement.

Undoubtedly, the Joint Ownership Agreement is the seminal document governing Seabrook. The July 19, 1990 Agreement is predicated on the provision in the Joint Ownership Agreement permitting a change in Managing Agent based on a vote of at least 51% of the ownership shares, which NU has been able to muster through settlements with UI and NEP. Amendment of the Joint Ownership Agreement requires an affirmative vote of joint owners owning at least 80% of the ownership shares, a percentage NU has been unable to achieve. NU has nevertheless proceeded to install NAESCO as Managing Agent (including this application to the NRC).

NU is executing a plan whereby it has separated the Seabrook management function and the ownership function from each other and utilized its market power to insulate itself, those functions and its other affiliates from any liability, except liability imposed by willful misconduct. NU does not seek to

execute this plan through the Joint Ownership Agreement. Rather, NU relies on the July 19, 1990 Agreement which was entered into by other Seabrook joint owners which settled their anti-competitive complaints in the FERC case. MNWEC contends that the unrestricted transfer of the license, as proposed by NU, merely furthers this anticompetitive scheme.

The Commission must act to prevent NU from maintaining a situation inconsistent with the policies of the antitrust laws. At a minimum the Commission should condition approval of the license transfer to require appropriate amendment of the Joint Ownership Agreement and to prohibit NAECC, NAECCO and their affiliates from freeing themselves from liability for misconduct.

Sincerely,

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April 1, 1991

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