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April 14, 1992

BY HAND

Dr. Thomas E. Murley, Director
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Re: Docket No. 50-423--Proposed Acquisition of the
Outstanding Common Stock of Fitchburg Gas and
Electric Light Company by UNITIL Corporation

Dear Dr. Murley:

This firm represents Fitchburg Gas and Electric Light Company ("Fitchburg"), a Massachusetts corporation which is a minority owner of the Millstone Nuclear Power Station, Unit No. 3. The purpose of this letter is to advise the Commission of the proposed merger of Fitchburg with UNITIL Corporation ("UNITIL"), a New Hampshire corporation. The merger has already been approved by various state agencies and the Federal Energy Regulatory Commission. The closing of the merger is scheduled for April 20, 1992.

Fitchburg owns .0217 percent of Millstone Unit 3; it has no involvement in or control over the operation of the plant. Upon completion of the proposed merger, Fitchburg will be a wholly-owned subsidiary of UNITIL. Fitchburg will continue to own the same minority interest in Millstone Unit 3 that it now owns, and it will maintain its corporate identity as a separate subsidiary of UNITIL. Thus, the license itself will not be transferred to any new entity, and Fitchburg will remain the licensee at all times during and after the merger. No other entity will acquire any ownership interest in Millstone Unit 3 as a result of the merger.

Upon completion of the merger, each outstanding share of common stock of Fitchburg will be converted into one share of common stock of UNITIL, and the present holders of Fitchburg common stock will become the majority shareholders of UNITIL. Fitchburg shareholders will thus continue to control Fitchburg's interest in the plant following the transaction. Moreover, a majority of the

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directors of UNITIL will consist of the present directors of Fitchburg. Because the present shareholders and directors of Fitchburg will continue to control Fitchburg, there will be no "transfer of control" of the license as described in 10 C.F.R. §50.80 (a).

In our view, this merger does not require any action on NRC's part. No direct or indirect transfer of the operating license for Millstone Unit 3 will occur as a result of the transactions described above. Fitchburg will continue in existence as a separate corporation; no license amendment to assign or transfer Fitchburg's minority interest in Millstone Unit 3 to another company is contemplated; and a majority of the holding company's stock will be owned by Fitchburg's current shareholders, who will continue to elect the majority of the holding company's directors and will control the surviving corporation.

Nonetheless, should the Commission believe that approval of this transaction is required, Fitchburg urges the Commission to give its consent. To that end, we are providing certain additional information concerning the Fitchburg-UNITIL merger.

Following completion of the merger, all of the officers and directors of Fitchburg and all of the officers and directors of UNITIL will be American citizens. Neither Fitchburg nor UNITIL will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The merger is expected to improve Fitchburg's financial position by providing greater opportunities in the purchased power market, as well as permitting more efficient operation through the integration of Fitchburg with the existing UNITIL subsidiaries. There will be no change in the outstanding bonded debt of Fitchburg as a result of the merger. UNITIL has no bonded debt. In approving the merger, the FERC examined the effect of the transaction on the capital structure and capital costs of both Fitchburg and UNITIL, and found no suggestion that the transaction would adversely affect the public interest in that (or any other) respect. See Fitchburg Gas and Electric Light Company, 58 F.E.R.C. ¶ 61,201 (1992). A copy of the FERC order is attached. The merger will not adversely affect the ability of Fitchburg to carry out its financial obligations under the license, both as to operation and as to decommissioning.

Fitchburg believes that antitrust review by the NRC of the proposed merger is neither required nor appropriate. 10 C.F.R. § 50.33a(a)(3) suggests that antitrust review is not required where an applicant has electrical generating capacity of 200 MW or less. Fitchburg's total ownership of generating capacity is 50.5 MW. The FERC has already looked into possible anticompetitive effects of

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the merger and has concluded that "there is no evidence that the transactions will adversely affect the existing competitive situation in New England." See FERC order, mimeo. at 9. As previously noted, there will be no change in Fitchburg's minority ownership of Millstone Unit 3 as a result of the merger. Accordingly, the Commission should conclude that no antitrust review is required.

As discussed above, we do not believe that the Fitchburg-UNITIL merger requires Commission approval. Nonetheless, to the extent that the Commission feels that its consent may be necessary, we urge the Commission to approve the transaction to the full extent required by law on or before April 20, 1992. If you need any additional information, please advise me, and we will respond immediately. Thank you for your attention to this matter.

Sincerely yours,

Harry H. Varg

Attorney for Fitchburg Gas
and Electric Light Company

cc (w/enc.): U.S. Nuclear Regulatory Commission
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Before Commissioners: Martin L. Allday, Chairman;
Charles A. Trabandt, Elizabeth Anne Moler,
Jerry J. Langdon and Branko Terzic.

Fitchburg Gas and Electric) Docket No. EC92-2-000
Light Company)

Fitchburg
EC92-2

ORDER DENYING REQUEST FOR DISCLAIMER OF JURISDICTION
AND AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued February 21, 1992)

On October 24, 1991, Fitchburg Gas and Electric Light Company (Fitchburg or Applicant) filed an application under section 203 of the Federal Power Act (FPA). The application seeks Commission authorization, if necessary, to dispose of jurisdictional facilities pursuant to a series of transactions involving both a merger and the exchange of common stock.

Specifically, Fitchburg proposes to merge with UMC Electric Company (UMC), a wholly-owned subsidiary of UNITIL Corporation (UNITIL). UMC was created solely for the purpose of effectuating the merger transaction and to facilitate the exchange of stock between Fitchburg and UNITIL. As a result of these proposed transactions, Fitchburg will become a wholly-owned subsidiary of UNITIL, 1/ a public utility holding company. The Applicant states that it believes that the transactions are not subject to the jurisdiction of this Commission under the FPA, and states that it reserves the right to contest jurisdiction if necessary at a later time. Nonetheless, because the transactions might be interpreted as a "disposition" of jurisdictional facilities under section 203 of the FPA, Fitchburg requests Commission approval of the transactions.

Background

Fitchburg is a public utility which supplies both electric and gas service at retail in the Town of Fitchburg, Massachusetts and other Massachusetts communities. In 1990, Fitchburg served over 25,000 retail customers and had a peak load of nearly 75 MW. Fitchburg operates a 26.75 MW turbine under a 25-year lease from Fleet Credit Corporation and has ownership entitlements totaling

21/ On December 16, 1991, Fitchburg filed a letter with the Commission advising that on December 3, 1991, the shareholders of both UNITIL and Fitchburg passed resolutions approving the proposed merger.

23.75 MW in three New England Power Pool (NEPOOL) planned generating units located in Connecticut and Maine. Fitchburg owns a limited 69 kV transmission network located entirely within its service territory, and is interconnected to the bulk power transmission system in New England through its 115 kV transmission substation with New England Power Company (NEPCO). Under the NEPOOL Agreement, Fitchburg is able to use the transmission systems of other NEPOOL members to transmit power purchased from other utilities and to transmit its ownership entitlements in NEPOOL planned units. Fitchburg currently does not provide wholesale requirements service to any customer, but does engage in short-term unit contract sales. 2/

UNITIL is a public utility holding company incorporated in New Hampshire. UNITIL owns all of the common stock of Concord Electric Company (Concord) and Exeter & Hampton Electric Company (Exeter). Together, Concord and Exeter provide electric service at retail to approximately 60,000 customers in several New Hampshire towns and in 1990 served a peak load of approximately 164 MW. UNITIL also owns all of the common stock of UNITIL Power, a public utility which provides wholesale power to Concord and Exeter and to other utilities. 3/ In addition, UNITIL wholly-owns UNITIL Service Corporation (UNITIL Service) and UNITIL Realty Corporation.

UNITIL Power owns no generation or transmission facilities. Instead, UNITIL Power purchases its power supply from a variety of sources and obtains transmission service from Public Service Company of New Hampshire (PSNH), which provides UNITIL Power with access to NEPOOL-designated transmission facilities and transmission services. UNITIL Power also leases certain facilities from Exeter to provide transmission service to PSNH for station service to the Seabrook Nuclear Power Station, which is located in Exeter's service territory.

UNITIL's electric utility subsidiaries are not directly interconnected with Fitchburg. The transmission facilities of NEPOOL members serve as a means of indirect interconnection between Fitchburg and UNITIL's electric utility subsidiaries. Fitchburg and UNITIL Power entered into a Power Supply Cooperation Agreement on March 1, 1989. Since that time, Fitchburg and UNITIL Power have, on several occasions, used NEPOOL-designated transmission services and other transmission services (obtained from NEPCO, PSNH and other New England utilities) to engage in power transactions with each other.

2/ The sales are made in accordance with the provisions of the NEPOOL Agreement and various rate schedules filed with the Commission.

3/ The three UNITIL electric utility subsidiaries are treated as individual participants in NEPOOL.

The Proposed Transactions

The proposed transactions will occur in several steps. First, UMC will issue 1,000 shares of common stock, at \$1.00 par value, to UNITIL and become a subsidiary of UNITIL. Next, UMC will merge with Fitchburg, with Fitchburg remaining as the surviving corporation. Then, each outstanding share of Fitchburg's common stock, par value \$10.00, will be converted into one share of common stock, no par value, of UNITIL. 4/ Fitchburg will then become a wholly-owned subsidiary of UNITIL. 5/

The Applicant states that the proposed transactions will create benefits to both Fitchburg and UNITIL, in the form of improved management planning and efficiency in corporate accounting, data processing, tax services and other administrative activities. The Applicant asserts that the proposed transactions will result in the ability to more effectively recruit and retain expert staff in specialized areas which will enable UNITIL to improve management planning and efficiency in administration. The Applicant contends that the proposed transactions will result in a greater opportunity to obtain economies through the coordinated purchase or procurement of supplies, equipment and insurance. The Applicant further asserts that the proposed transactions will allow a more favorable marketing of securities due to the greater financial strength of the combined companies.

The Applicant expects the proposed transactions to produce significant long-term power supply benefits. The Applicant believes that an integrated approach to power supply operation and planning will reduce costs and improve the diversity and flexibility of power supply. 6/ Fitchburg views the proposed

4/ Prior to consummation of the proposed transactions UNITIL is required to pay to its shareholders an 11 percent stock dividend.

5/ On October 22, 1991, the Maine Public Utilities Commission exempted the proposed transactions from approval under its state law. The Connecticut Department of Public Utility Control approved the proposed transactions on December 24, 1991. The Massachusetts Department of Public Utilities approved the transactions on January 10, 1992. Under Massachusetts law, Fitchburg is required to complete the transactions by March 10, 1992. Accordingly, Fitchburg requests that the Commission act on its application by March 10, 1992.

According to the Applicant, the specific benefits it expects to realize are:

(continued...)

transactions and the resulting corporate relationship as essential to the proper integration of the two systems.

The Applicant intends to take additional steps to more fully integrate operations if the proposed transactions are approved. Such additional steps include complete management integration of the two power supply systems and possible revision of the existing UNITIL System Agreement on file with the Commission to reflect participation by Fitchburg. The Applicant also plans to achieve, if economically feasible, a single operational power supply system within the NEPOOL framework.

Notice of Fitchburg's application was published in the Federal Register, 7/ with comments due on or before November 19, 1991.

On November 19, 1991, motions to intervene were filed by Green Mountain Power Corporation (Green Mountain), Northeast Utilities Service Company (Northeast) and PSNH. None of the intervenors has requested a hearing, but all seek to participate as a party in the proceeding.

Referring to the Commission's recent review of Northeast's proposed acquisition of PSNH, Green Mountain suggests that similar issues involving bulk power markets and the availability of transmission services in New England may arise in this proceeding and could impact the electric operations of Green Mountain. Northeast states that its operating companies are involved with both Fitchburg and UNITIL Power in various bulk power and wheeling transactions and may be affected by the proposed disposition of facilities. Because it also conducts transactions with both Fitchburg and UNITIL Power, PSNH claims that it too may be affected by the outcome of the proceeding.

6/(...continued)

- a. improved ability to participate in a competitive bulk power market and to influence the seller's price and terms due to potentially larger purchases of the combined system;
- b. greater flexibility to consider economical, large generating facilities, for either acquisition or construction; and
- c. increased ability to benefit from diversity in existing power supply commitments, to maintain a desirable diversity in power supply, and to take advantage of the diverse load characteristics of the two systems.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1991), the timely, unopposed motions to intervene of Green Mountain, Northeast and PSNH serve to make them parties to this proceeding.

Jurisdictional Analysis

Fitchburg believes that the proposed merger of Fitchburg with UMC and the exchange of stock between Fitchburg and UNITIL are not subject to the Commission's jurisdiction. Fitchburg reserves the right to contest jurisdiction if necessary at a later time. Fitchburg states that, after the transactions, it will continue to own the same facilities which it now owns; that it will not sell, lease, or encumber any of its jurisdictional facilities as a part of the transactions; and that it will not issue stock or assume new liabilities. Thus, Fitchburg maintains that the proposed transactions do not require Commission authorization. Nonetheless, because the transactions might be interpreted as a "disposition" of jurisdictional facilities under section 203 of the FPA, Fitchburg requests Commission approval of the transactions.

Section 203(a) provides in pertinent part:

No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. [8/]

In Central Vermont Public Service Corporation, 9/ the Commission concluded that the transfer of ownership and control of jurisdictional facilities, through a transfer of a public utility's common stock from existing shareholders to a newly-created holding company, constitutes a disposition of jurisdictional facilities requiring prior Commission approval under section 203. The Commission recognized that the current stockholders of the public utility, although acquiring stock in the holding company as a result of the transaction, would no longer have a proprietary interest in, or direct control over, the jurisdictional facilities

8/ 16 U.S.C. § 824b(a) (1988).

9/ 39 FERC ¶ 61,295 (1987); see also Central Illinois Public Service Company, 42 FERC ¶ 61,073 (1988).

of the public utility. The Commission characterized the substance of the transaction as a disposition of facilities by virtue of the transfer of all direct control. In asserting jurisdiction, the Commission expressed concern about the potential for cross-subsidization of non-utility operations with electric utility revenues.

Similarly, in Savannah Electric and Power Company and The Southern Company, 10/ the Commission asserted section 203 jurisdiction over a proposed transaction in which The Southern Company (Southern), a registered public utility holding company, acquired all of the common stock of Savannah Electric and Power Company (Savannah). By virtue of the stock transaction, Savannah proposed to become a wholly-owned operating subsidiary of Southern. In asserting jurisdiction, the Commission relied upon its earlier holding in Central Vermont: "[T]he proposed transaction, transferring ownership and control of Savannah's jurisdictional facilities to an existing holding company, is clearly a jurisdictional disposition of utility property under section 203." 11/

In the instant proceeding, all direct control over and proprietary interest in Fitchburg's jurisdictional facilities will pass from Fitchburg's current shareholders to those of UNITIL. 12/ In addition, while most of the activities of UNITIL subsidiaries are presently confined to utility operations, the potential exists for further diversification into non-utility operations. Consistent with our holding in Central Vermont and Savannah Electric, the Commission will assert jurisdiction in this case under section 203. We specifically note our authority under section 203(b) to make such supplemental orders as we later may find necessary or appropriate. 13/

Public Interest Determination

The Commission must approve Fitchburg's application if the proposed disposition of jurisdictional facilities "will be consistent with the public interest." Under section 203(b), the

10/ 42 PERC ¶ 61,240 (1988).

11/ *Id.* at 61,778.

12/ Testimony contained in Fitchburg's application for approval filed with the Massachusetts Department of Public Utilities states that following the consummation of the proposed transactions, the former shareholders of Fitchburg will own approximately 61 percent of the UNITIL common stock outstanding.

13/ 16 U.S.C. § 824b(b) (1988).

Commission may condition its approval on "such terms and condition as it finds necessary or appropriate to secure the maintenance of adequate service and proper coordination in the public interest of facilities subject to the jurisdiction of the Commission." 14/

An applicant need not show that a positive benefit to the public will result from a proposed disposition of facilities in order to support a public interest finding. Only a showing of compatibility is required. 15/ The Applicant is required to make a full disclosure of all material facts and to show affirmatively that the disposition of facilities is consistent with the public interest. 16/ The Commission does not have to determine whether the transactions involved are the only means by which the companies could accomplish the overall objective of the Federal Power Act. Rather, the Commission, after analysis of all the relevant factors, need only conclude that, in the particular circumstances, the disposition of facilities is consistent with the public interest. 17/

In Commonwealth Edison Company, the Commission adopted a nonexclusive list of factors to be considered when evaluating whether a proposed merger or disposition of facilities is consistent with the public interest:

- (1) the effect on operating costs and rate levels;
- (2) the contemplated accounting treatment;
- (3) the reasonableness of the purchase price;
- (4) the possibility of coercion;
- (5) the effect on competition; and
- (6) the impact on the effectiveness of state and federal regulation. [18/]

14/ Id.

15/ See, e.g., Kentucky Utilities Company and Old Dominion Power Company, 56 FERC ¶ 61,184 at 61,655 (1991) (citing Pacific Power & Light Company v. FPC, 111 F.2d 1014 (9th Cir. 1940)).

Id.

16/ See Commonwealth Edison Company, 36 FPC 927, 931 (1966), aff'd sub nom. Utility Users League v. FPC, 394 F.2d 16 (7th Cir. 1968), cert. denied, 393 U.S. 953 (1968).

18/ 36 FPC at 936-42.

We examine each of these factors below.

1. Effect on Operating Costs and Rate Levels

Based on anticipated savings from the transactions, Fitchburg projects that its operating costs and retail rate levels will decline. No allegation about adverse effects on cost and wholesale rate levels has been made by any party to this proceeding. Further, Commission review does not suggest that any adverse effects will occur. In addition, any future wholesale rate changes are subject to review and approval by the Commission under section 205 of the FPA. 19/

2. Accounting Treatment

Commission review indicates that the accounting treatment of the proposed disposition of facilities is satisfactory and will not adversely affect the public interest.

3. Reasonableness of the Purchase Price

Fitchburg and UNITIL propose to exchange common stock after UNITIL declares a 11 percent stock dividend on its common stock. 20/ As we have explained in other orders, 21/ in evaluating the reasonableness of the purchase price, our concern is not the effect of the purchase price (or stock exchange) on stockholders. The effect of the stock exchange on shareholders of UNITIL and Fitchburg is more appropriately addressed under applicable federal and state securities laws.

Here, none of the parties to this proceeding has made any allegation that the exchange of stock between Fitchburg and UNITIL will have any adverse effect on the capital structure or capital costs of any of the utilities involved in the merger transactions. Nor does our review suggest that the purchase price will, in any way, adversely affect the public interest.

9/ 16 U.S.C. § 824d (1988).

20/ See *supra* text accompanying notes 4-5 (explaining stock exchange in greater detail).

21/ See, e.g., Southern California Edison Company and San Diego Gas and Electric Company, 47 FERC ¶ 61,196 at 61,673-74 & n.20, 61,675 (1989).

4. Evidence of Coercion

No allegation of coercion has been raised with respect to the proposed transactions. Furthermore, there is no evidence of coercion.

5. Effect on the Existing Competitive Situation

In its application, Fitchburg indicates that the transaction will have a positive effect on competition. 22/ In order to acquire capacity from other utilities and from each other, both Fitchburg and UNITIL Power must obtain transmission services from other utilities, pursuant to the NEPOOL Agreement or individual contracts subject to review by the Commission. The combined capacity resources of Fitchburg and UNITIL Power amount to under one percent of the total generating capacity of all NEPOOL members. More importantly, UNITIL and its subsidiaries own no transmission lines above 34.5 kV. Although Fitchburg owns a limited 69 kV transmission network, 23/ its only point of interconnection with the bulk power transmission system in New England is through the Flagg Pond substation which connects Fitchburg's system with two 115 kV lines owned by NEPCO. 24/ We conclude that there is no evidence that the transactions will adversely affect the existing competitive situation in New England.

6. Impairment of Effective Regulation

Finally, there is no evidence to suggest that the proposed transactions will impair effective regulation by any state regulatory commission or by the Commission. Because Fitchburg will continue as a separate corporate entity within UNITIL, no change in the regulation of Fitchburg's jurisdictional activities by this Commission or any other regulatory commission is expected to occur. In this regard, the general concerns expressed by Northeast and

22/ The Applicant states that by integrating the Fitchburg system with those of UNITIL's other electric power subsidiaries, the system can operate in an integrated manner. Given the small size of the companies involved, the Applicant argues, integration will increase the companies' ability to compete as a buyer in the New England market. Application at 26.

23/ According to the application, approximately 14.78 miles of Fitchburg's 69 kV system are classified as NEPOOL Lower Voltage Pool Transmission Facilities pursuant to the NEPOOL Agreement.

24/ Although Green Mountain has suggested that the transaction may raise issues regarding bulk power markets and the availability of transmission services, Green Mountain has not requested a hearing or substantiated its claims.

PNH about the possible impact of the proposed disposition of jurisdictional facilities on wholesale transactions which they currently conduct with UNITIL Power and Fitchburg do not warrant further investigation at this time. All such contracts will continue to be regulated by the Commission after the disposition of jurisdictional facilities. The Commission retains its regulatory authority to consider any and all wholesale rate-related issues.
25/

Conclusion

Based on the foregoing analysis, we find that the proposed disposition of jurisdictional facilities is consistent with the public interest. We will therefore approve the proposed transactions. As explained above, the Commission retains the authority under section 203(b) of the FPA to issue supplemental orders as appropriate.

The Commission orders:

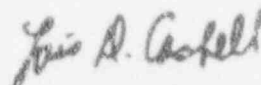
(A) The Applicant's request for a disclaimer of jurisdiction is hereby denied.

(B) The Applicant's proposed disposition of jurisdictional facilities, upon the terms and conditions and for the purposes set forth in the application, is hereby authorized pursuant to section 203 of the Federal Power Act.

(C) The Commission's authorization of the proposed transactions in this docket is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body in the future.

By the Commission.

(S E A L)



Lois D. Cashell,
Secretary.

25/ See, e.g., UtiliCorp United Inc. and Centel Corporation, 56 FERC ¶ 61,427 at 62,528-29 (1991).