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November 19, 1992

HAND DELIVER

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

Re: Docket No. 50-443, Seabrook Station, Unit 1; Bankruptcy
Court Proceeding with Respect to EUA Power Corporation,
Debtor and Debtor-in-Possession

Dear Dr. Murley:

As counsel for the several Joint Owners of Seabrook Station on matters before the Nuclear Regulatory Commission, we have been directed by North Atlantic Energy Service Corporation, the licensed operator of Seabrook Station, to file this request on behalf of EUA Power Corporation ("EUA Power"), one of the licensees, and of the Official Bondholders' Committee (referred to below) in the above bankruptcy proceeding in order to expedite the final resolution of that bankruptcy proceeding. As indicated below, the request herein only affects EUA Power; it will have no impact on the operations of Seabrook Station and will result in no changes in the representation on any oversight committees under the Seabrook Joint Ownership Agreement.

Background

EUA Power is an electric public utility subsidiary of Eastern Utilities Associates, a registered holding company under the Public Utility Holding Company Act of 1935, as amended ("PUHCA"). EUA Power's principal asset is an undivided 12.13240% interest in Seabrook Station.

¹ EUA Power's acquisition of that interest was approved by the NRC on September 12, 1986 by issuance of Amendment No. 9 to Construction Permit No. CPPR-135 in the above docket.

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On February 28, 1991 EUA Power filed a voluntary petition under Chapter 11 of Title 11 of the United States Code² (the "Bankruptcy Code") and has operated its business as debtor-in-possession under the jurisdiction and control of the Bankruptcy Court since that date. The Official Bondholders' Committee of EUA Power (the "Committee") was appointed, by order of the United States Trustee dated March 14, 1991, as the duly authorized representative of the persons holding EUA Power's outstanding Secured Notes. Since that date, the Committee has been actively engaged in pursuing a favorable resolution of these proceedings. When EUA Power's exclusivity period expired, the Committee became eligible to file its own proposed plan of reorganization and, on July 20, 1992, the Committee did in fact file such a plan (as subsequently amended, the "Plan"). The Plan provides in substance that once all applicable regulatory approvals have been obtained, including final NRC approval, the existing equity securities of EUA Power would be extinguished and replaced by a single class of common stock which would be exchanged by the reorganized debtor for the debt of EUA Power held by its various classes of creditors. The Plan also contemplates the syndication of a secured Plan of Reorganization financing facility as further support for the continuing operations of the reorganized debtor.

The Plan expressly acknowledges that the requisite regulatory approvals presently include, among others, action by the Nuclear Regulatory Commission under the Atomic Energy Act, as amended (the "Act"), and the Securities and Exchange Commission under the PUHCA. The NRC approval is required because the Plan's contemplated exchange of new equity securities for debt securities would involve an indirect transfer of control of EUA Power's interest in the Seabrook Operating License. The SEC approval is required because Section 11(f) of the PUHCA requires that

"[i]n any proceeding in a court of the United States...in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof....a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved the Commission after opportunity for hearing prior to its submission to the court."

It has been, and continues to be, the intent of the Committee and NAESCO to file with the NRC for the requisite consent to that aspect of the Plan as soon as the other regulatory hurdles have been overcome.

² 11 U.S.C. §§101 et seq.

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Current Status of Proceedings

Since Section 11(f) of the PUMCA may make SEC approval a prerequisite for any other approvals of the Plan, the Committee filed a request for such approval with the SEC on July 16, 1992. Discussions have been pursued with that agency since the date of that filing and it has now become apparent that, because of other workload considerations, the thorough review which would necessarily precede any SEC action on the pending request will take considerably more time and will inevitably further defer the initiation of proceedings before the NRC and the Bankruptcy Court - a delay which would prolong the uncertainty and adverse effects which the Plan is designed to resolve.

As an alternative, since the SEC's jurisdiction is founded solely upon the status of EUA Power as a subsidiary of a registered holding company, a status which will be eliminated when the Plan is ultimately implemented, the SEC Staff has indicated that it would favorably consider an interim step designed to eliminate the SEC's jurisdiction at the beginning of the process rather than at the end, namely: an immediate redemption of 100% of EUA Power's outstanding common stock which would terminate EUA Power's subsidiary status and the jurisdiction of the SEC in this matter, thus eliminating the regulatory logjam which presently exists and permitting the prompt initiation of the Plan confirmation proceedings before the Bankruptcy Court and the formal approval proceedings before the NRC.

The SEC Staff has further indicated that it could act expeditiously upon a request for approval of such a stock redemption after a minimum public notice period of 15 days. The parties to the Bankruptcy proceeding believe that the Bankruptcy Court would look favorably upon this interim step as a means of removing the statutory delay created by Section 11(f) of the PUMCA and of expediting ultimate resolution of the proceeding. Therefore, this interim step could realistically be consummated before year end, if the NRC is also able to accommodate this schedule.

³ A hearing has already been scheduled on December 8, 1992 by the Bankruptcy Court at which time it will consider whether the Disclosure Statement describing the Plan should be approved. This consideration will necessarily involve review of the stock redemption proposal and the desirability of eliminating the SEC role in these proceedings to expedite a final resolution.

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Present Request

As noted above, the ultimate implementation of the Plan, which contemplates the substitution of new persons as the equity owners of the reorganized EUA Power, will involve an indirect transfer of control of the Seabrook Operating License. This requires the prior approval of the NRC. 10 CFR §50.80. NAESCO and the Committee acknowledge that fact and intend to seek such approval as soon as the other preconditions to moving forward are met. Indeed, implementation of the interim step described above would clear the way for an earlier formal filing with the NRC with respect to the Plan and a thorough analysis by the NRC of the Plan and of the resulting new owners of EUA Power. Similarly, the interim step of redeeming the EUA Power common stock will itself involve a change in the ownership of that stock - and therefore, arguably, a transfer of control under 10 CFR §50.80. However, in actuality, the proposed redemption by EUA Power of its common stock is merely an interim facilitating step toward the ultimate approval of the Plan which, by itself, does not put new owners in place. Rather, this interim step, taken for the sole purpose of eliminating the basis of jurisdiction of the SEC under the PUHCA, will leave the debtor-in-possession, EUA Power, under the jurisdiction and control of the Bankruptcy Court, and will in no way alter the existing business of EUA Power.⁴ Furthermore, this interim step will have no effect on the operation of Seabrook Station itself because NAESCO is the only licensee under the Seabrook Operating License which is authorized to operate the facility⁵ and EUA Power has no direct involvement in the operation of the facility.

The importance of this interim step is that it will facilitate the prompt resolution of the EUA Power bankruptcy proceeding. By eliminating the need for prior SEC approval under Section 11(f) of the PUHCA, it clears the way for Bankruptcy Court approval of the Disclosure Statement which can then be used by the Committee to solicit favorable votes from the EUA Power creditors and to finalize negotiations for the post-bankruptcy secured financing facility. With those prerequisites in hand, final approvals from the NRC and the Bankruptcy Court can be formally applied for.

⁴ Since EUA Power's business operations are not affected by this interim step, there are no new antitrust issues to be considered at this time.

⁵ See Amendment No. 10 to the Facility Operating License No. NPF-86, dated May 29, 1992, in the above docket.

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Therefore, with specific acknowledgement that the NRC has jurisdiction to approve the transfer of control inherent in the Plan prior to its implementation, on behalf of NAESCO and the Committee request is hereby made that the NRC grant its approval of the proposed redemption of EUA Power's common stock with express recognition that the redemption is only an interim step toward implementation of the Plan and that the NRC has jurisdiction over the subsequent transfer of control contemplated by the Plan.

It is also respectfully requested that the NRC act upon this request by December 8, 1992 in coordination with the Bankruptcy Court's schedule, so that the stock redemption can be completed before year end, thus assuring the tax benefits for the debtor's estate. This will also clear the way for the filing, early in the new year, of a formal application to the NRC for approval of the elements of the Plan subject to its jurisdiction, at which time a thorough examination of all the issues can be undertaken before the ultimate transfer of control of EUA Power and its interest in the Seabrook Operating License is permitted to occur.

NAESCO, the Committee, the Committee's counsel and the undersigned are available to discuss any aspects of this request at your convenience. We do respectfully ask for your prompt attention to this matter so that the time schedule can be met.

Very truly yours,

ROPES & GRAY

By


John A. Ritscher

JAR/jm: JARBAKES, SA