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BEFORE THE
NUCLEAR REGULATORY COMMISSION

Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry	)))	10 C.F.R. Part 50

COMMENTS OF NEW ENGLAND POWER COMPANY

New England Power Company ("NEP") hereby submits its Comments on the Nuclear Regulatory Commission's ("NRC" or "Commission") Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 61 Fed. Reg. 49711 (Sept. 23, 1996).

I. INTRODUCTION

NEP agrees that it is both timely and appropriate that the NRC reconsider "its expectations for, and intended approach to, its power reactor licensees as the electric utility industry moves from an environment of rate regulation toward greater competition." 61 Fed.Reg. 49711. The inevitable transition to a competitive bulk power environment, and the opening of retail markets, must not impede the ability of licensees to discharge fully their obligations for the safe operation and decommissioning of nuclear units. The challenge confronting the NRC, licensees, and their economic rate regulators is to permit the evolution toward a competitive marketplace to continue while preserving -- through the adoption of alternative cost recovery mechanisms -- the ability of licensees to discharge fully their safety responsibilities. NEP is confident that it is a challenge that

can be met; that NEP remain able to do so was an imperative that it identified early-on as it considered its own response to restructuring. We are confident that the resulting models, incorporated in legislation in Rhode Island and in a settlement now under consideration by the Massachusetts Department of Public Utilities ("DPU"), both of which will be discussed presently, should give the NRC comfort that NEP will continue to meet its responsibilities.

NEP does not advocate its models as the paradigm for all to follow. Rather, the models show only that the NRC need not resist competition as inconsistent with preservation of its own safety agenda. The critical question for the NRC should be whether, in the absence of independent financial assurances to the NRC from a licensee, an economic regulator has committed to provide a licensee with sufficient financial resources to meet its license responsibilities. If the answer to that question is affirmative, the NRC should be congenial to change. Indeed, resistance to change on the part of the NRC might undermine the financial viability of licensees in the competitive environment, a consequence that can only prejudice realization of the NRC's objectives.

This last point is, we respectfully submit, critical. We are mindful that the NRC already has been encouraged to take what can fairly be characterized as a draconian step: requiring that all revenues received by licensees to retire costs stranded by the move to competition be earmarked to fund fully decommissioning. As we develop later in these comments, whatever its facial appeal, this suggestion, offered in comments submitted in this docket on December 9, 1996 by IPALCO Enterprises, Inc., et al. ("IPALCO"), can only, if adopted, be counterproductive to realization of both the consumer benefits of a competitive marketplace and the safety objectives of the NRC. There is no occasion for the adoption of hard and fast rules, with one critical exception: that each restructuring plan contain adequate assurance that the licensee will remain no less capable following

restructuring of meeting its safety responsibilities. So tested, the NRC should embrace the models offered by NEP and its retail affiliates as examples of approaches that accomplish fully its objectives.

II. NEW ENGLAND POWER COMPANY

NEP is a wholly-owned subsidiary of the New England Electric System, a public utility holding company. NEP has various interests in six nuclear plants. It is a minority owner-licensee of two plants and a minority shareholder of four other plants, the licenses of which are held by single-asset corporations. The following table illustrates NEP's specific ownership interests:

Plant	Size	NEP Ownership	Plant Status
Yankee Atomic	185 MW	30% shareholder	Retired (1992) - being decommissioned
Connecticut Yankee	582 MW	15% shareholder	Retired (1996) - preparing for decommissioning
Vermont Yankee	514 MW	20% shareholder	Operating
Maine Yankee	840 MW	20% shareholder	In outage; NRC staff approval required for restart
Millstone 3	1154 MW	12.21% joint owner	In prolonged outage; NRC approval required for restart
Seabrook 1	1148 MW	9.96% joint owner	Operating

NEP sells power from these plants, and from non-nuclear generating facilities, to affiliated wholesale customers in Massachusetts, Rhode Island, and New Hampshire, as well as to unaffiliated wholesale customers. NEP's affiliated customers in Massachusetts and Rhode Island account for

most of NEP's sales (approximately 72 percent and 22 percent, respectively). In both of these states, recent developments will result in the restructuring of the electric utility industry, enabling retail customers to choose their suppliers, beginning in 1997 and 1998.

In Rhode Island, the Utility Restructuring Act of 1996 requires NEP's Rhode Island affiliate, The Narragansett Electric Company, to implement retail choice on a phased basis beginning with large customers on July 1, 1997. In Massachusetts, in response to directives of the DPU calling for utilities to develop plans for the introduction of retail choice by January 1, 1998, NEP and its Massachusetts affiliate, the Massachusetts Electric Company, joined with the Attorney General of Massachusetts, the Massachusetts Division of Energy Resources, and other parties in presenting, on October 1, 1996, the "Consumers First" Plan. On January 10, 1997, the DPU indicated its general support for the proposed restructuring, requesting an additional submission that it is scheduled to act on by February 13, 1997. Both the Rhode Island and Massachusetts proposals recently were placed before the FERC which must approve a restructuring of the relationship between NEP and its retail affiliates. On January 29, 1997, FERC accepted those filings and convened the administrative review process.

While both approaches envision termination of the exclusive wholesale power relationship between NEP and the respective retail affiliate, the Rhode Island statute and the Massachusetts settlement also address comprehensively the costs associated with NEP's nuclear entitlements: amortization of plant investment, on-going O&M expenditures, and, most importantly, the continuing responsibility and ability to fund NEP's share of decommissioning. These cost responsibilities would be met through imposition -- with full regulatory support -- of a non-bypassable access charge. The access charge, which will remain subject to regulation, will be

payable by all customers in the service territories of NEP's retail affiliates in Massachusetts and Rhode Island, regardless of the supplier from whom they purchase power after competition is introduced.

The Massachusetts "Consumers First" Settlement requires NEP to divest its generating business including, if possible, its nuclear entitlements, to an unaffiliated entity or entities. If a divestiture of NEP's minority nuclear interests through an outright sale is not feasible, the Settlement permits NEP to assign the energy output of the units together with responsibility for their ongoing costs to a third party, with NEP retaining responsibility for costs associated with decommissioning. The sale or other disposition of NEP's nuclear entitlements is expressly made subject to the approval of this Commission, as necessary.

Finally, if NEP is unable to divest its nuclear interests, the Settlement includes a performance-based rate plan for the recovery of ongoing operating costs. Under that plan, NEP would credit the access charge with 80 percent of the revenues its receives from the sale of the energy produced at the plants and would recover, again through the non-bypassable access charge, 80 percent of its share of the plants' operating costs. The plan requires the incorporation of a performance standard for nuclear safety with a penalty (not to exceed $1 million) imposed for failure to satisfy that standard in any given year. Accordingly, NEP will have a direct financial incentive in the safe operation of units in which it retains an economic interest. In their comments, the IPALCO group appears to suggest that in a market-driven economy licensees will have an incentive to reduce their commitment to the safe maintenance of units; we strongly disagree. Indeed, precisely because a competitive environment would place an even higher premium on unit availability, licensees would have an even greater incentive to be fastidious when it comes to preventive

maintenance and strict compliance with NRC requirements. This is particularly so for licensees that are assured of rate recovery of the predominant portion of required O&M expenditures while subject to an economic penalty should safety be compromised, the NEP model. Following restructuring and the introduction of competition, an unplanned outage of even modest duration, while exposing the licensee to regulatory oversight and the possibility of cost disallowance in today's environment, could and undoubtedly would subject the licensee to more certain and severe economic penalties. In a competitive environment, financial success is dependent on adherence to contractual commitments. Because of the capital intensive nature of nuclear investments, licensees will be encouraged to make capital improvements and maintenance expenditures designed to enhance the unit's economic life and availability. Indeed, once licensees have been compensated for the uneconomic or stranded portion of their nuclear investments, recovery of the remainder of their unamortized investment will be critically dependent upon their ability to continue operating the units for so long as it is economically rational to do so on a marginal cost basis, and that in turn will counsel that they not compromise realization of that objective. Thus, market forces should complement, not impede, NRC oversight of licensee performance.

There is, moreover, an added advantage inherent in the NEP plan premised on 80 percent rate recovery for O&M expenditures. The partial introduction of market incentives not only should further enhance NEP's commitment to safe operation for the reasons previously discussed, it should provide an incentive to advocate the closure of any nuclear unit that is not economic on the basis of its ongoing costs.

Taken together, these provisions represent a careful balance that recognizes both the importance of providing funds for the safe shutdown and decommissioning of NEP's nuclear

interests and for the safe operation of those plants, as long as they remain economical. The inclusion of these provisions in the Rhode Island legislation and in the Massachusetts "Consumers First" Settlement demonstrates that adequate resources can be made available to assure the safety of licensed nuclear generating units, even as competition is introduced for retail electric service.

III. INCREASED COMPETITION IN THE ELECTRIC UTILITY INDUSTRY

Increased competition in the electric utility industry and changes in economic regulation could lead a licensee to reorganize or restructure itself through any of a wide variety of transactions. These events would include, but not necessarily be limited to, the following:

A. Reorganization, including an outright merger or formation of a holding company structure. A reorganization might include the formation of separate subsidiaries to own and operate assets serving the transmission function, the distribution function, and the generation function, including the generation of electricity from facilities licensed by the Commission. It is generally contemplated that the transmission and distribution functions will continue to be regulated by the State public utility commission ("PUC") and/or the FERC, but that prices for the sale of electricity will be set by the market, subject to reduced regulatory oversight.

B. Transfer (including sale or spinoff) of non-nuclear assets to a third party.

C. Transfer of nuclear assets or interests in nuclear assets to a third party.

With respect to any such transaction, the NRC must take into account the following factors in order to assess whether the event is likely to have an adverse impact on the ability of the licensee to comply with NRC requirements:

1. Position of economic regulators regarding the recovery of decommissioning and other nuclear-related costs. Perhaps the most important issue for the NRC should be the position of the PUC or, if appropriate, FERC, with respect to the treatment of decommissioning and other post-shutdown costs following restructuring. Specifically, the NRC must be able to confirm that the regulatory agency with jurisdiction has given the licensee a regulatory assurance that these costs will continue to be eligible for recovery through regulated rates or an equivalent mechanism. Where restructuring would include the transfer of nuclear assets, the NRC will want to focus on the ability of the transferee to assume the responsibilities associated with the license and, specifically, its ability to decommission the nuclear plant when it no longer produces revenue. If the transferee is a utility, the NRC should look to the cost recovery position of the transferee's economic regulator. The regulatory assurance should be substantially equivalent to that received in the past; that is, the transferee-utility will be assured of a reasonable opportunity to recover prudently incurred costs.[1]

The Commission's primary focus should be on regulatory assurances for the recovery of decommissioning costs precisely because they will be incurred after the termination of the unit's economic life. The ongoing costs of operation present a more complex question. As we already have suggested, subjecting nuclear units, as with other generating units, to market forces, should prove beneficial to the maintenance of safety objectives and, as well, encourage owners to evaluate fairly whether continued operation remains economically warranted. Nevertheless, it would be understandable for the Commission to be concerned that market pressures could lead a licensee to devote insufficient resources to operation and maintenance, and the Commission should therefore

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[1]It never has been the case that licensees were assured rate recovery of all costs whether or not prudently incurred.

encourage the design and adoption of countervailing economic regulatory regimes. NEP's access charge, coupled with the penalty for failure to meet safety objectives, should provide the NRC with the assurance it requires.

2. Legal Restructuring. If there has been a legal reorganization (rather than a functional separation of facilities) the NRC will want to examine the resulting structure. The same would be true with respect to a transfer of assets. So long as the corporate licensee continues to be an "electric utility" with appropriate assurance of recovery through rates of decommissioning and ongoing operating costs, the NRC should not withhold any consent or approval that may be required. (Of course, where the transferee is not an electric utility, it would, as is the case today, be appropriate to require other assurances of financial performance.) In fact, if there is simply a transfer of non-nuclear assets to a third party, there is no reason for NRC review, assuming that the licensee is able to provide appropriate assurances from its rate regulator that it will remain able to meet its nuclear obligations through its regulated rates. While it is likely that deregulation will give rise to a significant number of transfers or spinoffs of non-nuclear generating assets, as long as there are regulatory assurances of the recovery of nuclear-related costs roughly equivalent to the assurance available under the current regulatory regime, the disposition of non-nuclear assets should be a matter of indifference to the NRC.

It would indeed be anomalous for the Commission to take an intrusive approach to the transfer of non-nuclear assets where regulatory assurances of the recovery of nuclear-related costs remain in place. The Commission has historically granted licenses to single-asset nuclear companies and treated those companies as "electric utilities" under its regulations, where the licensee is able to recover its operating costs under wholesale power contracts subject to the oversight of the Federal

Energy Regulatory Commission ("FERC"). See In the Matter of Yankee Atomic Electric Company, 1 AEC 440 (1960); In the Matter of Vermont Yankee Power Corporation, 4 AEC 36 (1967). In those circumstances, no added financial "cushion" was provided by the ownership of non-nuclear assets; the adequate security was provided by the regulatory assurance of rate recovery for required nuclear expenditures, an assurance which, if properly constructed, should suffice going forward notwithstanding the disposition of non-nuclear assets.

3. Does the licensee continue to qualify as an "electric utility"? The NRC's special treatment of electric utilities arises because traditional regulation provides some assurance of cost recovery. But it is important to recognize that even under current regulatory regimes, electric utilities are only provided with reasonable assurances of cost recovery, not guarantees. As regulatory regimes change to permit greater competition, the NRC should continue to require financial assurance substantially similar to what it has considered sufficient in the past. Competition itself need not compromise realization of the assurances that the NRC rightfully has required. Indeed, as we have suggested, it should provide licensees with added incentive to comply fully with NRC requirements and to avoid the potentially ruinous consequences of unplanned outages. Accordingly, the NRC should not oppose competition, but instead should insist upon a licensee's nuclear obligations being respected under the new regulatory structure, as they are today. As the Rhode Island legislation and the Massachusetts Settlement illustrate, there is no reason why the Commission's legitimate concerns cannot be accommodated in a competitive industry structure. The challenge, which NEP, its affiliates, and their regulators have taken up, is to craft resolutions that provide resources sufficient to safely decommission nuclear units while exposing the ongoing

operations of the units to competitive market forces, permitting customers to benefit from the efficiencies and cost savings that accompany increased competition.

IV. ISSUES RELATED TO RESTRUCTURING AND ECONOMIC DEREGULATION OF THE ELECTRIC UTILITY INDUSTRY

The NRC seeks specific comment with respect to the following issues:

A. NRC Responsibility Vis-a-Vis State and Federal Economic Regulators. There should be no difficulty in accommodating the interests of the NRC and those of the agencies (primarily at the state level) responsible for the economic regulation of utility licensees. The NRC is legitimately concerned that consumers will continue to stand behind the financial obligations associated with decommissioning funding for licensed nuclear generating plants. The rate commissions, while hopefully supportive of this concern, want to be assured that consumers, who are the intended beneficiaries of the restructuring of utility regulation, not be faced with increased obligations properly attributed to others.

The key to an accommodation of these interests is a recognition that prudently incurred nuclear costs can be recovered in rates, following any regulatory restructuring, but that the NRC will not look to any licensee for more than its "fair share" of the costs of a particular licensed facility. There would be a significant advantage for the NRC and the rate commissions (including both state PUCs and the FERC) to agree upon these economic guidelines. In particular, if a new regulatory regime permits nuclear post-shutdown and decommissioning costs to be recovered through a non-bypassable access charge or its equivalent, that should be sufficient for the NRC.

B. Co-Owner Responsibilities. There are complicated issues with respect to co-ownership of nuclear plants. The NRC should obtain reasonable assurances that each co-owner

licensee is able to pay for its allocable share of decommissioning costs so that burdens are not unfairly shifted. Generally, the NRC should look for the same type of regulatory agreement indicated above from each co-owner and its respective PUC. Restructuring or changes in economic regulation should not affect allocation of responsibility upon which joint ownership licenses were based.

The NRC can anticipate more requests for the transfer of ownership interests in nuclear plants in light of increased competition and the trend toward separation of gene ation assets from transmission and distribution facilities. The NRC should approve a transfer of an interest in a nuclear plant to a responsible party (financially and otherwise) with the transferor remaining liable only for its pro rata share of decommissioning costs incurred up to the date of the transfer, and the transferee taking responsibility for the pro rata share associated with continued operation (an allocation that should be resolved finally at the time of transfer approval). This "fair share" approach to the allocation of cost responsibility in a multiple-ownership context not only is fair to customers, it should provide the NRC with the adequate protection it considers necessary. To place additional financial burdens on co-owners of nuclear plants in an environment of increased competition benefits no one. Indeed, any indication of a willingness on the part of the NRC that it might countenance a departure from a "fair share" allocation would be an open invitation to attempt an evasion of cost responsibility, an invitation that the NRC should be loathe to encourage.

C. Financial Qualifications Reviews. We believe it critically important that the NRC make explicit that licensees that are able, with the support of their rate regulators, to fashion alternative cost recovery mechanisms that are appropriate for a competitive environment and that assure adequate protection for the recovery through rates of O&M and decommissioning

expenditures be deemed to remain "electric utilities," that they not be subject to added NRC financial qualifications review, and that they continue to be permitted to fund decommissioning costs over the facility's anticipated service life. By making this explicit, the NRC will motivate both licensees and their rate regulators to develop appropriate rate recovery regimes. The IPALCO group's suggestion, that all revenues provided licensees as compensation for stranded costs be earmarked for decommissioning until that effort is fully funded, not only would discourage this necessary cooperation, it would thwart realization of the IPALCO objectives, with which we largely agree.[2]

Where we part company is with IPALCO's premise that safe operation and decommissioning requires that all revenues received by licensees as compensation for stranded costs, first be earmarked for the full funding of decommissioning, and by extension, anticipated nuclear O&M expenditures. Were that to be required, licensees could be deprived of a revenue stream that is indispensable to their financial well-being at precisely the wrong time -- when they must confront competitive entry. Indeed, by compromising severely the financial viability of licensees, the IPALCO proposal could well precipitate the very prejudice it seeks to avoid. Precisely because the cost of decommissioning, in particular, can at best only be estimated, the continued financial viability of licensees, coupled with cost-recovery mechanisms designed for the new competitive environment and endorsed by economic regulators, provides the best assurance that

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[2]For example, we are in total agreement: that decommissioning funding should be predicated on the best reasonably current cost estimate and that payments should be maintained in an external trust; that uneconomic nuclear units should be candidates for early retirement; and that all licensees should be prepared to demonstrate that notwithstanding any restructuring that they or their economic regulators seek to implement, their ability to discharge their obligations as licensees -- including the safe operation and maintenance of units during their operating lives and their safe decommissioning thereafter -- will in no way be compromised.

decommissioning will be accomplished in a timely fashion and, most importantly, safely. It is absolutely imperative that the NRC not take action that, however inadvertently, impairs the financial viability of licensees. Stranded cost recovery, and the application of those revenues to discharge financial obligations associated with the costs that in fact would be stranded in a market-driven power economy -- the uneconomic portion of all generation investment, the uneconomic portion of purchase-power obligations, the amortization of other regulatory assets -- is the surest way to assure that licensees will remain viable and, as a consequence, capable of meeting their nuclear obligations whatever may turn out to be the associated cost.

V. CONCLUSION

The challenges presented by changes in the economic regulation of electric utilities and increased competition are real, but are not insurmountable for utility licensees, provided that the need to afford appropriate treatment to nuclear-related costs is recognized in the terms of a restructured regulatory environment. The NRC should look at each restructuring proposal and the related assurances given by the appropriate rate regulatory authority. The NRC should consent to a restructuring so long as the licensee's economic regulator has provided appropriate assurance that decommission costs and a "fair share" of on-going O&M expenditures will remain recoverable in rates through an access charge or similar non-bypassable mechanism. The Rhode Island legislation and the Massachusetts "Consumers First" Settlement provide examples of restructuring plans that provide such assurance. They do not, however, represent the only models for addressing these costs. The NRC should work with the FERC and NARUC to form a consensus regarding the minimum requirements for regulatory assurances that nuclear costs will be recovered in a manner that is

compatible with a more competitive environment. If a licensee demonstrates that it has received financial assurance substantially equivalent to what it enjoyed under cost-based regulation, the NRC should continue to permit decommissioning funding as an "electric utility," even if those assurances do not extend to all ongoing operating costs. A change in economic regulation should not, by itself, serve as a basis for increasing a licensee's obligations for financial assurance. Indeed, any attempt to use restructured regulation for this purpose is likely to prove counter-productive if it interferes with a licensee's ability to compete in the open, deregulated generation market that is well on its way to realization. The imposition of burdens that prejudice the economic viability of licensees can only serve to compromise their ability to discharge their license obligations.

If the restructuring includes a divestiture of interests in nuclear assets, the NRC will want to be satisfied (as it must be currently) that the transferee meets the appropriate financial standards. This would include determining whether the transferee qualifies as an electric utility and, if so, what assurance has been obtained from its economic regulator with regard to nuclear plant costs. The transferor's liability should be limited to the decommissioning associated with the pro rata share of plant operations from the date of commencement of commercial operations to the date of transfer, with the transferee responsible for the balance. Each portion of the liability should be assured through a regulatory assurance with the appropriate rate regulator or through other financial means.

If the restructuring involves only a divestiture of non-nuclear assets and the licensee is able to offer satisfactory assurances that it will continue, after restructuring, to recover the costs of meeting its nuclear-related obligations, NRC consent should not be required. Indeed, it is reasonable to presume that the successful divestiture of non-nuclear assets, if accompanied by such assurances,

will enhance the economic viability of the licensee, thereby satisfying the Commission's legitimate concerns.

Respectfully submitted,

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