

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of

North Atlantic Energy Service Corporation and
Great Bay Power Corporation

(Seabrook Station, Unit No. 1)

Docket No. 50-443
(License No. NPF-86)

**PETITION OF GREAT BAY POWER CORPORATION
FOR PARTIAL RECONSIDERATION OF EXEMPTION ORDER**

Great Bay Power Corporation ("Great Bay") hereby petitions the Nuclear Regulatory Commission's ("NRC") Office of Nuclear Reactor Regulation (hereinafter referred to as "Staff") for partial reconsideration of its Exemption Order issued on January 22, 1997 in the above-captioned proceeding ("Exemption Order"). Specifically, Great Bay seeks reconsideration of the Staff's preliminary finding that Great Bay is not an "electric utility" as defined by the NRC in 10 C.F.R. § 50.2, and therefore Great Bay must meet the NRC's decommissioning funding requirements contained in 10 C.F. R. § 50.75(e)(2).

The Exemption Order's conclusion is based on a supposed distinction between long-term and short-term rates. In fact, all of Great Bay's rates -- including those for long-term sales and spot market sales at market-based prices -- are "established by . . . a separate regulatory authority" -- the Federal Energy Regulatory Commission ("FERC" or "Commission"). As set forth fully below, no distinction can be drawn between FERC's establishment of long-term and short-term rates for Great Bay. Both are equally subject to FERC jurisdiction and regulation.

Great Bay, therefore, is an "electric utility" under 10 C.F.R. § 50.2, and is not subject to the decommissioning funding requirements of 10 C.F.R. § 50.75(e)(2).

I. ARGUMENT

A. Prior To The Exemption Order, The NRC Had Recognized Great Bay To Be An Electric Utility Under Its Current Regulations.

Great Bay is currently an investor-owned public utility organized under the laws of New Hampshire.¹² It owns an undivided 12.13240 percent ownership interest in the Seabrook Station (equivalent to approximately 140 megawatts of capacity). It sells its share of the electrical output of Seabrook at wholesale as a public utility subject to the jurisdiction and regulation of the FERC, as described below. Prior to its reorganization under bankruptcy, Great Bay held the license for its 12.13240 percent ownership interest in Seabrook as EUA Power Corporation ("EUA Power") and was similarly organized as a New Hampshire public utility.

Prior to the January 22, 1997 Exemption Order, the NRC had always recognized Great Bay and its predecessor, EUA Power, as an electric utility. The Seabrook Operating License issued March 15, 1990 identified EUA Power as one of the Seabrook licensees and referred to the licensees for the plant as "utilities." Similarly, the NRC's "Safety Evaluation . . . Supporting

¹² The New Hampshire statutes define an electric "public utility" as follows:

362:2 Public Utility. The term "public utility" shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations and county corporations operating within their corporate limits, owning, operating or managing any plant or equipment or any part of the same for . . . the generation, transmission or sale of electricity ultimately sold to the public

N.H.R.S.A. 362:2. Great Bay falls within this definition.

Amendment No. 10 To [The Seabrook] Operating License" of May 29, 1992 describes Seabrook as "being operated on behalf of the licensees, a group of investor-owned and municipal utilities."²¹ After EUA Power was reorganized and renamed as Great Bay, the Seabrook license was amended to delete EUA Power and to add Great Bay as one of the Seabrook licensees. The license as amended continued to refer to Great Bay and the other Seabrook licensees (except for North Atlantic Service Company) as "utilities."²²

B. The Staff's Ruling That Great Bay Is No Longer An "Electric Utility" Is Incorrect As A Matter Of Fact And Of Law And Persisting In It Would Be Arbitrary And Capricious.

According to the Exemption Order, at the time the NRC approved Great Bay's plan for emergence from bankruptcy in 1993 the NRC believed that:

Great Bay would continue to be an electric utility based upon its status as such prior to bankruptcy and upon the expectation that the reorganized entity would be successful with obtaining long-term contracts for the sale of most of its share of power from Seabrook.

Exemption Order at 2. The Exemption Order goes on to find, however, that Great Bay "no longer" meets the definition of "electric utility" set forth in 10 C.F.R. § 50.2 of the NRC's regulations. *Id.* at 3.²³ According to the Exemption Order:

²¹ "Safety Evaluation By The Office Of Nuclear Reactor Regulation Supporting Amendment No. 10 To Facility Operating License No. NPF-86, Public Service Company Of New Hampshire, Seabrook Station, Unit No. 1, Docket No. 50-443," May 29, 1992 (emphasis added).

²² Amendment No. 23 to Facility Operating License No. NPF-86, for the Seabrook Station Unit No. 1, August 16, 1993.

²³ In pertinent part, the relevant statute provides:

Electric utility means any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly through rates . . . established by a separate regulatory authority. (emphasis in original). Investor-owned utilities . . . are included within the meaning of "electric utility."

Great Bay has successfully entered into one long-term contract, which is for 10MWe. Great Bay sells its remaining 130MWe share of Seabrook power on the spot wholesale market, which by definition is subject to market-set rates. The staff believes that although FERC may exercise general regulatory oversight over spot market rates, such rates cannot be considered to be "rates established by . . . a separate regulatory authority."

Id. (emphasis in original).

The Staff's attempt to distinguish between long-term and short-term sales and its characterization of FERC's establishment of such rates simply is incorrect. As set forth in detail below, Great Bay's market-based rates for spot market sales were established by a separate regulatory authority -- the FERC -- in its May 17, 1996 letter order in FERC Docket Nos. ER96-726-000, ER96-728-000 and ER96-1204-000 ("May 17 Order").⁵² FERC's jurisdictional authority and the rate-setting standard it must apply are precisely the same for long-term and short-term transactions. All of Great Bay's sales are pursuant to rates established by FERC.

Given that the Staff has not "articulate[d] a satisfactory explanation" for its finding, nor has it set forth "a rational connection between the facts found and the choice made," its conclusion that Great Bay is not an "electric utility" under 10 C.F.R. § 50.2 is arbitrary and capricious and must be reconsidered. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins., 463 U.S. 29, 43 (1983); Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962).

The Staff's observation that Great Bay "no longer" meets the definition of "electric utility" set forth in 10 C.F.R. § 50.2 is also at odds with the final sentence of § 50.2, which explicitly provides that "[i]nvestor-owned utilities . . . are included within the meaning of

⁵² Appendix 1 of this Petition contains a copy of the FERC's May 17 Order.

'electric utility.'" Without consideration of this inclusive statement in the regulatory definition, the Staff's position is patently arbitrary and capricious, for there surely is no dispute that Great Bay is an investor-owned utility.

C. The FERC Has Jurisdiction Over Great Bay's Rates For Both Long-Term And Short-Term Market-Based Sales To Assure Just And Reasonable Rates.

Pursuant to Section 201 of the Federal Power Act ("FPA"), the FERC has jurisdiction over (1) the transmission of electric energy in interstate commerce; (2) sales of electric energy at wholesale in interstate commerce; and (3) all facilities used for such transmission or sales. 16 U.S.C. § 824(b)(1). The FPA defines "public utility" as any person⁶² who owns or operates facilities subject to the FERC's jurisdiction. 16 U.S.C. § 824(e). Because Great Bay sells its share of the electric output from Seabrook at wholesale in interstate commerce and owns and operates facilities used for such sales, Great Bay is a public utility subject to the FERC's FPA jurisdiction.

Section 205 of the FPA grants FERC jurisdiction over "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission" 16 U.S.C. § 824d(a) (emphasis added). Nothing in this jurisdictional statement of FERC's authority and responsibility over interstate wholesale rates creates a distinction between spot market and long-term wholesale sales. Rather, as the FPA states, "all" sales of electricity at wholesale in interstate commerce are subject to FERC's rate jurisdiction.

⁶² Section 3(4) of the FPA defines "person" as an individual or corporation. 16 U.S.C. § 796(4).

Under Section 205 of the FPA, the FERC is required to ensure that a public utility's rates for the sale of electricity at wholesale are "just and reasonable." Through this Section, "Congress delegated ratemaking authority to FERC in broad terms." Farmers Union Cent. Exch., Inc. v. FERC, 734 F.2d 1486, 1501 (D.C. Cir.), cert. denied, 469 U.S. 1034 (1984). Thus, in arriving at a "just and reasonable" rate "no single method need be followed." Wisconsin v. FPC, 373 U.S. 294, 309 (1963). Indeed, the United States Supreme Court "has repeatedly held that the just and reasonable standard does not compel the Commission to use any single pricing formula" Mobil Oil Exploration v. United Distribution Co., 498 U.S. 211, 224 (1991).

Traditionally, the FERC has set just and reasonable rates through cost-of-service regulation. Nevertheless, the Supreme Court consistently has recognized that the FERC is not required "to adhere 'rigidly to a cost-based determination of rates'" FERC v. Pennzoil Producing Co., 439 U.S. 508, 517 (1979), quoting, Mobil Oil Corp. v. FPC, 417 U.S. 283, 308 (1974). In fact, courts have specifically found that when there is a competitive market, FERC may rely upon market-based prices to assure just and reasonable rates. Elizabethtown Gas Co. v. FERC, 10 F.3d 866, 870 (D.C. Cir. 1993); see also Tejas Power Corp. v. FERC, 908 F.2d 998, 1004 (D.C. Cir. 1990); Farmers Union, 734 F.2d at 1510. The rationale behind these findings is that market-based rates will assure that consumers are not being charged monopolistic prices.

In Elizabethtown Gas Co. v. FERC, for example, the U.S. Court of Appeals for the D.C. Circuit upheld FERC's authorization of market-based rates for natural gas sales under the "just and reasonable standard" contained in Section 4 of the Natural Gas Act ("NGA"), which is

analogous to Section 205 of the FPA.²¹ In that case, the D.C. Circuit held that the FERC's authorization of market-based rates satisfied its statutory obligation to ensure just and reasonable rates. Importantly, the Elizabethtown court also rejected petitioners' contentions -- similar to those implied by the NRC in the Exemption Order -- that FERC's approval of market-based pricing constituted "virtual deregulation" of natural gas sales rates. Elizabethtown, 10 F.3d at 870.

Similarly, the FERC itself has specifically rejected challenges to its authority to authorize market-based rates for sales of electricity. Thus, the FERC has found that "the FPA does not require the Commission to use any particular methodology in determining whether a proposed rate satisfies the statutory standards of section 205". Enron Power Enterprise Corp., 52 FERC ¶ 61,193, 61,709 (1990); see also Public Serv. Co. of Indiana, 51 FERC ¶ 61,367 (1990), Commonwealth Atlantic Ltd. Partnership, 51 FERC ¶ 61,368 (1990). The FERC also has concluded that authorizing the use of non-cost factors in setting rates is consistent with its obligations to ensure that electric utilities charge "just and reasonable" rates. Enron, 52 FERC at 61,709-10; Public Serv. Co., 51 FERC at 62,221-23; Commonwealth Atlantic, 51 FERC at 62,246-47.

In fact, the FERC, like the courts, has rejected contentions that accepting an electric utility's market-based rates "is tantamount to deregulation of wholesale sales of electricity. . . ." Public Serv. Co., 51 FERC ¶ 62, 220. As these court and FERC precedents demonstrate, FERC

²¹ It is well-established that "[p]recedents interpreting Section 205 of FPA are applicable to Section 4 of the NGA and vice versa." Tennessee Gas Pipeline Co., 77 FERC ¶ 61,215, 61,876, n.22 (1996); Northern Natural Gas Co., 77 FERC ¶ 61,035, 61,137, n.25 (1996); see also Municipal Light Boards v. FPC, 450 F.2d 1341, 1347 (D.C. Cir. 1971), cert. denied, 405 U.S. 989 (1972).

can fulfill its FPA Section 205 statutory obligation to establish "just and reasonable" rates for wholesale sales of electricity -- both long-term and short-term -- by authorizing electric utilities to charge market-based rates, without compromising its obligation under FPC v. Hope Natural Gas Co., 320 U.S. 591, 605 (1944), to establish rate which "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed".^{8/}

D. FERC Has "Established" Great Bay's Rates For Both Long-Term And Spot Market Sales.

As set forth above, under the plain language of the FPA, Great Bay, as a "public utility," was required to seek FERC's prior rate authorization to sell at wholesale its share of the electricity generated at Seabrook, regardless of whether those sales would be made pursuant to long-term or spot market contracts. Consistent with this requirement, by letters dated December 29, 1995, February 28, 1996 and March 15, 1996, Great Bay submitted for filing with FERC a power sales tariff and related service agreements that provide for wholesale sales at market-based rates or electricity generated at Seabrook. The request for market-based rates was applicable to both Great Bay's long-term and short-term sale of electricity. Upon its review of Great Bay's filings, the FERC on May 17, 1996 issued a letter order accepting and making effective Great Bay's tariff, including the market-based rates to be charged thereunder for both long-term and short-term sales.

^{8/} In setting rates, FERC has followed the Supreme Court's decision in Bluefield Waterworks & Improvement Co. v. Public Service Comm'n, 262 U.S. 679, 692 (1923) by accepting rates which permit a utility to earn a return equal to that on "investments in other business undertakings which are attended by corresponding risks and uncertainties."

As the court has recognized in Farmers Union and Elizabethtown, and as the FERC has found in Enron and Public Service Co. of Indiana, by accepting and making effective Great Bay's market-based rates, the FERC fulfilled its statutory obligation to ensure that those rates would satisfy the ratemaking standard set out in the FPA for all rates established by FERC.⁹² Thus, in the May 17 Order the FERC "established" Great Bay's rates under the same legal standard it previously applied to "establish" rates based on long-term sales contracts. Indeed, by Order of April 30, 1993 in FERC Docket No. ER93-495-000, the FERC similarly accepted a long-term power purchase agreement between Great Bay and UNITIL Power Corp.,¹⁰² which the NRC has correctly accepted as being established by FERC.¹¹²

The conclusion that the FERC "established" Great Bay's wholesale rates is further supported by the fact that the rates accepted on May 17-- including the rates Great Bay may charge for spot market sales -- remain subject to FERC's jurisdiction. For example, the rates, terms and conditions for all of Great Bay's wholesale sales in interstate commerce must be

⁹² One procedural aspect of the FERC's review of Great Bay's rate filings at FERC should be noted. Great Bay filed its rates pursuant to Section 205 of the FPA, as does every electric utility subject to FERC jurisdiction. Here, there being no opposition to Great Bay's rate filing, the Commission permitted the filed rates to go into effect without suspension or hearing. It need not have done so. Nor is its practice with regard to suspending a rate prior to its becoming effective in any way related to whether the rate is short-term or long-term or to whether the rate is market-based or cost-of-service. It is, rather, an exercise of the Commission's discretion as to whether the rate as filed appears to be just and reasonable and whether any party has raised questions concerning it. The crucial point, with regard to the Exemption Order's analysis is that, under Section 205, these rates, upon acceptance for filing, are established as Great Bay's lawful rates, and remain such until changed by Commission action. Any Commission-initiated action to change them would have prospective effect only.

¹⁰² Appendix 2 of this Petition contains a copy of the April 30, 1993 Order.

¹¹² Both the April 30, 1993 and May 17, 1996 Orders contain language which states "[t]his acceptance for filing does not constitute approval of any service, rate, charge classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents;" April 30 Order at 2; May 17 Order at 2. Given that the FERC maintains the right to initiate its own investigation of the rates, or to investigate the rates based upon the complaint of a third party, FERC traditionally "accepts" but does not "approve" rate filings. The fact that FERC accepted these filings and made them effective after review demonstrates that FERC established these rates, even if they are subject to subsequent review or reconsideration by FERC.

consistent with the tariff accepted by the FERC's May 17 Order. 16 U.S.C. § 824d(c). In addition, the FERC, on its own initiative or upon complaint by a third party, may conduct a new proceeding at any time to determine whether any of Great Bay's rates are just and reasonable or unduly discriminatory. 16 U.S.C. § 824e(a). Furthermore, if Great Bay desires to change its rates, Great Bay cannot do so without seeking prior authorization from the FERC, upon proper notice and hearing. 16 U.S.C. § 824d(d)f(e).^{12/}

The FERC's prior review, acceptance and placing into effect, of Great Bay's spot market rates in the May 17 Order, coupled with the FERC's ongoing obligation to comprehensively regulate those rates, clearly amounts to more than the "general regulatory oversight over spot market rates" which the Exemption Order apparently assumes. Exemption Order at 3. Rather, FERC has "established" Great Bay's rates, including rates for both long-term and spot market sales, as required by 10 C.F.R. § 50.2.^{13/}

E. Denial Of This Petition Would Constitute An Improper Departure From Past NRC Practice Without Sufficient Explanation.

It is well-established that an administrative agency bears the burden of explaining the reasonableness of any departure from a long-standing practice, and any facts underlying its

^{12/} Section 1.5 of Great Bay's FERC Electric Tariff Original Volume No. 1, First Revised Sheet No. 3, explicitly states that Great Bay has the right "to unilaterally make application to the Commission for a change in rates or in any term or condition under Section 205 of the Federal Power Act"

^{13/} The only distinction the FERC has made between Great Bay's long-term and short-term sales relates to reporting requirements. According to the May 17 Order, if Great Bay enters into long-term service agreements at market-based rates, such agreements must be filed with the FERC within 30 days of service commencement. For short-term transactions, Great Bay may file "umbrella service agreements" within 30 days of service commencement and quarterly transaction reports. May 17 Order at 1. This distinction was developed by the FERC for administrative convenience, see Southern Co. Servs., Inc., 75 FERC ¶ 61,130 (1996), and has no impact on the rates to be charged for such transactions. Therefore, this distinction has no bearing on the question of whether the FERC has "established" Great Bay's spot market rates.

explanation must be supported by substantial evidence. Public Service Comm'n v. FERC, 813 F.2d 448, 451 (D.C. Cir. 1987); Columbia Gas Transmission Corp. v. FERC, 628 F.2d 578, 585-86 (D.C. Cir. 1979). The Staff's denial of Great Bay's Petition for partial reconsideration would violate these principles.

The January 22 Exemption Order is the only NRC or Staff decision of which Great Bay is aware in which the NRC has found that rates accepted and made effective by the FERC are not "established . . . by a separate regulatory authority" for purposes of 10 C.F.R. § 50.2. FERC's jurisdictional authority under the FPA over sales of electricity at wholesale in interstate commerce, its statutory obligation to set rates based on a statutory standard, and its procedure for accepting and making effective rates through a tariff filing and subsequent orders, are exactly the same for every other entity which the NRC considers to be an "electric utility." Nevertheless, the Staff has singled out Great Bay for disparate treatment. This abrupt departure from past NRC practice is not only the result of an incorrect interpretation of the FERC's jurisdictional authority, but the fact that it is unsupported by substantial evidence also contravenes basic principles of administrative law.

Furthermore, given the lack of substantial evidence supporting the Exemption Order's finding, it is arbitrary and capricious for the Staff to use this proceeding as a vehicle for modifying its decommissioning funding requirements. The Staff cannot arbitrarily impose different decommissioning funding requirements on Great Bay alone, when Great Bay's rates are "established" pursuant to the same regulatory scheme as other electric utilities. Such an action would be particularly egregious in view of the fact that Great Bay is fully meeting its obligations

and is committed to put aside sufficient funds on an annual basis to cover the decommissioning costs for its ownership share of the Seabrook Station.

The NRC has been following electric utility deregulation and restructuring for several years. Last spring, the NRC issued an Advance Notice of Proposed Rulemaking to obtain comments on whether decommissioning funding requirements for electric utilities should be modified in view of the ongoing restructuring and deregulation of the utility industry. If the NRC wishes to modify the decommissioning funding requirements for electric utilities in light of industry restructuring, this modification should be considered in the context of the Proposed Rulemaking, not in this proceeding. To do otherwise, i.e., to persist in this ad hoc ruling based on a patently incorrect characterization of FERC's jurisdictional authority and ratemaking procedures, will cause confusion and uncertainty among nuclear-generating utilities as they shape their strategies for responding to the current thrust toward restructuring the electric industry. Great Bay, of course, would be obliged to comply with any modified rule to the extent it would be applicable.

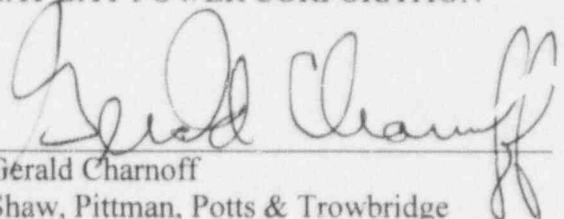
III. CONCLUSION

Wherefore, for the foregoing reasons, Great Bay respectfully requests that the Staff reconsider the challenged portion of its January 22, 1997 Exemption Order issued in the above-captioned proceeding, and issue a finding that Great Bay is an "electric utility" pursuant to 10 C.F.R. § 50.2 which is not subject to the decommissioning funding requirements of 10 C.F.R. § 50.75(e)(2).

In the alternative, Great Bay respectfully requests an opportunity to orally argue this matter before the Nuclear Regulatory Commission.

Respectfully submitted,

GREAT BAY POWER CORPORATION

By: 
Gerald Charnoff
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8032

February 21, 1997

410537-01

FROM

(FRI) 05.17.96 17:49/ST. 17:48/NO. 3560543173 P 2

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

96 MAY 17 PM 4:22

Docket Nos. ER96-726-000 ER96-728-000
ER96-1204-000

FEDERAL ENERGY
REGULATORY
COMMISSION

LeBoeuf, Lamb, Greene & MacRae L.L.P.
ATTN: Sam Behrends, IV, Esq.
Attorney for Great Bay Power Corporation
1875 Connecticut Avenue, N.W.
Washington, DC 20009-5728

MAY 17 1996

Dear Mr. Behrends:

By letters dated December 29, 1993, and February 28 and March 15, 1996, you submitted for filing with the Commission, on behalf of Great Bay Power Corporation, a power sales tariff which provides for sales at market based rates, and service agreements thereunder with Fitchburg Gas and Electric Light Company, UNITIL Power Corporation, and PECO Energy Company. You also request waiver of Part 45 to allow abbreviated filings with respect to interlocking directorships and authorization for blanket approval of issuance of securities or assumptions of liabilities pursuant to Section 204. Authority to act on this matter is delegated to the Director, Division of Applications, under Section 375.308 of the Commission's Regulations; pursuant to Section 375.308(a)(1) the submittal is accepted for filing and is designated and made effective as shown on the Enclosure.

Notice of the filing was published in the Federal Register with comments, protests, or interventions due on or before April 4, 1996. No comments, protests or interventions were filed.

Your requests for waiver of the Commission's filing requirements are hereby granted, along with the requested authorizations, subject to the same conditions provided in Enron Power Enterprise Corp., 52 FERC ¶ 61,193 (1990). Please be advised that, in Southern Company Services, Inc. (Southern), 75 FERC ¶ 61,130 (1996), the Commission stated that, henceforth, public utilities with market-based rates need only file separate service agreements for long-term transactions within 30 days of service commencement. For short-term transactions, they may file umbrella service agreements within 30 days of service commencement and quarterly transaction reports. Your transactions are subject to the filing requirements adopted in Southern:

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may

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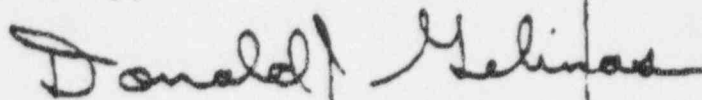
LeBoeuf, Lamb, Greene & MacRae, L.L.P.

hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Great Bay Power Corporation.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR 385.713.

This letter terminates Docket Nos. ER96-726-000, ER96-728-000, and ER96-1204-000.

Sincerely,



Donald J. Gelinas, Director
Division of Applications

Enclosure

Enclosure

Great Bay Power Corporation
Rate Schedule Designations

| <u>Designation</u> | <u>Description/ Effective Date</u> |
|--|--|
| <u>Docket No. ER96-726-000</u> | |
| (1) FERC Electric Tariff, Original Volume No. 2 (Original Sheet Nos. 1 through 6) (Supersedes FERC Electric Tariff Original Volume No. 1) | Market Based Power Sales Tariff/ December 30, 1995 |
| <u>Docket No. ER96-728-000</u> | |
| (2) Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 2 | Power Sales to Fitchburg Gas and Electric Light Company/ January 1, 1996 -- |
| (3) Service Agreement No. 2 under FERC Electric Tariff, Original Volume No. 2 | Power Sales to UNITIL Power Corp./ January 1, 1996 |
| <u>Docket No. ER96-1204-000</u> | |
| (4) Service Agreement No. 3 under FERC Electric Tariff, Original Volume No. 2 | Power Sales to PECO Energy Company/ February 1, 1996 |

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P.02/03

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

Docket No. ER93-495-000

APR 30 1993

Milbank, Tweed, Hadley & McCloy
Attention: Mr. Michael D. Hornstein
1825 Eye Street, N.W.
11th Floor
Washington, D.C. 20006

Dear Mr. Hornstein:

By letter dated March 26, 1993, you submitted for filing with the Commission, on behalf of Great Bay Power Corporation (Great Bay), a purchased power agreement between Great Bay and UNITIL Power Corp. (UNITIL). Authority to act on this matter is delegated to the Director, Division of Applications, under Section 375.308 of the Commission's Regulations; pursuant to Section 375.308(a)(1), your submittal is accepted for filing and designated as follows:

Great Bay Power Corporation

Rate Schedule FERC No. 16

Supplement No. 1 to Rate
Schedule FERC No. 16

Purchase Power Agreement

Exhibit A, Scenario 2,
justifying rate of
112 mills/kwh, exclusive
of fuel, and this
acceptance letter

Notice of your filing was published in the Federal Register with comments, protests, or interventions due on or before April 16, 1993. On April 16, 1993, UNITIL filed a motion to intervene in support of the filing. Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), if no answer in opposition to the motion to intervene is filed within fifteen days after the motion is filed, the motion serves to make the UNITIL a party to this proceeding.

Good cause is shown for granting waiver of the notice requirements pursuant to Section 205(d) of the Federal Power Act and Section 35.11 of the Commission's Regulations thereunder; therefore, the rate schedule shall become effective May 1, 1993, as requested.

Article 3 establishes an initial rate of 50 mills/kwh subject to escalation to track certain inflation indices. Article 7 establishes rates applicable to any extension of term implemented under the agreement. Please be advised that

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Milbank, Tweed, Hadley & McCloy

any rates established under Articles 3 or 7 which exceed the sum of the fuel cost of the Saabrook Unit and 112 mills/kwh will constitute a change in rate requiring a timely filing under Part 35 of the Commission's Regulations together with appropriate cost support. Please note that this letter has been designated as a supplement to the rate schedule codifying the filing requirement.

This acceptance for filing does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Great Bay Power Corporation.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR 385.713.

This acceptance for filing terminates Docket No. ER93-495-000.

Sincerely,



Donald J. Galinas, Director
Division of Applications

cc: UNITIL Power Corp.
Attention: Mr. David Foote
216 Epping Road
Exeter, New Hampshire 03833