

20963

STP000076
July 1, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'99 NOV -4 P 4 :20

In the Matters of)
North Atlantic Energy Service Corp.)
(Seabrook Station, Unit 1))
and)
Northeast Nuclear Energy Co.)
(Millstone Station, Unit 3))

Docket Nos. 50-443-LT-2
and 50-423-LT (consolidated)

OFFICE OF SECRETARY
PUBLIC AFFAIRS
ADJUDICATORY STAFF

NOTICE OF WITHDRAWAL OF PETITIONS FOR
LEAVE TO INTERVENE AND FOR HEARING,
AND JOINT MOTION TO TERMINATE PROCEEDING

I. INTRODUCTION

On March 15, 1999, New England Power Company (NEP) submitted an application for the approval of the indirect transfer of its minority ownership interests in Millstone Unit No. 3 (Millstone 3) and Seabrook Unit No. 1 (Seabrook), pursuant to Section 184 of the Atomic Energy Act of 1954 (AEA) and 10 C.F.R. § 50.80 (Application). NEP holds a 12.2 percent ownership interest in Millstone 3 and a 9.9 percent ownership interest in Seabrook. NEP is a licensee of both plants, authorized to possess but not operate the facilities. NEP is seeking Nuclear Regulatory Commission (NRC) approval for an indirect transfer to reflect a change in the upstream ownership of its parent company. NEP is a subsidiary of New England Electric System (NEES), which entered into an Agreement and Plan of Merger with The National Grid Group plc (National Grid) on December 11, 1998, whereby NEES would become a wholly-owned subsidiary of National Grid.

On June 30, 1999, the NRC published a notice of receipt of NEP's Application in the Federal Register. 64 Fed. Reg. 35190. In response to that notice, on July 20, 1999, The

P26056-1

United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of:	NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)
	ASLBP #: 09-885-08-COL-BD01
	Docket #: 05200012 05200013
	Exhibit #: STP000076-00-BD01
	Admitted: 1/6/2014
	Rejected:
Other:	Identified: 1/6/2014 Withdrawn: Stricken:

PDR ADOCK

DS03

Connecticut Light and Power Company, North Atlantic Energy Corporation and Western Massachusetts Electric Company (jointly "the Intervenors") filed Petitions for Leave to Intervene and Petitions for a Hearing. No other parties sought to intervene. The Intervenors asserted that the Application did not provide sufficient assurances that NEP will remain financially qualified and that the Application did not describe a sufficient mechanism to prevent foreign domination or control of NEP's licenses. On July 27, 1999, NEP filed an answer to both petitions. On August 3, 1999, the Intervenors filed a joint reply to NEP's answer. In both their initial petitions and their reply, Intervenors indicated that withdrawal of their petitions could be appropriate if NEP provided further information addressing the Intervenors' two concerns. *See Intervenors' Petitions at 12, Intervenors' Reply at 13.* Intervenors also indicated that they do not object to the NEES/National Grid merger so long as the interests asserted in their petitions for intervention are protected. *Intervenors' Reply at 2.*

On October 21, 1999, the NRC issued a Memorandum and Order, CLI-99-27, 49 NRC ____ (1999) (Order), concluding that the Intervenors had raised two admissible issues: financial qualifications and foreign ownership. Accordingly, the NRC set the proceeding for oral hearing. Order at 2. Notwithstanding its order establishing an oral hearing, the NRC instructed the parties "to confer promptly on whether this proceeding might be settled amicably without conducting a hearing." Order at 14. Pursuant to the NRC's Order, representatives of NEP and the Intervenors (jointly "the Parties") conducted discussions to attempt to resolve the matters encompassed by the NRC's October 21, 1999 Order.

II. WITHDRAWAL OF INTERVENTION

The Parties have reached a resolution of the issues in this proceeding that is fair and reasonable. In sum, NEP has provided additional information to demonstrate to the Intervenors' satisfaction that it will be capable of meeting its financial obligations with respect to Millstone 3 and Seabrook, and thus the Intervenors withdraw their concerns about NEP's status as an electric utility and its ability to meet its financial obligations. In addition, NEP has strengthened and clarified its negation action plan to ensure that NEP will not be foreign controlled or dominated following the National Grid acquisition of NEES. Thus, the Intervenors similarly withdraw their concerns regarding foreign ownership. Given the resolution of these issues, the Intervenors hereby withdraw their petitions to intervene and hearing requests in this proceeding. Under Commission case law, this withdrawal of the intervention and admitted issues warrants termination of this proceeding. *See, e.g.,* North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-16, 49 NRC ____ (1999); Boston Edison Company and Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-99-17, 49 NRC 372 (1999). Accordingly, the Parties respectfully request that the proceeding in the captioned matters be terminated, with prejudice.

As a separate matter, NEP's Application for NRC approval of the indirect transfer of control of its minority ownership interests in Seabrook and Millstone 3 remains pending before the NRC Staff, and continues to be reviewed by the Staff. The Application is, by virtue of the withdrawal of the Intervenors' petitions, now uncontested. Intervenors now do not oppose this Application, based on the clarifications and additional information provided. NEP will provide

supplemental information as needed, through meetings with the NRC Staff and/or submittals, to ensure that the clarifications contained in this Notice of Withdrawal are adequately described in order to assist the NRC Staff in its ongoing review of the Application. NEP will schedule a meeting or telephone call promptly with the NRC Staff to discuss what additional information will be provided and how Staff's review of this Application can be completed successfully in the most expeditious manner.

III. RESOLUTION OF ISSUES

NEP has provided the Intervenors with additional information that addresses Intervenors' concerns regarding financial qualifications and foreign ownership. The basis upon which Intervenors' concerns have been addressed, which is derived from both the additional information provided and the information contained in NEP's license transfer Application, is summarized below.

- A. The Parties Agree that NEP Has Satisfied the Intervenors that It Is Qualified to Meet Its Financial Obligations to Seabrook and Millstone 3 Following the NEES-National Grid Merger.

Under 10 C.F.R. § 50.80, an application for license transfer must contain information on the "financial qualifications of the proposed transferee as would be required . . . if the application were for an initial license." 10 C.F.R. § 50.80(b). According to 10 C.F.R. § 50.33(f), the regulation governing the contents of applications for NRC initial licenses, an applicant must demonstrate that it has the requisite "financial qualification . . . to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought." In cases where

the license applicant qualifies as an “electric utility” as defined by 10 C.F.R. § 50.2,¹ the applicant is exempt from financial qualification reviews by 10 C.F.R. § 50.33(f).² NRC guidance further clarifies that, in cases involving license transfer applications, financial qualifications can be demonstrated either by finding that the entity will remain an “electric utility” as defined by 10 C.F.R. § 50.2, or by additional financial data demonstrating the ability of the applicant to fund safe plant operations as a non-electric utility. “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,” NUREG-SR-1577, Revision 1, at section III.1.e.

As discussed *infra*, NEP has demonstrated to the Intervenors’ satisfaction that it will be able to meet its financial obligations with respect to Millstone 3 and Seabrook. Specifically, NEP has provided information indicating that it will continue to recover virtually all of its portion of the operating costs for Seabrook and Millstone 3 through rates set by “regulators that allow an electric utility to recover prudently incurred costs of generating, transmitting, and distributing electric services.”³

NEP is the generation and transmission company within NEES. It has historically been responsible for providing the power requirements of NEP’s retail distribution company affiliates -- Massachusetts Electric Company (Mass. Electric), Nantucket Electric Company (Nantucket), The

1 An “electric utility” is defined by 10 C.F.R. § 50.2 as “any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.”

2 The NRC based this decision on the assumption that “the rate process assures that funds needed for safe operation will be made available to regulated electric utilities.” 49 FR 35747, at 35750 (Sept. 12, 1984).

3 See NRC Administrative Letter 96-02, “Licensee Responsibilities Related to Financial Qualifications” (Jun. 21, 1996).

Narragansett Electric Company (Narragansett), and Granite State Electric Company (Granite State) -- which sell electricity at retail. As a result of restructuring initiatives by the Federal Energy Regulatory Commission (FERC) and by Massachusetts, Rhode Island and New Hampshire to open both wholesale and retail electric markets to competition, NEP agreed to release its retail affiliates from their obligations to continue purchasing their power requirements from NEP, and the retail affiliates, in turn, agreed to provide retail open access. In addition, in 1998, NEP divested substantially all of its fossil and hydroelectric generation assets. Currently, NEP's only generating assets are its shares of the Seabrook and Millstone 3 Nuclear Stations, as well as a 9.3% interest (*i.e.*, 57 MW electric) in Wyman 4, an oil-burning generating station in Maine.

As a result of the restructuring orders of FERC, NEP is authorized to collect Contract Termination Charges (CTCs) from Mass. Electric, Nantucket, Narragansett, and Granite State. *See New England Power Company*, 81 F.E.R.C. ¶ 61,281 (November 26, 1997) (approving CTCs charged to Mass. Electric and Narragansett); *New England Power Company*, 80 F.E.R.C. ¶ 63,003 (July 11, 1997) (ALJ's order certifying settlement agreements to FERC); *New England Power Company*, 83 F.E.R.C. ¶ 61,085 (April 28, 1998) (approving CTC charged to Granite State). Under these CTCs, NEP recovers a large proportion of its costs of generating electricity through cost-of-service based rates.

Mass. Electric, Nantucket, Narragansett, and Granite State, in turn, are authorized to collect in retail distribution rates the CTCs they are required to pay to NEP. *See Re: Massachusetts Electric Company*, D.P.U. 96-25C, Mass. Dept. of Pub. Utils., Feb. 26, 1997

(order for Mass. Electric and Nantucket), *Granite State Electric Company*, Order Nos. 22,981 (July 15, 1998) and 23,041 (Oct. 7, 1998), N.H.P.U.C. Docket No. DR 98-012 (order for Granite State), and Rhode Island General Laws § 39-1-27.4 (state law authorizing Narragansett to recover the CTC).

Under its restructuring orders and ongoing rate regulation, then, NEP is able to recover its costs of generating and transmitting electricity. In this connection, NEP notes as follows:

1. The CTC is a regulated rate and provides for recovery of 100 percent of NEP's unamortized investments, as of December 31, 1995, in Seabrook and Millstone 3. These costs are recovered under the Fixed Component of the CTC through December 31, 2000.⁴
2. Through the CTC charges, NEP is also guaranteed the recovery of 80% of its share of the going-forward capital and operation and maintenance expenditures of Seabrook and Millstone 3 (since December 31, 1995) on a cost-of-service basis.
3. NEP recovers the additional 20% of its share of the going-forward capital and operation and maintenance expenditures of Seabrook and Millstone 3 through sales at market-based rates pursuant to tariffs approved by FERC or through earnings from its other utility operations.

⁴ Through the CTC charges, which are non-by-passable wire charges, NEP is also assured of recovery of 100 percent of nuclear decommissioning costs of Seabrook and Millstone 3. Thus, NEP's share of the decommissioning costs of Seabrook and Millstone 3 will be fully funded through non-by-passable charges to NEP's retail affiliates. While the Intervenor did not call into question NEP's ability to meet its decommissioning funding obligations, this information helps emphasize that NEP has the ability to fund both safe operations and decommissioning.

4. NEP's transmission business is predominantly regulated by FERC. NEP recovers the costs of its transmission activities through cost-of-service based rates approved by FERC.⁵

Based upon this information, Intervenors are satisfied that NEP will be able to meet its financial obligations with respect to Seabrook and Millstone 3.

B. The Parties Agree that NEP Has Satisfied the Intervenors' Concerns Regarding Foreign Ownership.

1. The Standard for Foreign Ownership of Commercial Nuclear Facilities

Section 103d of the Atomic Energy Act of 1954 prohibits the NRC from issuing a license to any corporation owned, controlled or dominated by a foreign entity. Recently issued NRC guidance on foreign ownership explains that, where appropriate, applicants should propose a "negation action plan," to provide positive measures to assure that a foreign ownership interest is denied control or domination over licensee decisions. "Final Standard Review Plan on Foreign Ownership, Control, or Domination," 64 Fed. Reg. 52355, 52359 (Sept. 28, 1999). In the final SRP on foreign ownership, the NRC indicated that where a parent of an applicant is being acquired by a foreign entity and the applicant owns less than a 100 percent interest in a facility, the NRC will consider the following factors in determining whether such an indirect transfer is consistent with the statutory and regulatory requirements:

- (1) the extent of the proposed partial ownership of the reactor;
- (2) whether the applicant is seeking authority to operate the reactor;
- (3) whether the applicant has interlocking directors or officers and details concerning the relevant companies;
- (4)

⁵ For the twelve-month period ending September 30, 1999, NEP's overall revenues were \$586 million. Its operating expenditures for Seabrook and Millstone 3 totaled \$42 million. Twenty percent of this amount – the portion recovered through market-based rates – represents only 1.4% of NEP's revenues.

whether the applicant would have any access to restricted data; and (5) details concerning ownership of the foreign parent company.

Concerning items 1, 2 and 4, NEP provides the following responses, respectively:

(i) the partial ownership interest of NEP in Seabrook and Millstone 3 (9.9 percent and 12.2 percent) remains unchanged;⁶ (ii) NEP is not seeking authority to operate the reactors; and (iii) there are no restricted data involved in the Millstone 3 or Seabrook design, technology, or operation (*see* Application at 35). As to the remaining items, 3 and 5, the original Application described the corporate organizational structure and details concerning the relevant companies and ownership of the parent company. Application at 7-12 and Exhibit F. To the extent that any additional information is needed on these topics, NEP will provide such information to the NRC Staff in support of their ongoing review of the Application.

2. The Parties Agree that NEP Has Addressed Intervenors' Concerns Regarding Foreign Ownership.

NEP proposed a negation action plan as part of its Application containing the following basic elements:

- (i) A Special Nuclear Committee (Nuclear Committee) of the NEP Board of Directors, comprised of U.S. citizens, has been created. The members have been named but not yet elected by the Board. Except for certain rights reserved to the full NEP Board, the Nuclear Committee will have sole discretion and authority to act on behalf of NEP as to all nuclear matters relating to the operation, maintenance, contribution of capital, decommissioning, fuel cycle and other related matters concerning Seabrook, Millstone 3 and other nuclear facilities in which NEP has an interest; Application at 32-33;

⁶ A pending merger of NEES (the parent company of NEP) with Eastern Utilities Associates, which owns Montaup Electric Company, would result in an increase in NEES' ownership interest in Millstone 3 to approximately 16.2 percent and its ownership interest in Seabrook to approximately 12.9 percent. The Commission has granted Montaup's request for approval of the sale of its share of Seabrook to Little Bay Power Corporation. However, the sale itself has not yet been finalized. Order at 1, n. 1.

- (ii) Only the Nuclear Committee will have the right to request access to certain sensitive nuclear-related information, *e.g.* Safeguards Information; *Id.* at 35; and
- (iii) Extraordinary steps have been taken to ensure the Nuclear Committee will be free from any foreign control or influence, including appointing members for a fixed term, allowing removal only for specific causes, and extending the protections of 10 C.F.R. § 50.7 to the members. *Id.* at 36-37.

The Intervenors, however, raised concerns that the extent of rights retained by the full NEP Board of Directors may have an impact on the effectiveness of the negation action plan.

Chief among the Intervenors' concerns were the decision-making authority for:

- (1) whether to close the facility and begin decommissioning and whether to seek license renewal;
- (2) whether to sell, lease, or otherwise dispose of NEP's interests in the facility; and
- (3) whether to take action ordered by the Commission or any agency or court of competent jurisdiction.

In response to Intervenors' concerns, NEP has clarified to the Intervenors' satisfaction the instances in which decisions related to Seabrook and Millstone 3 are reserved to the NEP Board of Directors. Further NEP has committed that, following the NEES/National Grid merger, its Board of Directors and corporate officers will be composed solely of United States citizens for so long as NEP remains a licensee of Millstone 3 and Seabrook. As stated above, NEP also does not possess and is not seeking any direct operational authority for the plants.

With respect to item (1) above, the decision on whether NEP would vote to either decommission or restart is limited to only the very rare circumstances in which the plant has been shut down, and the repairs and other actions required to restart will cost significant sums. This run-retain decision is reserved to the full NEP Board because it is fundamentally an economic

business decision. In those narrow circumstances, the full NEP Board will be allowed to decide whether NEP will vote to support full repair and the attempt to restart, or whether to retire the plant and proceed to decommissioning. Once the owners have decided whether to support full repair or decommissioning in accordance with the joint ownership agreements, the decision-making process will reside with the NEP Nuclear Committee. The NEP Board thereafter will have no control over the timing of restart or other matters involving the process of decommissioning or repair.

With respect to the decision on whether to sell, lease or otherwise dispose of NEP's interests in the facilities, item (2) above, this decision was again reserved to the full NEP Board because it is a fundamental business decision. Any such disposition of NEP's interests would be governed by the existing joint ownership agreements. *See* Section 22 of the Sharing Agreement for Millstone 3 and Section 23 of the Agreement for Joint Ownership of Seabrook (Application, Exhibit E). A sale or disposition of NEP's interest would also require NRC approval under 10 C.F.R. § 50.80. Accordingly, there is no change in the process by which such a disposition of NEP's interests could occur.

As to NEP's reservation for the full NEP Board of the right to take action which is ordered by the Commission or any other agency or court of competent jurisdiction, item (3) above, NEP has assured the Intervenors that its reservation to the full NEP Board of the authority to make decisions concerning compliance with law was not intended to give NEP any right to take any discretionary action, but merely to do precisely what the government authorities require.

NEP now agrees to eliminate this reservation of rights, and thus only reserves two decisions, *i.e.*, items (1) and (2) specified above, to the full NEP Board.

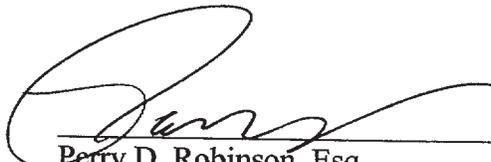
Finally, as added assurance that NEP's licensed activities will not be foreign controlled or dominated, NEP has agreed to amend the NEP By-laws to provide that after the NEES/National Grid merger, the *full* Board of Directors for NEP shall be composed of only United States citizens. Similarly, NEP has agreed that following the NEES/National Grid merger, the officers of NEP shall consist of only United States citizens. NEP's commitments to maintain a Board of Directors and Officers comprised solely of United States citizens will remain in place for so long as NEP remains a licensee of Seabrook and Millstone 3. Additionally, NEP will remain the licensee for Seabrook and Millstone 3 following the indirect transfer of upstream ownership of NEES. Accordingly, the proposed license transfer will not affect the NEP oversight of these facilities.

As a result of these additions and clarifications to the negation action plan, Intervenors are satisfied that NEP can comply with the NRC requirements concerning foreign control, domination and ownership of Seabrook and Millstone 3.

IV. CONCLUSION

WHEREFORE, the Parties jointly request that the hearing in these matters be terminated. By separate motion filed concurrently herewith, the Parties jointly request that the current hearing process be held in abeyance, pending Commission approval of this notice and joint motion to terminate the proceeding.

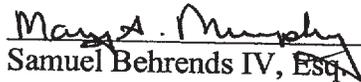
Respectfully submitted,



Perry D. Robinson, Esq.
Daniel F. Stenger, Esq.
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, DC 20006-4103
(202) 835-8000

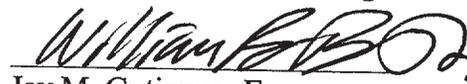
Edward Berlin, Esq.
Scott P. Klurfeld, Esq.
Swidler Berlin Shereff
Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116
(202) 424-7500

Attorneys for New England
Power Company



Samuel Behrends IV, Esq.
Mary A. Murphy, Esq.
LeBoeuf, Lamb, Greene &
MacRae, L.L.P.
1875 Connecticut Avenue, NW,
Suite 1200
Washington, DC 20009
(202) 986-8000

Attorneys for NGG Holdings LLC



Jay M. Gutierrez, Esq.
William E. Baer, Jr. Esq.
Goran P. Stojkovich, Esq.
Morgan, Lewis & Bockius, L.L.P.
1800 M Street, N.W.
Washington, DC 20036
(202) 467-7000

Attorneys for The Connecticut
Light and Power Company,
North Atlantic Energy Corporation and
Western Massachusetts Electric Company

November 4, 1999