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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Millstone Unit No. 3	)	NRC License No. NPF-49 (Docket No. 50-423)
Seabrook Unit No. 1	)	NRC License No. NPF-86 (Docket No. 50-443)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Response of New England Power Company
to Requests for Hearing

On March 15, 1999, New England Power Company ("NEP"), pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, Section 50.80 of the Commission's Rules, 10 C.F.R. § 50.80 (1998), and to the procedures described in 10 C.F.R. Part 2, Subpart M (1998), requested prior Commission approval for transfer of control of certain ownership licenses, to the extent that such approval is required solely to reflect a change in upstream economic ownership of the parent company of the licensee, NEP.[1] NEP is a minority, non-operating ownership licensee of Unit 3 of the Millstone commercial nuclear facility located in Waterford, Connecticut ("Millstone") and a minority non-operating ownership licensee of Unit 1 of the Seabrook commercial nuclear facility located in Seabrook, New Hampshire ("Seabrook"). NEP owns a 12.2% interest in Millstone, and a 9.9% interest in Seabrook.[2]

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[1] NEP is a subsidiary of New England Electric System ("NEES"). Under the proposed transaction, NEES will become a wholly-owned, indirect subsidiary of The National Grid Group plc, a public limited company incorporated under the laws of England and Wales ("National Grid"), and NEP will remain a subsidiary of NEES.

[2] Subsequent to its March 15, 1999 Application, on June 15, 1999, NEP and Montaup Electric Company ("Montaup") jointly filed an application for the transfer of Montaup's minority ownership interest in Millstone and Seabrook to NEP.

20726

On June 30, 1999, the Commission published two notices in the Federal Register stating that it was considering the issuance of orders approving the indirect transfer of the Facility Operating License No. NPF-49 for Millstone and the Facility Operating License No. NPF-86 for Seabrook to the extent held by NEP. 64 Fed. Reg. 35190-92 (1999). Pursuant to those notices, the Commission required that any person desiring a hearing concerning such orders file a request for hearing by July 20, 1999. On July 20, 1999, Connecticut Light and Power Company ("CL&P") and Western Massachusetts Electric Company ("WMECO") filed a motion to intervene and a petition for oral hearing in the Millstone proceeding. On that same date, CL&P and North Atlantic Energy Corporation ("NAEC") filed a motion to intervene and a petition for oral hearing in the Seabrook proceeding. CL&P, WMECO and NAEC (jointly the "Intervenors") are all subsidiaries of Northeast Utilities ("NU"), which through its subsidiaries owns a 68% interest in Millstone and a 40% interest in Seabrook. NU also is the licensed operator of Millstone and through its subsidiary, North Atlantic Energy Service Corporation, is the licensed operator of Seabrook.

Pursuant to 10 C.F.R. § 2.1307 of the Commission's Rules of Practice and Procedure, NEP submits this reply to the Intervenors' request for hearing. As the Intervenors make identical arguments in the two motions to intervene and requests for hearing, NEP makes this response to both requests for hearings.

I. Introduction.

The Intervenors have not presented any credible basis justifying commencement of an oral hearing, and their requests should be rejected. Two bases are advanced by Intervenors that NEP's March 15, 1999 Application (the "Application") did not provide (i) sufficient assurances

that NEP will remain financially qualified, and (ii) sufficient mechanisms to prevent foreign control of NEP's licenses. NEP, quite simply, is puzzled by the Intervenors' allegations which present, at best, a strained interpretation of NEP's Application and do not appear to serve any interest of the Interveners.[3]

As detailed below, NEP, by definition, is an "electric utility" as defined by 10 C.F.R. § 50.2, and thus is not required to meet the financial qualifications set forth in 10 C.F.R. § 50.33 (f). However, even if NEP was required to establish its financial qualifications, the March 15, 1999 Application is replete with evidence of NEP's current strong financial position, as well as evidence of its increased financial strength by virtue of the National Grid-NEES merger. These facts are well known to the Intervenors, who not only are NEP's competitors in the New England energy market, but also have been NEP's co-licensees of the Millstone and Seabrook facilities since they were licensed.

Similarly, the March 15, 1999 Application also provides detailed explanations of the protections NEP has committed to put in place to assure no foreign control of its minority, non-operating license interest in the facilities. These protections exceed those that recently were found to be sufficient in In the Matter of GPU Nuclear Inc., Docket No. 50-289 (April 12, 1999) ("GPU Nuclear, Inc."), which approved the transfer of the Three Mile Island, Unit No. 1 to Amergen Energy Company, LLC ("Amergen"), in which British Energy, Inc, a non- U.S. company, has a 50 percent ownership interest in the licensed facility, a direct interest far greater than the indirect interest to be owned by National Grid.

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[3] Of course, as an independent matter, NEP currently is pursuing a civil court action regarding the operation of Millstone, New England Power Co. v. Northeast Utils., Dkt. No. 97-1716 (Worcester Superior Ct., MA, filed Aug. 7, 1997). Western Massachusetts Electric Company and Connecticut Light and Power Company also are engaged in arbitration.

None of the contentions advanced by Intervenors justifies an oral hearing in this proceeding. Rather, expedited Commission approval of NEP's Application is warranted.[4] Moreover, NEP is committed to selling both Millstone and Seabrook, subject to the Commission's approval, at the earliest possible date. It is not NEP's intention to continue its ownership of these facilities over the long term. With that sale, National Grid will no longer have even an indirect interest.

For all of these reasons, as described more fully below, the Intervenors' requests for an oral hearing should be rejected.

II. As Stated in The Application, the Licensee Will Continue to Meet All Financial Qualifications.

A. NEP will continue to be an "electric utility" as defined by the Commission's rules.

Intervenors allege that NEP has not provided "sufficient information" that it will remain an electric utility or include information that as a non-electric utility it will have reasonable assurances of obtaining the necessary funds to cover the estimated operating costs of Millstone and Seabrook. Intervenors are mistaken.

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[4] Indeed, the merger between National Grid and NEES already has been acted upon and approved by several other agencies. Notably, on April 9, 1999, the Federal Trade Commission granted NEP's request for early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as provided by Section 7A(b)(1) of the Clayton Act and Sections 803.10(b) of the premerger notification rules. On April 29, 1999, the Department of the Treasury, Committee on Foreign Investment in the United States concluded that National Grid's acquisition of NEES did not raise issues of national security. And, on June 16, 1999, the Federal Energy Regulatory Commission ("FERC") approved the merger transaction, stating that the transaction did not raise competitive concerns. Copies of these decisions were transmitted to the Commission and made a part of the record in this proceeding on April 19, 1999 and June 17, 1999.

An "electric utility" is defined in 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. Investor-owned utilities, including generation or distribution subsidiaries, ... are included within the meaning of "electric utility."

NEP is an "electric utility" under both definitions; even a cursory reading of NEP's Application establishes this fact. As NEP stated in its Application, NEP's primary role had been to generate and transmit electricity for sale to its affiliates, which are electric distribution companies.[5] With the sale of substantially all of its fossil and hydroelectric generation, NEP's principal focus will be the transmission of electricity (e.g., wholesale "distribution") and those of its affiliate retail distribution, with NEP's rates regulated by the FERC.[6] Application at 8. Clearly, NEP is an entity which will continue to "distribute" electricity.

It also is clear from NEP's Application that NEP is an investor-owned utility. In Exhibit A to its Application, NEP provided its Form 10-Q, filed with the Securities and Exchange Commission for the quarterly period ended September 30, 1998. In Exhibit B to the Application, NEP included its 1996 and 1997 Annual Reports. Thus, it is evident from the facts set forth in NEP's Application: (i) NEP will continue to "distribute" electricity; (ii) its rates will be established by a separate regulatory authority; and (iii) NEP is an investor-owned utility. In short, NEP is and will remain an electric utility under either definition contained in 10 C.F.R.

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[5] NEP's integrated system consists of approximately 2,400 miles of transmission lines, 118 substations, and 7 pole or conduit miles of distribution lines. Application at 8.

[6] See FERC's June 16, 1999 order approving the merger which was transmitted to the Commission on June 17, 1999, which makes clear that NEP's transmission rates are subject to FERC regulation.

§50.2. To cure any problem raised by the Intervenors, NEP hereby states the obvious: it always has been and will continue to be an electric utility. Thus, under Section 50.33(A), financial qualification is deemed to have been met.

B. Nothing about this transaction will have an adverse effect on the financial ability of NEP.

NEP takes very seriously its contractual commitments, always has fulfilled its financial obligations to its nuclear projects and will continue to do so. NEP has worked very hard in establishing and maintaining its financial strength. In fact, NEP stands alone above the other owners of Seabrook and Millstone 3, including the Intervenors, in terms of its creditworthiness. NEP is a very financially healthy company as measured by its A+ bond rating. NEP has made every payment it has been obligated to make to its nuclear projects and has never been in a position that has threatened its ability to do so.

NEP also has been a leader in developing the necessary financial assurance protections as the electric utility industry has proceeded through the restructuring process in New England. NEP understands the financial assurance concerns of the Commission and believes that it has very successfully addressed those concerns in its numerous regulatory settlement agreements which have been discussed extensively in the Application.

The Intervenors have failed to point to any element of this transaction that will affect NEP's ability to fulfill its contractual commitments to its nuclear obligations, and indeed, there is nothing about the transaction that will do so. NEP always has been part of a public utility holding company. That will not change under this transaction. As NEP stated in its Application, nothing about the merger will dilute the financial resources of NEP. Neither Millstone nor Seabrook, nor any other NEP asset will be pledged as security or otherwise

encumbered as a result of the transaction. NEP's Price-Anderson indemnity agreement and the amount of nuclear insurance will not be affected by the merger. Application at 16. Indeed, insofar as its nuclear obligations are concerned, the merger will not change anything. NEP today is owned by a holding company and will be following the merger. Absolutely nothing will occur to diminish NEP's ability to meet its nuclear commitments. NEP merely is becoming a member of a corporate aggregation with a greater total capitalization.

C. The New England deregulation process will not effect NEP's financial qualifications.

The Intervenors' discussion of financial qualifications is directed at the effect of the New England deregulation process, not at the merger. The Intervenors do not claim that anything related to the Grid-NEES transaction will hurt NEP. As to the New England deregulation process, NEP entered into Settlement Agreements with its customers in Massachusetts, Rhode Island and New Hampshire which provide for the collection of non-bypassable charges sufficient to recover all decommissioning costs. As described in its Application, NEP's portion of the projected cost of decommissioning is funded fully commensurate with the schedule approved by the respective regulatory agencies. Application at 6. Under the relevant regulatory regimes, funds for decommissioning are collected by NEP through non-bypassable charges set forth in mandatory contract termination charges paid to NEP by its affiliated distribution utilities. Those distribution utilities, in turn, are allowed to collect funds for decommissioning through non-bypassable charges to their retail customers. Id. These non-bypassable charges are of the exact nature the Commission recently deemed as appropriate to meet its financial requirements.[7] All

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[7] Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, 63 Fed. Reg. 50465 (1998).

of this data, which demonstrates that NEP can meet its decommissioning obligations, also proves that NEP can meet its Operating and Maintenance ("O&M") obligations. As stated in the Application, the settlement agreements also provide that NEP has the right to recover in regulated rates 80 percent of nuclear operations and maintenance expenses and property taxes. NEP is entitled to recover the remaining 20 percent through market revenues derived from sales from the plants. These settlement agreements were discussed extensively in NEP's Application. See Application at 44-47.

III. NEP's Negation Action Plan Conforms with Commission Rules and Precedent.

As described in the Application, NEP has proposed to institute a negation action plan, designed to comply with the concerns outlined in the Commission's Standard Review Plan on Foreign Ownership, Control or Domination, 64 Fed. Reg. 10166 (March 2, 1999)("SRP") . The negation action plan provides that all activity by NEP under the license (demonstrating that NEP's ability to "act," other than at the direction of the majority owners, the NU companies, is exceedingly limited) will be controlled by a Special Nuclear Committee of the Board of Directors of NEP ("Nuclear Committee"). The Nuclear Committee will consist entirely of United States citizens. With three exceptions, the Nuclear Committee will have sole discretion regarding all issues of plant operation, budget and expenditures, health and safety matters, matters affecting national security, compliance with the Atomic Energy Act of 1954, as amended, and this Commission's orders, and all other matters regarding NEP's license obligations, to the extent these may be involved in NEP's actions as an NRC licensee. The three exceptions are: (i) the right to vote as to whether or not to close the facility and begin decommissioning, and as to whether to seek relicensing; (ii) the right to decide to sell, lease or

otherwise dispose of NEP's interest in the facility; and (iii) the right to take any action which is ordered by this Commission or any other agency or court of competent jurisdiction.

Intervenors point to these reservations to support their claim of improper foreign control or domination. Once again, they are mistaken.

A. NEP's Proposed Negation Action Plan Regarding Foreign Control Conforms with the Commission's Rules and Precedent, Particularly as NEP Only Has a Minority Interest in Millstone and Seabrook.

The foreign ownership restriction was enacted as part of the Atomic Energy Act of 1954 and is reflected in the Commission's rules at 10 C.F.R. §50.38 (1998). The foreign ownership prohibition was designed to safeguard the national defense and security. More recently, the practical focus of the prohibition has been reflected in the Commission's SRP. The SRP creates the framework for the approval of this transaction. Under Section 3.2, the essential guideline reads as follows:

> Where an applicant that is seeking to acquire a 100% interest in the facility is wholly owned by a U.S. company that is wholly owned by a foreign company, the applicant will not be eligible for a license, unless the Commission knows that the foreign parent's stock is "largely" owned by U.S. citizens. . . . If the applicant is seeking to acquire less than a 100% interest, further consideration is required.

64 Fed. Reg. 10166, 10168 (1999). This transaction presents an acquisition of less than a 50 percent interest in the facility, the level of ownership recently sanctioned by the Commission under the SRP, with its approval of the transfer of Three Mile Island, Unit No. 1 to Amergen.

B. NEP's negation action plan is consistent with the Commission's SRP.

NEP has no control over any licensed nuclear plant. As shown in its Application, NEP is a minority, non-operating owner of both Millstone and Seabrook. The transaction between NEES and National Grid will not alter those facts. Moreover, the rights that NEP has in those plants are strictly limited by the Sharing Agreement executed in 1973 for Millstone, and the Agreement for Joint Ownership Construction and Operation of New Hampshire Nuclear Units, dated May 1, 1973 , as amended ("JOA") and the Managing Agent Operating Agreement, dated June 29, 1992, as amended ("MAOA") for Seabrook . The Sharing Agreement was included in Exhibit E to the Application and the JOA and MAOA were included in Exhibit G.

Under the Sharing Agreement, NEP does not participate in day-to-day operations of Millstone, nor does it have authority to make decisions on behalf of the facility. As that agreement states, the Lead Participants have sole responsibility for the operation of the plant in accordance with good utility practice. NEP is not, and has never been, a Lead Participant in Millstone. NEP, although a member of the Seabrook Executive Committee, similarly has limited rights. A full recitation of the limits on NEP's rights with respect to the operations of these plants is set forth in the Application at 25-30.

Despite their contentions that NEP's negation action plan does not protect against foreign control, in footnote 6 of both motions, Intervenors acknowledge that NEP has no practical control with respect to operation of either Millstone or Seabrook. Clearly, the Intervenors all but state that foreign ownership of NEP will have no effect on the operations of the plant.

C. The few decisions reserved for the full NEP Board are all completely controlled by the Commission, or the other licensees.

NEP made clear in its Application that each of the reserved decisions is subject to the Commission's approval or to control by other licensees. Application at 35. The first reservation pertains to NEP's right to vote as to whether or not to close the facility and begin decommissioning, and as to whether to seek relicensing. This power is not reserved to NEP under the Sharing Agreement the JOA or the MAOA. Although the full NEP board would have the right to decide how NEP would vote its interest, as a practical matter, unless the other co-licensees were in agreement, NEP could not dictate this result. And were they so to vote, application for approval would have to be filed with the Commission. The second reservation pertains to NEP's right to sell, lease or otherwise dispose of its interest in the facility. Again, the ability to implement this right is subject to the control of the Commission. NEP cannot dispose of its interest in any manner without prior Commission approval, as is demonstrated by the filing of NEP's Application in this proceeding. The third reservation -- the authority to comply with the law -- was not intended to give NEP any right to take any discretionary action, but merely to do precisely what the government commands. And in that vein, if requested by the Commission, NEP is willing to remove this reservation.

The Intervenors are the subsidiaries or affiliates of the operators of these plants, and subsidiaries of NU. NU, through its interests and those of its subsidiaries, has the controlling interests in these facilities today and will continue to be in control following the NEES-Grid merger. There can be no bona fide concern that, by virtue of the NEES-National Grid transaction, an element of foreign control may be introduced.

D. Contrary to the Intervenors' assertions, nothing will give any foreign entity the right to withhold funds from the plant, to influence or replace the U.S. directors, or to change the conditions specified in the Application.

The Application clearly states that United States citizens will have sole discretion regarding funds for budgeting and expenditures, during both operation and decommissioning. If the Participants decide to seek decommissioning (a decision effectively "controlled" by the affiliates of NU), the Nuclear Committee will have the sole discretion to act on behalf of NEP regarding the decommissioning plan, any alterations to the plan, the budget for decommissioning, all ordinary and extraordinary expenditures regarding decommissioning, and all other aspects of the decommissioning process. Application at 34. Alternatively, if the Participants decide to attempt repairs and restart, the Nuclear Committee will have all of NEP's rights regarding the scope, budget, actual expenditures, auditing and other matters involved in the repair and restart, generally the right to ask questions and make comments regarding the operator's conduct at the facility. Id. However, even those limited rights will be entrusted entirely to the Nuclear Committee composed of U.S. citizens.

As to foreign influence over directors of the Nuclear Committee, NEP has taken extraordinary steps to prevent such influence. As set forth in the amended Bylaws, which were included as Exhibit H-1 to the Application, the directors will serve fixed terms, may be removed only for cause, and have whistleblower protection. NEP plans to have three members on the Nuclear Committee and two will be independent directors. The independent directors of the Nuclear Committee will include Congressman Phillip R. Sharp, a former ten-term member of the United States House of Representatives, and L. Joseph Callan, the former Executive Director for Operations of the Commission. These people are not susceptible to foreign control, and are fully

capable of protecting their own independence, including (if necessary) by communicating any attempt at undue influence to the Commission.

In their motions, Intervenors suggest that NEP will retain the ability to alter the protections and controls set forth in the Application. Such allegations flatly are contradicted by the Application. NEP has committed not to alter these restrictions without prior Commission approval and has invited the Commission to condition its orders upon the implementation and maintenance of these conditions. See Application at 38.

E. In the National Grid-NEES transaction, foreign control is much less than in the recently approved acquisition of Three Mile Island Nuclear Station Unit No. 1.

Under the National Grid-NEES transaction, a foreign company will own far less than 50 percent of any licensed plant, and will never own any part of any licensed operator. In the recently approved license transfer of Three Mile Island Nuclear Station Unit No. 1 ("TMI-1") , a foreign company effectively was permitted to own 50% of the plant, and 50% of the operator. That proceeding concerned the transfer of a license to a company that is owned 50% by British Energy, Inc., a United Kingdom entity.[8] Thus, the present case involves a lesser percentage of foreign ownership of the plant, and greater protection against the exercise of that ownership.

Moreover, in the TMI-1 proceeding, the three reserved decisions which the Intervenors attack in this case were not exempt from foreign influence. There, United States citizens were given sole control only over safety and security issues, but not over economic issues. Indeed, as demonstrated in both its Application and above, NEP has given United States citizens sole

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[8] Amergen, which is owned by PECO Energy Company and British Energy, Inc., was formed primarily to acquire and operate nuclear power plants in the United States. The transaction between National Grid and NEES was not entered into for the purpose of owning nuclear facilities.

control over all decisions, except voting to sell its interest in the plant and casting a minority vote regarding whether to close the plant. Clearly, the protections and controls NEP has developed and set forth in its Application exceed those that were found to be sufficient by the Commission in its approval of the TMI-1 transaction. Just as Commission approval was appropriate in that proceeding, so to is Commission approval appropriate in this proceeding.

VII. CONCLUSION.

The Intervenors have presented no justification for an oral hearing in this proceeding. As demonstrated in NEP's Application, the National Grid-NEES transaction will have no effect whatsoever on the operation, performance, workforce, funding for operation or decommissioning, or any other aspect of either Seabrook or Millstone 3. NEP will remain an electric utility. Nor will the transfer have an adverse effect on NEP's financial stability, or upon its ability to meet its licensing obligations. The present case involves much less foreign control than was approved in TMI-1. For these reasons, the Commission should reject the Intervenors' request for an oral hearing and approve the Application expeditiously.

Respectfully submitted,

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