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VIA COURIER

July 20, 1999

Office of the Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

RE: Northeast Nuclear Energy Company et al. (Millstone Station, Unit 3, NRC License No. NPF-49), Docket No. 50-423

Dear Ms. Vietti-Cook:

Enclosed for filing please find an original and two copies of the Motion of The Connecticut Light and Power Company and Western Massachusetts Electric Company for Leave to Intervene and Petition for a Hearing in the above-captioned matter. Also enclosed are our Notices of Appearance in this matter.

Copies of this Petition have been served upon the parties by facsimile and by first-class mail, in accordance with 10 CFR § 2.1313, as indicated in the Certificate of Service attached to the Petition.

Please contact me at 202-467-7466 if you have any questions or need any additional information related to this filing.

Please date and time stamp the additional copy of this pleading and return it to our courier. Thank you.

Sincerely,

Jay M. Gutierrez

Enclosure

cc: Attached Distribution List

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
Northeast Nuclear Energy Company, et al.	)	**Docket No. 50-423**
Millstone Station, Unit 3	)	**License No. NPF-49**
	)	

MOTION OF THE CONNECTICUT LIGHT AND POWER COMPANY AND WESTERN MASSACHUSETTS ELECTRIC COMPANY FOR LEAVE TO INTERVENE AND PETITION FOR A HEARING

I. INTRODUCTION

Pursuant to 10 CFR § 2.1306 of the Nuclear Regulatory Commission's ("NRC" or "Commission") Rules of Practice and Procedure, and in response to the NRC's June 30, 1999 *Federal Register* Notice of Consideration of Approval of Application Regarding Proposed Corporate Merger and Opportunity for Hearing, *see* 64 *Fed. Reg.* 35191, The Connecticut Light and Power Company ("CL&P") and Western Massachusetts Electric Company ("WMECO") move to intervene in the above-captioned proceeding and petition for an oral hearing. CL&P and WMECO are co-owners and licensees of Millstone Unit 3 ("Millstone 3").

On March 15, 1999, New England Power Company ("NEP"), a co-owner and licensee of Millstone 3, filed an application ("NEP Application") seeking authorization for an indirect transfer of control of NEP's ownership interest to The National Grid Group plc ("National Grid"), a holding company incorporated in England and Wales. NEP currently owns a 12.2% interest in Millstone 3.

NEP is a wholly-owned subsidiary of New England Electric System ("NEES"), which entered into a merger agreement with National Grid on December 11, 1998. Pursuant to the proposed merger, NEES will become a wholly-owned subsidiary of National Grid, and NEP will remain a subsidiary of NEES.[1/] The effect will be an indirect transfer of the NEP interest to National Grid, an entity that is not an electric utility and that is a foreign entity. As described below, this license transfer, if approved, could affect the financial, property, and other interests of CL&P and WMECO as co-owners and licensees of Millstone 3. Accordingly, CL&P and WMECO seek to intervene and request a hearing to ensure that these interests are protected.

II. PETITIONERS MEET THE STANDARDS FOR INTERVENTION SET FORTH IN 10 CFR § 2.1306 AND 10 CFR § 2.1308

The Commission's standards for granting intervention in nuclear power plant license transfer proceedings are set forth in 10 CFR § 2.1306 and 10 CFR § 2.1308.

A. Identification of Petitioners

Pursuant to 10 CFR § 2.1306(b)(1), the names, addresses, and telephone numbers of petitioners are:

The Connecticut Light and Power Company
Western Massachusetts Electric Company
107 Selden Street
Berlin, Connecticut 06037-1616
(860) 665-5000

1/ NEES is currently in the process of merging with Eastern Utilities Associates, which owns Montaup Electric Company, an approximate 4% owner of Millstone 3. In connection with this merger, NEP will acquire Montaup Electric Company's interest in Millstone 3, and as a result will own approximately 16% of Millstone 3.

Service of documents in this proceeding is to be made on:

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B. Petitioners Have Standing and a Strong and Clear Interest that Will be Affected by the Proposed Indirect Transfer

Entities that "own (or co-own) an NRC-licensed facility plainly have an AEA-protected interest in license proceedings involving their facility." *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-06, 49 NRC 201, 216 (1999). As the Commission recently noted, "it is hard to conceive of an entity more entitled to claim standing in a license transfer case than a co-licensee whose costs may rise, and whose property may be put at radiological risk, as a result of an ill-funded license transfer. This kind of situation justifies standing based on 'real world consequences that conceivably could harm Petitioners and entitle them to a hearing.'" *Id.* at 215, *quoting Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 205 (1998). For CL&P and WMECO, these real-world consequences would include having to provide additional funding to make up for failures of a co-owner who is unable or unwilling to meet its financial obligations to Millstone 3.

In this case, the NRC is asked to approve an indirect transfer of NEP's license to National Grid, a foreign entity that is not an electric utility. As co-owners and licensees of Millstone 3,

CL&P and WMECO have direct and vital interests in the following areas implicated in the proposed transfer:

- the continued financial qualifications of NEP; and
- assuring appropriate mechanisms to prevent foreign control of NEP's license.

These issues are directly relevant to judgments that the Commission must make in response to the proposed indirect transfer. As co-owners, CL&P's and WMECO's property interests in Millstone 3 will be affected if there is not a continued assurance of NEP's financial qualifications or if the extent of foreign control remains unclear. Specifically, CL&P and WMECO will be injured if the Commission grants the indirect transfer because the information in the NEP Application does not provide sufficient assurance that NEP will remain financially qualified or that NEP's proposed "negation action plan" places appropriate limits on foreign domination or control. Accordingly, CL&P and WMECO may suffer financial harm and harm to their property if NEP no longer provides sufficient financial resources to support safe and efficient operation of Millstone 3, or if NEP's foreign owner takes action not in the interest of this U.S. nuclear plant. These injuries can be prevented or redressed by the Commission by denial of the proposed license transfer or by conditioning of the transfer on a showing of adequate financial assurances and appropriate mechanisms to prevent foreign control of the license. These interests are clearly within the "zone of interest" protected by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011, *et. seq.* (the "Act").

C. Statement of Admissible Issues

Petitioners seek to intervene and request a hearing on the following issues:

1. NEP has not provided sufficient assurance of its continued financial qualifications to support Millstone 3 as required by the Act and its implementing regulations; and

2. NEP's "negation action plan" is not sufficient to prevent foreign domination or control as required by the Act and its implementing regulations.

Both of these issues fall squarely within the scope of this proceeding and are relevant and material to the findings NRC must make before granting an indirect transfer of NEP's license. With respect to each issue, there is a genuine and material dispute based upon the information provided in the Application, and Petitioners have provided facts and references supporting each issue.

1. NEP has not provided sufficient assurance of its continued financial qualifications to support Millstone 3 as required by the Act and its implementing regulations.

The issue of NEP's continued financial qualifications is both within the scope of this proceeding and relevant to the findings the NRC must make to grant the application for license transfer. *See* 10 CFR §§ 2.1306(b)(2)(i) & (ii). Section 182a of the Act authorizes the Commission to establish financial qualification requirements, and the Commission's regulations define the information that must be included in license applications. Specifically, 10 CFR § 50.80(b) requires that an application for transfer of control of a license must include the information necessary to establish such financial qualification as provided in 10 CFR § 50.33. Pursuant to these regulations, an applicant may either: (1) establish that it is an "electric utility" exempt from financial qualifications review pursuant to 10 CFR § 50.33(f); or (2) submit information

which demonstrates that the licensee either possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated operating costs for the period of the license.[2/]

In implementing these regulations, NRC's guidance regarding the review of license transfers in connection with mergers makes clear that the NRC must either determine that "the surviving licensed owner . . . will remain an 'electric utility' as defined in section 50.2," or must evaluate the financial qualifications of a non-"electric utility" applicant. NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," Section III.1.e. at 6-7 (March 1999) ("SRP"). NEP's continued financial qualifications are therefore directly within the scope of this proceeding and relevant to approval of the requested license transfer.

Notwithstanding these requirements, NEP has not provided sufficient information in its application for the NRC to find that it, as the surviving licensed owner, will remain an "electric utility" within the meaning of 10 CFR §§ 50.2 and 50.33(f). NEP's application also does not include the information required for the NRC to find that, as a non- "electric utility," NEP either possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs of its share in Millstone 3. The specific facts which support Petitioners' position with respect to the inadequacy of Applicants' financial qualifications are set forth below. *See* 10 CFR § 2.1306(b)(2)(iii) and (iv).

2/ 10 CFR § 50.2 defines an electric utility as an 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.

NEP's application is silent on whether it will continue to qualify as an "electric utility" under 10 CFR §§ 50.2 and 50.33(f). Rather, the Application asserts that in the context of providing adequate assurance for decommissioning funding "NEP provides assurances *equivalent* to those offered by an 'electric utility' pursuant to 10 CFR § 50.75." NEP Application at 6 (emphasis added). However, this assertion relates to decommissioning funding and neither addresses nor meets the standards regarding financial qualifications to support ongoing operations and maintenance. The Commission, therefore, has been provided with no basis for concluding that NEP will continue to be an electric utility after the merger (*i.e.*, that it will continue to recover its share of the costs of generating electricity through rates established by a separate regulatory authority. *See* 10 CFR 50.2).[3/]

Given that NEP has provided no information for determining whether or not it will continue to qualify as an electric utility, the only basis for reviewing and approving NEP's continued financial qualification is an evaluation of NEP as a non-electric utility. However, NEP has similarly failed to provide the information required of non-electric utilities under 10 CFR §§ 50.33 and 50.80. Under these regulations, NEP is required to submit what is often called a "five-year *pro forma*," *i.e.*, estimates for the total operating costs for five years and an indication of "the source(s) of funds to cover these costs." 10 CFR § 50.33(f)(2). In addition, NEP may be required to provide "information on cash or cash equivalents that would be sufficient to pay fixed

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3/ In this regard, the only information provided is a passing reference that a contract termination charge (CTC) for certain of NEP's affiliates in one of the jurisdictions in which it operates, contains a variable component that will enable NEP to recover "80% of the operations and maintenance expenses and property taxes for the units." *See* NEP Application at 44-45. However, NEP provides no discussion or context to determine whether it will remain an "electric utility" as defined in 10 CFR §§ 50.2 and 50.33(f).

operating costs during an outage of at least six months" as suggested by the NRC's SRP. NUREG 1577, Rev. 1 at 5.[4/] Absent such information, the NRC has no basis for a determination that following the transfer NEP will continue to be financially qualified to meet its obligations under its license, and that the transfer is otherwise consistent with applicable regulations. *See* 10 CFR § 50.80(c)(1) and (2). Therefore, NEP's application is defective and must be either cured or denied.

2. NEP's proposed "negation action plan" is not sufficient to prevent foreign domination or control as required by the Act and its implementing regulations.

Under the Applicant's proposed transaction, NEES will become a wholly-owned subsidiary of the National Grid Group plc, a "public limited company" incorporated under the laws of England and Wales. NEP will remain a wholly-owned subsidiary of NEES. Accordingly, NEP will indirectly become 100% owned by National Grid, a foreign entity.

NEP's application recognizes that conditions need to be imposed through a "negation plan" to ensure that this transaction fully complies with § 103d of the Act, prohibiting issuance of a license to any alien or any corporation that is "owned, controlled, or dominated" by a foreign entity. This restriction is reflected in the Commission's rules at 10 CFR §§ 50.38 and 50.40(c). Furthermore, the Standard Review Plan on Foreign Ownership, Control or Domination requires that applicants propose a "negation action plan" to provide positive measures to assure that the

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4/ The quoted guidance falls under Section III.1.b of the SRP which applies to "Operating License Reviews." Notably, however, the guidance for reviews of license transfers in Section III.1.e. specifically acknowledges that "the reviewer will use the criteria described in other sections of III.1 of this SRP, as appropriate, to conduct his or her license transfer reviews." NUREG-1577, Rev. 1 at 6.

foreign ownership interest is denied control or domination over licensee decisions. 64 *Fed. Reg.* 10166, 10169 (March 2, 1999).

NEP's proposed negation action plan fails to provide sufficient assurance that the license will not be controlled or dominated by National Grid and, therefore, NRC does not have a sufficient basis to find that the proposed transaction complies with the Act's prohibition against foreign control. It is without question that the issue of foreign control of NEP's licenses is both within the scope of this proceeding and relevant to the findings the NRC must make to grant the application for license transfer. 42 U.S.C. § 2133(d); 10 CFR §§ 50.38 and 50.40 (c). More specific facts and references are provided below. *See* 10 CFR § 2.1306(b)(2)(iii) and (iv).

Following the proposed merger, NEP will be 100% owned (through NEES) by National Grid, a foreign entity. Directly or through NEES, the NEP Board of Directors will be answerable to, and subject to appointment or dismissal by, National Grid. In other words, NEP's Board will be subject to control by National Grid. Furthermore, there do not appear to be any restrictions on Board membership of NEP, so that a majority of NEP's Board may ultimately be comprised of foreign nationals – an even more direct form of foreign control.[5/]

In an effort to mitigate foreign domination and control, NEP has proposed a "negation action plan," NEP Application at 32, that consists essentially of three elements:

(i) A Nuclear Committee of the NEP Board, comprised of U.S. citizens, has been created and has been given authority over a range of nuclear matters with the exception of certain rights reserved to the full NEP Board, *id.*;

5/ Four of nine of the Directors of NEES, including its Chairman, will be foreign nationals following the merger with National Grid. As with NEP, there appear to be no limits precluding NEES, the direct owner of NEP, from being controlled by a foreign-majority Board.

(ii) Only the Nuclear Committee will have access to certain sensitive nuclear-related information, *id.* at 35; and

(iii) The Nuclear Committee will be free from any foreign control or influence, because Nuclear Committee members will be shielded by "whistleblower protection." *Id.* at 36.

As demonstrated below, this negation plan does not provide sufficient protection against foreign domination or control.

With respect to establishment of a Nuclear Committee, NEP's negation action plan is insufficient because it reserves fundamental rights over nuclear matters to the full NEP Board of Directors such that the full Board (which has no prohibition against foreign control), and not the Nuclear Committee, retains substantial control of the license. Among the rights reserved to the full NEP Board of Directors are:

- the right to decide whether or not to close the facility and begin decommissioning and whether to seek license renewal, *id.* at 33;
- the right to decide whether to sell, lease, or otherwise dispose of NEP's interest in the facility; and
- the right to take action ordered by the Commission or any agency or court of competent jurisdiction. *Id.*[6/]

In its "Preliminary Criterion for Non-owner Operating Service Companies," the Commission enumerated areas to be considered when determining whether certain decisionmaking authority is sufficient to constitute a transfer of an NRC license. 63 *Fed. Reg.* 54,389. Included in these enumerated areas is the decision to permanently cease operations. *Id.* at 54,390. As a

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6/ CL&P and WMECO recognize that by reason of the Sharing Agreement NEP has limited authority to unilaterally implement any of these actions; nonetheless, the Petitioners remain concerned that decisions on whether or not to support and, in turn, fund these actions remain in control of a foreign entity.

practical matter, retention of this right (as well as the right to dispose of NEP's interest in Millstone 3) by the full NEP Board provides it with tremendous leverage to influence the actions of Nuclear Committee members, as well as to directly impact operations at Millstone 3 by exercising the authority to withhold funds. Expressly reserving to the full NEP Board final decision-making authority with respect to continuing or permanently ceasing operations is tantamount to a transfer of control of the license to National Grid. Thus, the negation plan is insufficient to provide assurance NEP's license will not be controlled or dominated by a foreign interest.

Another of the powers reserved to the full NEP Board of Directors is the right to "take action" ordered by this Commission or any other agency or court of competent jurisdiction. NEP Application at 33-34. This exception is overly broad and provides the opportunity for a potentially foreign-controlled NEP Board to bypass the Nuclear Committee's authority to act on nuclear matters that are addressed by an agency or court order. The authority to "take action" in response to an order would logically encompass the right to decide whether to comply, challenge, or how to interpret such an order. All of these determinations go to the essence of the responsibility of being an NRC licensee. In these instances, a foreign-controlled NEP Board would be able to bypass the Nuclear Committee and exert the very control prohibited by the Act. Thus, the proposed negation action plan does not provide adequate assurance that NEP's license will not be controlled or dominated by any foreign interest.[7/]

7/ NEP's purported extension of "whistleblower protection" to Nuclear Committee members similarly adds no greater assurance that the Nuclear Committee and NEP's license will not be dominated or controlled by a foreign interest. The Commission's "whistleblower" regulations contained in 10 CFR § 50.7 prevent any licensee – foreign dominated or otherwise – from discriminating against any employee for engaging in "protected activity." *Id.* at 37. The existence (continued...)

III. CONCLUSION

For the foregoing reasons, CL&P and WMECO respectfully request that they be permitted to intervene in this proceeding and that a hearing be granted on the issues presented. If NEP is given the opportunity to cure the defects in its application, the Petitioners respectfully request that (1) they be provided thirty days to review and assess the new information provided by NEP, and (2) they be provided with an opportunity to amend, supplement, or withdraw this Petition based upon their assessment of any such new information.

Respectfully submitted,

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July 20, 1999

7/(...continued)
of this regulation does not vitiate or supplant the Act's separate prohibition on foreign domination or control. In short, the purported endorsement of 10 CFR § 50.7 (which would apply in any event) in NEP's negation action plan provides no additional assurance that the licensee will not be controlled or dominated by any foreign interest and would not prevent harm as a result of that domination.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
NORTHEAST NUCLEAR ENERGY COMPANY, et al.	)	Docket No. 50-423
Millstone Station, Unit 3	)	

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance as counsel on behalf of petitioners The Connecticut Light and Power Company and Western Massachusetts Electric Company, in any proceeding related to the above-captioned matter.

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Dated: July 20, 1999

UNITED STATES OF AMERICA
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NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance as counsel on behalf of petitioners The Connecticut Light and Power Company and Western Massachusetts Electric Company, in any proceeding related to the above-captioned matter.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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NORTHEAST NUCLEAR ENERGY COMPANY, et al.	)	Docket No. 50-423
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NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance as counsel on behalf of petitioners The Connecticut Light and Power Company and Western Massachusetts Electric Company, in any proceeding related to the above-captioned matter.

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Dated: July 20, 1999

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion and Notices of Appearance have been served upon the following by courier this 20th day of July, 1999.

Office of the Secretary
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

I hereby certify that copies of the foregoing Motion and Notices of Appearance have been served upon the following by facsimile, with a conforming copy deposited in the U.S. mail, first class, postage prepaid, this 20th day of July, 1999.

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