January 21, 1999

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

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| In the Matter of | ) | |
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| NORTH ATLANTIC ENERGY SERVICE | ) | |
| CORPORATION and | ) | Docket No. 50-443 |
| MONTAUP ELECTRIC COMPANY | ) | |
| | ) | (License No. NPF-86) |
| (Seabrook Station, Unit No. 1) | ) | |
| | ) | |

**ANSWER OF LITTLE BAY POWER CORPORATION TO MOTION OF THE UNITED ILLUMINATING COMPANY FOR LEAVE TO INTERVENE, AND PETITION TO ALLOW INTERVENTION OUT-OF-TIME**

## I. INTRODUCTION

In a filing dated January 11, 1999 – one week past the deadline for filing petitions for leave to intervene – the United Illuminating Company ("UI") moved to intervene in the captioned proceeding and petitioned to impose conditions on the license transfer.[1] UI's petition was submitted in response to the NRC's "Notice of Consideration of Approval of Transfer of Facility Operating License . . ." in the above docket published in the Federal Register on December 14, 1998. That notice reflected the September 29, 1998 request by Montaup Electric Company ("Montaup"), a minority owner of approximately 2.9% of the Seabrook Station, Unit No. 1, and Little Bay Power Corporation ("Little Bay") for authorization to transfer Montaup's ownership and license interests in Seabrook to Little Bay. The Notice also identified January 4, 1999 as the date by which petitions for leave to intervene were due to be filed.

[1] See Motion of the United Illuminating Company for Leave to Intervene and Petition to Allow Intervention Out-of-Time, dated January 11, 1999 (hereinafter "Petition").

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UI's petition must be denied. First, the petition is unjustifiably late, for it was filed after the deadline and UI has failed to establish good cause for its lateness. UI claims it was under the mistaken impression that it had thirty days in which to file a petition, or until January 13, 1999, but in fact two senior officials of UI were advised by North Atlantic Energy Services Corporation ("North Atlantic"), the operator of the Seabrook Station, as were the other Seabrook co-owners, that petitions for leave to intervene with respect to the Montaup/Little Bay transfer were due January 4, 1999, and not January 13, 1999 as UI claims it mistakenly believed. In light of this actual notice – which occurred on December 16, 1998 – UI's claimed good cause is clearly non-existent and its petition for leave to intervene must be dismissed for being unjustifiably late.

Additionally, as with the petition of New England Power Company ("NEP"), UI has not established standing in that the harm UI asserts it will suffer is wholly conjectural in nature. Nor has UI submitted a valid issue in accordance with Commission pleading requirements. As Little Bay demonstrates in this answer, UI's two proposed issues – like the those of NEP – should be dismissed for two reasons. First, UI's proposed issues impermissibly attack Commission rules and regulations by advocating stricter requirements than those imposed by its regulations. In reality, UI's petition is nothing more than a petition for rulemaking, which is not allowed in this proceeding. Second, the petition fails to set forth facts or expert opinion in support of UI's proposed issues, as required by Commission pleading requirements. Rather, UI's claims are based instead wholly on speculation and conjecture.[2]

[2] As a result of these deficiencies, the petition also fails to provide information to show that a genuine dispute exists on a material issue of law or fact relevant to whether the NRC should approve the transfer. Since this deficiency is derivative of the two above, we do not discuss this issue separately.

## II. BACKGROUND

By letter dated September 29, 1998, North Atlantic transmitted Montaup and Little Bay's License Transfer Application requesting the Commission's consent to the transfer of Montaup's interest in the Operating License for Seabrook Station, Unit No. 1 to Little Bay.[3] The transfer is being undertaken by Montaup as part of the divestiture of all of its generating assets pursuant to the restructuring of the electric utility industry in conformance with agreements with the regulatory authorities in Massachusetts and Rhode Island.

As part of the agreement to sell its 2.9% ownership interest in Seabrook, Montaup will transfer to Little Bay its interest in the Seabrook Decommissioning Trust Fund and pre-pay the balance of its decommissioning obligation into the Seabrook Trust Fund such that the total amount attributable to its 2.9% ownership interest at the time of closing will be $11.8 million. License App. at 10. Assuming a 1.73% annual real rate of return on this $11.8 million (which is more conservative than the 2% real rate of return allowed by the NRC under 10 C.F.R. § 50.75(e)(1)), this amount will grow by the year 2026 (the current expiration date of the Seabrook Operating License) to the amount required to decommission Montaup's 2.9% ownership share of Seabrook. Id. at 11-12. Such prepayment of decommissioning obligations is specifically allowed for in the Commission's regulations. 10 C.F.R. § 50.75(e)(1).

To demonstrate reasonable assurance of funds necessary to cover estimated operating costs at Seabrook, Little Bay submitted estimates for total annual operating costs attributable

[3] License Transfer Application Requesting Consent for Transfer of Montaup Electric Company's Interest in Operating License NPF-86 for Seabrook Station, Unit No. 1 to Little Bay Power Corporation (September 29, 1998) (hereinafter "License App."). Little Bay is a wholly owned subsidiary of BayCorp Holdings, Ltd ("BayCorp"), which is the holding company that also owns Great Bay Power Corporation ("Great Bay"), which owns approximately 12.1% of Seabrook, Unit 1.

to Montaup's current 2.9% ownership share of Seabrook for the first five years of its ownership and the sources of funds to cover those costs, as called for by 10 CFR § 50.33(f)(2). License App. at 8-9.

There is no question that the September 29, 1998 request for authorization meets the NRC requirements in 10 CFR § 50.75 and § 50.33(f)(2) concerning Little Bay's financial qualifications for decommissioning funding and operational costs attributable to its prospective 2.9% ownership interest in Seabrook. Indeed, UI, like NEP, in effect concedes as much. See UI Petition at 4-6; Section V, VI.A, and VI.B infra.

In fact, UI's true concerns, as articulated in its petition, is that Little Bay "will be an [EWG], not an electric utility," and – unlike Montaup, which, "as a rate regulated utility, has the right to recover its required [costs] through the rates it charges" – Little Bay "will depend on market revenues from its share of the sale of power from Seabrook to cover its financial obligations." UI Petition at 3. The entire tenor of this argument – and indeed UI's petition as a whole – is that Little Bay is not financially qualified because it is not backed by state rate setting authorities. This argument, however, challenges the very premise underlying the restructuring of the electric utility industry, which presumes the eventual demise of traditional cost-of-service ratemaking. Moreover, its acceptance could essentially preclude nuclear plant owners from participating in such restructuring and directly undercut the restructuring legislated by Massachusetts, Rhode Island and other New England states (including Connecticut where UI operates). The Commission, of course, has determined after thoroughly considering the impact of restructuring on its financial qualification requirements that "its regulatory framework is generally sufficient, at this time, to address restructurings and reorganizations that will likely arise as a result of electric utility deregulation." See Final Policy

Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,076 (1997).

Thus, the Commission should view askance UI's (as well as NEP's) attempt to impose stricter requirements than those required by NRC regulations on the sale and transfer of nuclear power plant generating assets. Such additional requirements would only serve to undermine the restructuring initiatives of the various states by unnecessarily discouraging and disrupting the sale or divestiture of nuclear generating assets by other utilities undertaking or contemplating such restructuring.

## III. APPLICABLE LEGAL STANDARDS

Little Bay has set forth the general legal requirements for standing and for the admission of issues under Subpart M in detail in Section III of its response to NEP's petition to intervene and refers to that section of its NEP pleading here.[4] As with respect to NEP's petition, directly relevant to considering the admissibility of the proposed issues set forth in UI's petition are the second requirement of 10 C.F.R. § 2.1306(b)(2)– which requires that issues be "relevant to the findings the NRC must make to grant the application for license transfer" as that requirement relates to the general proscription barring challenges in license proceedings to established NRC rules and regulations – and the third criterion which requires a factual basis – "facts or expert opinion" – for the admission of issues.[5] The general legal requirements for late-filed petitions, such as UI's, are set forth below.

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[4] See Answer of Little Bay Power Corporation to Motion of New England Power Company for Leave to Intervene, and Petition for Summary Relief or, in the Alternative, for a Hearing, dated January 13, 1999, Section III (hereinafter "Little Bay Resp. to NEP").

[5] As noted earlier, by virtue of challenging NRC regulations and failing to provide a factual basis, the UI petition also fails to "[p]rovide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact" as required by 10 C.F.R. § 2.1306(b)(2)(iv). See Florida Power and Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 512, 521 n.12 (1990).

## IV. UI'S PETITION IS INEXCUSABLY LATE

UI filed its petition on January 11, 1999, one week after it was due. 63 Fed. Reg. 68,801, 68,802 (1998). Thus, as a petitioner seeking to intervene late, UI must demonstrate, under the Commission's new Subpart M regulations, "good cause for failure to file on time." 10 C.F.R. § 2.1308(b). "In reviewing untimely . . . petitions, the Commission will also consider:"

> (1) The availability of other means by which the . . . petitioner's interest will be protected or represented by other participants in a hearing; and
>
> (2) The extent to which the issues will be broadened or final action on the application delayed.[6]

The December 14, 1998 Federal Register "Notice of Consideration of Approval of [Montaup/Little Bay] Transfer" clearly provided that:

> By January 4, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing and . . . may petition for leave to intervene in a hearing proceeding on the Commission's action.

63 Fed. Reg. at 68,802. UI claims that it was late because, despite this clear statement in the Federal Register, it "was under the mistaken impression" that it would have until 30 days after the notice, or until January 13, 1999, to file its petition and because it was preoccupied by "the press of year end activities and vacation schedules." UI Petition at 10. This showing is insufficient and UI's late-filed petition must be denied.

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[6] Id. These requirements are nearly identical to three of the factors considered when determining whether to admit late-file petitions under Subpart G of the Commission's rules of practice. Compare 10 C.F.R. §§ 2.714(a)(1)(i), (iv), and (v). Thus, Commission case law concerning those late-filing factors should apply to petitions under Subpart M as well. For example, licensing boards in Subpart L proceedings have looked to Subpart G for guidance when determining the requirements for late-filings. See Curators of the University of Missouri, LBP-91-31, 34 NRC 29, 121 n.172 (1991); Babcock and Wilcox Company (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-95-1, 41 NRC 1, 5 & n.3 (1995).

The Commission's requirement to show good cause applies independent of how late a petition is filed and, indeed, petitions have been dismissed for being as few as eight and eleven days late absent an explanation of good cause. See Boston Edison Company (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 468 & n.27 (1985); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 12-13 (1980). Moreover, merely overlooking a Federal Register notice – in essence UI's claimed good cause here – does not provide good cause for lateness. Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 646-47 & n.18 (1975); see also Consolidated Edison Company (Indian Point Station, Unit No. 2), LBP-82-1, 15 NRC 37, 40 (1982) ("ignorance of the publication of the Federal Register notice does not constitute good cause").

Further, in addition to official notice in the Federal Register notice, UI had actual notice of the correct due date. On December 16, 1998, the Chief Nuclear Officer of North Atlantic forwarded by facsimile the Federal Register notice to each of the Chief Executives of the Seabrook co-owners expressly advising them in the cover letter that:

> The notice provides interested parties until January 4, 1999 to request a hearing and file a petition to intervene on the license transfer application.[7]

The fax cover sheet shows that the Federal Register and cover letter was faxed to Nathaniel D. Woodson, UI's Chief Executive, as well as to James F. Crowe, UI's Executive Vice President. Thus, on December 16, 1998 two senior officials of UI had been advised that January 4, 1999 – and not January 13, 1999 – was the due date for the filing of petitions to

[7] Letter from Ted. C. Feigenbaum, Executive Vice President and Chief Nuclear Officer, North Atlantic Energy Services Corp., to Chief Executives, Seabrook Joint Owners (December 16, 1998) (emphasis added), attached as Exhibit 1.

intervene. Such actual notice of the correct due date should have clearly corrected any "mistaken impression" on UI's part of any longer period for the filing of its petition to intervene, and clearly deflates and negates any claimed good cause for its having missed the filing deadline. See Jamesport, ALAB-292, 2 NRC at 633, 646-47.

Under well established Commission precedent, absent a showing of good cause, a late-filing petitioner must make a compelling showing on the remaining factors in order for the Commission to admit the late-filed petition.[8] UI has not done so here. UI acknowledges that its proposed issues "are substantially the same as those raised by NEP," but claims that its interests would not be protected unless it is permitted to intervene because it proposes different remedies and its view of the New England electricity market differs "in some respect" from that of NEP. UI Petition at 10-11. UI does not, however, identify how its views of the New England electricity market differs from those of NEP or how such difference would impair NEP's representation of UI's interests with respect to the proposed issues. Further, UI's proposed remedies do differ substantially from those proposed by NEP and could significantly broaden the issues in this proceeding, thus causing delay.

Thus, UI has not made a compelling case on the other factors to overcome its lack of good cause. Because UI's lateness is unjustified, its late-filed petition must be denied.

## V. UI LACKS STANDING TO RAISE ITS CLAIMS

Like NEP's petition, UI's petition must be dismissed for lack of standing. Although UI claims that it would be harmed as a result of the license transfer, the harm that UI alleges

[8] E.g., Westinghouse Electric Corporation (Nuclear Fuel Export License for Czech Republic -Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 329 (1994)

is merely speculative or conjectural as opposed to being imminent, particular and concrete.[9] UI fears that Little Bay may be unable to pay plant operating and decommissioning costs. Petition at 3-4. However, UI, like NEP, has done nothing more than to speculate that conditions in the New England electric power market make it difficult to project Little Bay's future revenues, see UI Petition at 5 (discussed at Section VI.B, infra); that decommissioning costs might be higher than now estimated, see UI Petition at 6 (discussed at Section VI.A, infra); and that Seabrook might shut down early because other nuclear plants in New England have shut down early and because of plans for construction of new power plants in New England, see UI Petition at 5-6 (discussed at Sections VI.A and B, infra). Contrary to Subpart M's express requirements, UI provides no facts to support such conjecture or to show any harm whatsoever that it may suffer. See 10 C.F.R. § 2.1306(b)(3) (petitions must "[s]pecify both the facts pertaining to the petitioner's interest and how the interest may be affected, with particular reference to the factors in § 2.1308(a)"); accord Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978) ("[t]here must be a concrete demonstration that harm to the petitioner . . . will or could flow from a result unfavorable to it . . . "). UI has made no such "concrete demonstration" here and thus lacks standing to intervene in this proceeding.

Moreover, UI's petition, like NEP's, is really premised on the argument that UI will suffer harm even if Little Bay complies with all the appropriate license transfer regulations. For example, UI expressly recognizes that five-year cost-revenue projections, such as those provided by Little Bay, have been "used in some cases in the past" to establish financial

[9] Quivira Mining Company (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998); International Uranium (USA) Corporation (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 (1998).

qualifications under the NRC's regulations. UI Petition at 5-6. Similarly, UI fails to identify any aspect in which the decommissioning prefunding that is being provided as part of the license transfer fails to meet the NRC's regulatory requirements for such prefunding. Id. At 6; see also Sections VI and VII infra. Failing to even assert that Little Bay's application is inadequate under the Commission's regulations, UI certainly has not demonstrated a legally recognized injury sufficient to establish its standing in this proceeding. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (injury in fact must involve the "invasion of a legally protected interest").

Further, the NRC has already recognized in the notice of opportunity for a hearing that "[t]he proposed transfer does not involve a change in the rights, obligations, or interests of the other co-owners of the Seabrook Station." 63 Fed. Reg. at 68,802. As set forth in the Seabrook Joint Ownership Agreement, the obligations of the joint owners are "several and not joint," so UI cannot incur any liability from Little Bay as a result of this transaction.[10] In short, UI's claim that it will suffer harm from the granting of this license transfer is purely hypothetical at best and does not suffice to establish UI's standing in this proceeding.

## VI. UI'S ISSUES AND SUPPORTING BASES FAIL TO MEET NRC PLEADING REQUIREMENTS

UI's petition articulates two "concerns" which presumably UI seeks to raise as issues in accordance with the requirements of 10 C.F.R. § 2.1306. These are:

1. "the ability of Little Bay to cover its share of expenses for the ongoing operation of Seabrook, including operating expenses and capital costs," and
2. "the adequacy of the provision for funding Montaup's share of decommissioning costs for Seabrook."

[10] See Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units (May 1, 1973), ¶ 6.1.

UI Petition at 4. These concerns, however, are no more than a broad restatement of the Commission regulatory requirements and do not provide a concise statement of the issues which UI seeks to raise. UI does go on in its petition to raise vague, generalized claims – unsupported by any affidavit providing facts or expert opinion – concerning the adequacy of the decommissioning prefunding and Little Bay's five-year cost-revenue projections. UI's claims with respect to each must be dismissed, however, for improperly challenging NRC regulatory requirements and for lack of adequate factual basis.[11]

**A. Alleged Inadequacy of Decommissioning Funding**

UI expresses essentially the same concerns as NEP, that the decommissioning prefunding may be inadequate (1) "[i]f the estimated cost for decommissioning . . . is lower than what the projection realistically should be," and (2) "[i]f premature closure of Seabrook were to occur." UI Petition at 6. UI's issue must be dismissed for the same reasons as NEP's, because it constitutes an impermissible collateral attack on the NRC's prefunding decommissioning regulations and because UI provides no factual basis to support its position.

**1. Impermissible Challenge to NRC Regulations**

UI's claim that prefunding may be an insufficient means to meet Little Bay's decommissioning obligations is a direct challenge to the decommissioning funding requirements the NRC has imposed on non-rate regulated licensees to ensure adequate funding. Compare 10 C.F.R. § 50.75(e)(1)(i) with 10 C.F.R. § 50.75(e)(1)(ii) (external sinking fund available only to licensees with guaranteed income streams). The NRC's decommissioning

[11] In showing that UI has failed to provide a factual basis for its claims, Little Bay demonstrates that UI's petition fails to provide facts or expert opinion to support its claims as required under the Commission's standards for the pleading of issues or contentions. Little Bay has not come forth with facts outside of the Application to oppose UI's vague, generalized claims for such is not relevant in determining whether UI has met its wholly independent burden under the Commission's rules of submitting a valid issue or contention for litigation, which precedes any obligation or burden on Little Bay to come forward with facts beyond those in the Application.

regulations identify the minimum amount of decommissioning funding required to show reasonable assurance that sufficient funds will be available for decommissioning, 10 C.F.R. §§ 50.75(b)(3) and (c), and expressly provide that prepayment is one of the "acceptable" methods of providing this funding, 10 C.F.R. §§ 50.75(b)(3) and (e)(1)(i).[12] UI identifies no respect in which the prepayment here fails to meet any of the NRC's regulatory provisions providing for the prepayment of decommissioning funds, nor does it even make such a claim.

Instead, UI merely speculates that the prefunding may be inadequate because "the estimated cost for decommissioning" might be "lower than what the projection realistically should be" and because Seabrook might close prematurely. UI Petition at 6. Wholly apart from the complete lack of factual basis, discussed infra, UI's speculation of greater prefunding needs is a direct challenge to the Commission's prefunding requirements – which UI does not dispute are met here – and the generic determinations made by the NRC in their promulgation. The NRC includes a 25% contingency factor in its baseline decommissioning cost estimate which underlies its minimum formula amount in 10 C.F.R. § 50.75(c) in order to account for uncertainty and unforeseen changes in decommissioning costs.[13] The NRC also requires its licensees to adjust their decommissioning cost estimates annually and to file biennial reports with the NRC to show that their plant decommissioning funds are likely to be sufficient at the time of decommissioning. 10 C.F.R. §§ 50.75(b) and (f)(1). Thus, the

[12] As noted by Little Bay in its response to the NEP petition, prefunding has long been recognized by the Commission as a more stringent requirement than setting aside monies over time from ratepayers of regulated electric utilities. See Little Bay Resp. to NEP at 13 n.12.

[13] See Report on Waste Disposal Charges, Changes in Decommissioning Waste-Disposal Costs at Low-Level Waste Burial Facilities, NUREG-1307, Rev. 8 (December 1998) at 4, Table 3.1. This table reflects that a 25% contingency is included in the January 1986 costs of $105 (for the reference PWR) and $135 (for the reference BWR) set forth in the regulations at 10 C.F.R. § 50.75(c).

Commission specifically took into account the potential that decommissioning cost estimates could change in promulgating its decommissioning prefunding requirements.

The NRC also specifically considered the possibility that power plants might shut down early when it promulgated its new decommissioning funding regulations. 62 Fed. Reg. 47,588, 47,591-92 (1997) (Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, Proposed Rule). The Commission rejected a proposed alternative requiring accelerated funding for utility licensees to cover the possibility of early shutdown, but stated that non-rate regulated licensees would, in effect, "have to 'accelerate' funding by getting 'up-front' forms of financial assurance," such as prepayment (which is the ultimate acceleration) or some type of surety or guarantee. Id. at 47,592.[14] The Commission was also aware that some plants had not operated for their full 40-year license terms but nonetheless thought its current regulations governing plant shutdowns, 10 C.F.R. § 50.82, "[struck] the best balance between the level of assurance and cost." Id. Thus, under the regulations, the possibility of early shutdown is adequately addressed by non-rate regulated licensees providing up-front decommissioning funding, such as that provided by Montuap and Little Bay here.[15]

In short, UI seeks to impose stricter requirements than those required by the NRC's regulations and therefore its proposed issue must be dismissed as an impermissible collateral

[14] See also 63 Fed. Reg. 50,465, 50,470 (1998) (Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, Final Rule) (rejecting "requiring accelerated funding for all plants . . . to cover the possibility of premature shutdown at some plants").

[15] As discussed in Little Bay's response to the NEP petition, the regulations put non-rate regulated licensees, like Little Bay, which have prepaid their decommissioning obligations, in a stronger position regarding potential early shutdown than rate regulated licensees making annual deposits into an external sinking fund. See Little Bay Resp. to NEP at 15.

attack on the Commission's decommissioning prefunding regulations and the generic determinations and Commission policy judgments underlying them.[16]

**2. Lack of Factual Basis under 10 C.F.R. § 2.1306(b)(2)(iii)**

This issue must also be dismissed for lack of factual basis. As set forth in Little Bay's response to NEP, for a petitioner's challenge to a licensee's decommissioning cost estimate to be admissible, the petitioner must not only provide a factual basis to challenge the adequacy of the estimate, but a sufficient factual basis to claim as well that there is no reasonable assurance that the amount will be paid.[17] Here, UI, like NEP, has done neither.

Indeed, UI does not even challenge the adequacy of the decommissioning cost estimate. Although it claims that "the amount of the proposed deposit by Montaup into the Trust Fund needs to be explored carefully," its claimed basis for such a need is simply that:

> If the estimated cost for decommissioning used as a basis for calculating the deposit is lower than what the projection realistically should be, then the deposit amount will be too low.

UI Petition at 6 (emphasis added). Nowhere does UI claim that the estimated cost for decommissioning used as a basis for calculating the prepayment "is lower than what the projection realistically should be."[18] Nor does UI provide any facts to suggest that the cost estimate is in any respect too low. Not a shred of factual or expert opinion support – none – is

[16] See legal authority discussed in Little Bay's response to NEP's petition, Section II.B.1 at 6-8.

[17] See Little Bay Resp. to NEP at 15, citing Yankee Atomic Energy Company (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 9 (1996) and Yankee Atomic Energy Company (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 260 (1996).

[18] As noted in Little Bay's response to NEP, the proposed decommissioning prefunding level is keyed to the current decommissioning cost estimate for Seabrook of $489 million based on the NRC's cost formula set forth in the regulations, 10 C.F.R. § 50.75(c). See Little Bay Resp. to NEP at 16 n.16.

provided anywhere for UI's conjecture. Indeed, to the contrary, the prefunding commitment in the Montaup/Little Bay transaction is highly conservative.[19]

Nor has UI provided any factual basis to claim a lack of reasonable assurance that Little Bay would not pay any shortfall should the current estimate prove low at some later date. Little Bay has committed that it will, in accordance with NRC requirements, "annually conduct a 'prefunding true-up' review under which it will review the sufficiency of accumulated funds (the initial $11,800,000 and subsequent earnings) to cover decommissioning funding requirements for its prospective 2.9% ownership interest in Seabrook (assuming a 2% real earnings rate) and will deposit, if necessary, additional funds in the Seabrook Decommissioning Trust as required to maintain the prefunded status of its decommissioning obligation." License App. at 13 n. 20. UI's petition does not even acknowledge this commitment, much less provide any factual basis to dispute its adequacy to cover any shortfalls. In short, UI's claimed inadequacy of using the current cost estimate as a basis for prepayment is utter speculation – totally devoid of any factual basis – that does not begin to approach the Commission's standard for challenging decommissioning funding estimates. See Yankee Nuclear, CLI-96-1, 43 NRC at 9; Yankee Nuclear, CLI-96-7, 43 NRC at 260, 267. Hence this issue is patently inadmissible.

UI's speculation that Seabrook might shut down early is also totally devoid of any factual basis. UI notes the "premature shutdown of a number of reactors" and asserts that there is a "difficult climate for nuclear power in New England." UI Petition at 6. But UI

[19] As noted above, the NRC includes a 25% contingency factor in its baseline decommissioning cost estimate to account for uncertainty and unforeseen changes in costs. UI presents no facts to suggest that this contingency may be insufficient to cover any changes in the decommissioning costs for Seabrook. Moreover, just last month, the NRC issued a revision to NUREG-1307 showing that the cost for low level waste disposal might be decreased substantially for a plant the size of Seabrook. See Little Bay Resp. to NEP at 4 n.4.

presents no facts or expert opinion concerning Seabrook to suggest that it will shut down early. UI also presents no facts or expert opinion to support its assertion of a "difficult climate for nuclear power in New England," or elsewhere.[20] Its argument about new power plants potentially displacing Seabrook capacity, id. at 5, is also merely unsupported conjecture. See Section VI.B.2. Thus, UI's claim is purely conjectural and it must be dismissed. See Yankee Nuclear, CLI-96-7, 43 NRC at 267.

Furthermore, UI's surmise that Little Bay would be unable to meet its decommissioning funding obligations if Seabrook were to shut down prior to 2026 is also pure conjecture and is simply wrong. At the outset, UI's claim that the $11.8 million prepayment is based on the assumption that Seabrook must remain operational until 2026 in order to provide sufficient decommissioning funding is erroneous, for the $11.8 million prepayment is purposefully conservative compared to NRC requirements.[21] Moreover, even if Seabrook were to shut down early, decommissioning need not commence at that time,[22] and the decommissioning fund could continue to grow and –without any additional payment – be available to fully cover Little Bay's share for any decommissioning that takes place after 2026. In this regard, the NRC regulations expressly allow a credit for projected earnings using a 2% annual real rate of return "through the projected decommissioning period." 10 C.F.R. § 50.75(e)(1)(i). Hence, UI's claim that Little Bay might not meet its decommissioning fund-

[20] As an aside, Little Bay notes that Boston Edison has just recently entered into a transaction providing for the sale of the Pilgrim Station, which is a significantly smaller and older plant than Seabrook. Further, as noted in Little Bay's response to NEP, five other nuclear units have already applied for license extensions and others are preparing such applications. See Little Bay Resp. to NEP at 17 n.17.

[21] See Little Bay Resp. to NEP at 13 n.13. Thus, this claim must also be dismissed because it does "not accurately address" the application. See Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069, 2082 (1982).

[22] Decommissioning must be completed within 60 years of permanent shutdown, i.e., by 2059 if Seabrook were to shut down today. 10 C.F.R. § 50.82(a)(3).

ing obligations – despite its full compliance with NRC regulations – is based on utter speculation and must be dismissed.

**B. Alleged Inadequacy of Financial Qualifications for Operations**

UI claims that Little Bay's demonstration of financial qualifications for operations based on five-year cost-revenue projections is inadequate because of alleged new generation capacity being planned for the New England area and the potential for a prolong shutdown of the Seabrook, Little Bay's sole asset. Like UI's decommissioning claims, this issue must also be dismissed as an impermissible challenge to NRC regulations and for lack of a supporting factual basis.

**1. Impermissible Challenge to NRC Regulations**

In the September 29, 1998 Application, Little Bay set forth the expenses associated with its prospective 2.9% ownership interest in Seabrook for the first five years of its ownership and further identified the sources of revenues that would be used to cover these costs. License App. at 8-9. This showing was made in accordance with the express provision of 10 C.F.R. § 50.33(f)(2), which provides that an "applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility [and] shall also indicate the source(s) of funds to cover these costs."

UI readily acknowledges that "such projections have been used in some cases in the past" to show financial qualifications. UI Petition at 5. But despite their acceptability under NRC regulations, UI goes on to claim that such a showing is not sufficient here. Id. at 4-6. Therefore, like UI's proposed issue on decommissioning funding, this issue must also be dismissed as an impermissible collateral attack on Commission regulations for advocating stricter requirements than those imposed by the regulations.

Specifically, the regulations, as reflected above, expressly provide for non-electric utility applicants to establish financial qualifications by five-year cost and revenue projections, such as those provided here by Little Bay. This interpretation of the regulations is confirmed by the NRC's recently approved Standard Review Plan. See Little Bay Resp. to NEP at 20 n.23. It is further confirmed by NRC precedent, specifically with respect to Great Bay, where the NRC found that revenue from the sale of electricity from Seabrook alone would be sufficient to cover its operating costs:

> Great Bay is required to meet the existing financial qualifications review requirements of 10 CFR 50.33(f)(2). This section requires that "the applicant shall submit estimates for the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs." Seabrook has an established operating history and associated costs that are now a matter of record. Based on a review of Great Bay's current financial statements submitted with its May 8, 1996, submittal, and supplemental projections submitted on October 18, 1996, the staff has concluded that Great Bay has complied with the essential requirement of the existing standard, which is to demonstrate reasonable assurance of obtaining its share of Seabrook operating costs. Great Bay has projected operating income and cash flow based on what appear to be reasonable projections of the spot market price of and demand for power from Seabrook for the foreseeable future . . . . Thus, Great Bay has demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license as required by 10 CFR 50.33(f)(2).[23]

[23] North Atlantic Energy Services Corporation and Great Bay Power Corporation (Seabrook Station, Unit No. 1), Docket No. 50-443, Exemption Order at 3-4 (January 22, 1997), 62 Fed. Reg. 5,492, 5,493 (1997) (emphasis added); see also North Atlantic Energy Services Corporation and Great Bay Power Corporation (Seabrook Station, Unit No. 1), Docket No. 50-443, Exemption Order at 5 (July 23, 1997), 62 Fed. Reg. 40,549, 40,550 (1997). The NRC considered the financial qualifications of Great Bay because it initially determined for the first time in evaluating the application for establishing a holding company that Great Bay was not an electric utility.

Thus, NRC regulations, guidelines and practice all point to the fact that cost and revenue projections such as those provided by Little Bay, relying solely on revenue from Seabrook, are sufficient to establish financial qualifications for operations.[24] Indeed, Little Bay's ongoing financial costs will be less than Great Bay's, in that Little Bay will have prefunded its decommissioning costs. Therefore, UI's challenge to the adequacy of Little Bay's demonstration of financial qualifications in accordance with the NRC's financial assurance standards – on the basis of speculation that Seabrook might suffer a prolonged shutdown or that Seabrook's electrical generation might be displaced by unspecified, yet to be constructed power plants – is an impermissible collateral attack on NRC regulations, contrary to well-established NRC precedent. See Little Bay Resp. to NEP at Section III.B.1.

**2. Lack of Factual Basis under 10 C.F.R. § 2.1306(b)(2)(iii)**

As with its claims regarding decommissioning funding, UI again provides nothing more than pure speculation to support its claim that Little Bay's showing of financial qualifications for operations is inadequate. UI claims that the "power situation in New England currently is in a state of great flux;" that developers plan to build 30,000 MW of new electrical capacity; and that therefore "the five-year revenue projections made by Little Bay are, or may be, highly uncertain." UI Petition at 5. UI, however, provides no facts or expert opinion to support its claim. UI refers to new power plants under consideration for the New England area but it provides no facts or information to show that these potential new units would adversely affect the capability of Little Bay to recover its costs of generating Seabrook power through the sale of that power. See UI Petition at 4-6. For example, UI provides no fact or

[24] As noted in Section II, supra, the Commission has specifically determined that "its regulatory framework is generally sufficient, at this time, to address restructurings and reorganizations that will likely arise as a result of electric utility deregulation."

expert opinion to show to what extent such units will be constructed and, to the extent constructed, whether they would displace electrical generation by Seabrook. See also New England Power Pool, 85 FERC ¶¶ 61,141, 61,551 (1998) (it is unlikely that all such projects "will be constructed").

More specifically, UI does not claim – much less provide any supporting facts or expert opinion – that electricity from Seabrook would be more expensive than that from any such new capacity, or, even if more expensive, that generation from Seabrook would thereby be displaced by such new generation. UI provides absolutely no information concerning Seabrook's costs of generating power (of which UI, like NEP, is certainly aware), how Seabrook's costs compare to the costs of other existing New England generating resources (on which UI certainly has information), or the estimated costs of the new generation sources under consideration (on which UI certainly has at least some representative information). In fact, as UI well knows, the cost of generating power at Seabrook compares very favorably with the operating costs of generating electricity from other sources of energy, such as coal, oil and natural gas, and indeed other nuclear units.

Finally, UI provides no facts to indicate that Seabrook is likely to suffer a "prolonged shutdown." UI merely asserts that "[t]he history at some [unspecified] nuclear plants demonstrates that a lengthy shutdown . . . is not out of the question." UI Petition at 5-6. If a petitioner contends that an application is inadequate on the basis of an analogy between the applicant's facility and a proposed benchmark facility, the petitioner must establish that the benchmark is valid to show that the analogy raises a genuine dispute on a material issue of fact with the applicant. Yankee Atomic Electric Company (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 32 (1996); Yankee Nuclear, CLI-96-7, 43 NRC at 267 (petitioner

must show "logical relationship" with alleged analogy). UI has done nothing of the sort here. UI provides no facts about the plants that suffered prolonged shutdowns to indicate why they did – indeed, UI does not even name the plants – and no facts to indicate that Seabrook is likely to suffer such a shutdown. UI Petition at 5-6. Thus, the Commission must reject this claim as completely unsupported.

In short, UI's claimed inadequacy of the cost-revenue projections provided by Little Bay with its Application is totally devoid of supporting facts or expert opinion. Thus, the petition is deficient, and must be dismissed based on the precedent holding that such speculative and conclusory allegations cannot support a contention. See Yankee Nuclear, CLI-96-7, 43 NRC at 267; Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180-81 (1998).[25]

## VII. UI'S PROPOSED REMEDIES MUST BE REJECTED

In addition to petitioning for leave to intervene – for which, as shown above, there is no basis – UI asks the Commission to impose "remedies" in the form of the following conditions on the transfer of the license from Montaup to Little Bay:

1. BayCorp Holdings would be required to build a cash reserve sufficient to sustain a one year shutdown of the plant. Because of the interrelationship of Little Bay and Great Bay, such reserve would be required to cover both the exiting ownership by Great Bay and the Montaup share to be acquired by Little Bay.

2. BayCorp Holdings would not be permitted to withdraw cash from Little Bay or Great Bay for the purposes other than supporting its obliga-

[25] Moreover, the mere citation of an alleged factual basis in the petition (planned new capacity and shutdowns at other plants) does not suffice. The petitioner must provide information and analyses to show why its bases support its contention, which UI has completely failed to do. Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 284, vacated in part and remanded on other grounds, CLI-95-10, 42 NRC 1, aff'd in part, CLI-95-12, 42 NRC 111 (1995); Private Fuel Storage, LBP-98-7, 47 NRC at 181.

tions involving Seabrook until the cash reserve referred to in (1) above is met.

3. BayCorp Holdings would not be permitted to acquire any additional Seabrook ownership until its cash reserve is sufficient to support any incremental purchases, using the one-year criteria and until legislation is adopted in New Hampshire removing any exposure of other Seabrook owners from a default by Great Bay or Little Bay.

4. Great Bay and Little Bay would be required to obtain and maintain business interruption insurance for their ownership interest in Seabrook.

UI Petition at 7-8. UI's request for relief must be dismissed as a premature request for the Commission to impose license conditions. It is based on the presumption that UI will prevail on its request for hearing and the admission of its two proposed issues – notwithstanding the numerous bars and deficiencies delineated above – as well as prevail on the merits at any subsequent hearing. Moreover, there is no basis for the granting of such relief and the Commission should deny it outright.[26]

Indeed, UI suggests no legal or regulatory basis for its request, and there is none. In effect, through its operating cost "prefunding" remedy, UI is looking for an ironclad guarantee of Little Bay's funding of its prospective financial obligations for the Seabrook plant. See UI Petition at 4. However, the NRC regulation requiring reasonable assurance of decommissioning funds "does not contemplate" an "ironclad" or "absolute guarantee of such funds." Yankee Nuclear, CLI-96-7, 43 NRC at 262. Rather, the "regulation was intended only to require 'reasonable assurance of funds for decommissioning.'" Id. (emphasis in original). Similarly, the showing required for establishing financial qualifications under 10

[26] In fact, Great Bay has business interruption insurance through Nuclear Electric Insurance Limited to protect against protracted unscheduled outages of Seabrook. It provides weekly coverage of $520,000 in the event of an outage of more than 23 weeks for up to 135 weeks of outage time. Nevertheless, such is not required by NRC regulations.

C.F.R. § 50.33(f) is one of "reasonable assurance," not "absolute certainty" or assurance "beyond doubt."[27] Indeed, as shown above, under nearly identical circumstances, the Commission found that Great Bay could fund its share of Seabrook's operating costs through revenues from the plant alone, and hence did not impose any of UI's "remedies" on it to establish reasonable financial assurance. Thus, UI's remedies are clearly beyond what the Commission's standard requires. UI's requested relief is just an attempt to challenge, through this license transfer proceeding, NRC policy and requirements concerning financial qualifications and decommissioning funding. Such is not permissible under well-established NRC precedent.[28]

Moreover, the Commission's granting of such relief would not only greatly impede and restrict Great Bay and Little Bay's legitimate business functions but would also provide UI (and NEP), competitors of Great Bay and Little Bay, with a significant and unfair competitive advantage. Indeed, if the Commission were even to consider UI's proposed relief, in order to assure a level playing field among competitors, it would also have to consider requiring the other co-owners of the Seabrook facility to maintain a one year cash reserve and adhere to UI's other proposed conditions as well.

Further, the granting of such relief could also disrupt the ongoing sale of nuclear power plants occurring in conjunction with electric utility restructuring. The imposition of

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[27] 10 C.F.R. § 50.33(f)(1) and (2); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 18 (1988) (quoting Coalition for the Environment v. NRC, 795 F.2d 168, 175 (D.C. Cir. 1986))

[28] See, e.g., Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 21 n.33 (1974); Duke Power Company (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-128, 6 AEC 399, 401 (1973).

such conditions would complicate, hinder, and make less likely both ongoing transactions as well as future sales and divestitures of nuclear plants by saddling potential new owners with extraneous and burdensome requirements. In doing so, it could greatly delay the restructuring of nuclear utilities, thereby discouraging the sale and transfer of nuclear units.

In short, UI's proposed remedies should be rejected for being both contrary to Commission regulation and bad policy.

## CONCLUSION

In consideration of the foregoing, Little Bay respectfully requests the Commission to deny UI's petition for leave to intervene and for a hearing in that (1) UI's petition is unjustifiably late, (2) UI lacks standing, and (3) UI has failed to submit a valid issue in accordance with the pleading requirements of 10 C.F.R. § 2.1306(b)(2).

Respectfully submitted,

Gerald Charnoff
Paul A. Gaukler
D. Sean Barnett
SHAW PITTMAN POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000
Counsel for Little Bay Power Corporation

January 21, 1999

Document # 706379 v 1

# EXHIBIT 1

North Atlantic

# FAX TRANSMITTAL SHEET

NORTH ATLANTIC ENERGY SERVICE CORPORATION
P. O. BOX 300
SEABROOK, NH 03874
603-474-9521

**Please deliver the following pages to:**

| | | Fax Number |
|---|---|---|
| NAME: | **Seabrook Joint Owners** | |
| | Nathaniel D. Woodson - United Illuminating Company | 203-499-3664 |
| | John B. Keane - Northeast Utilities | 860-665-3800 |
| | Kevin A. Kirby - Eastern Utilities Associates | 508-559-6125 |
| | James J. Keane - Com/Electric | 508-291-3346 |
| | James S. Robinson - New England Electric System | 508-389-2962 |
| | Joseph O. Roy - MMWEC | 413-583-8994 |
| | Anthony J. Monteiro - Hudson Light & Power Dept. | 978-562-1389 |
| | Joseph M. Blain - Taunton Municipal Lighting Plant | 508-823-6931 |
| | Frederic C. Anderson - NH Electric Cooperative, Inc. | 603-536-8682 |
| | Frank W. Getman, Jr. - Great Bay Power Corporation | 603-431-8877 |
| cc: | Bruce D. Kenyon - Northeast Utilities | 860-665-3581 |
| | James F. Crowe - United Illuminating Company | 203-499-3664 |

FROM: Ted C. Feigenbaum

TOTAL PAGES (Including Cover): 4

DATE: 12/16/98

Message:

If you do not receive all pages, please call back as soon as possible.
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North Atlantic

North Atlantic Energy Service Corporation
P.O. Box 300
Seabrook, NH 03874
(603) 474-9521

The Northeast Utilities System

December 16, 1998
NA #980535

To Chief Executives
Seabrook Joint Owners

Subject. Publication of Federal Register Notice for the Little Bay/Montaup Transfer of Control

In the December 14, 1998 Federal Register, the NRC published notice of the request for the transfer of Montaup Electric's ownership interest in Seabrook Station to Little Bay Power Corporation. A copy of the notice is attached.

The notice provides interested parties until January 4, 1999 to request a hearing and file a petition to intervene on the license transfer application. Requests for hearing and petition to intervene must be in accordance with the NRC's new procedure for license transfer applications, which became effective on December 3, 1998. As an alternative, the NRC will accept comments on the proposed action until January 13, 1999.

Very truly yours,

Ted C. Feigenbaum
Executive Vice President
and Chief Nuclear Officer

TCF:bes
Enclosure

cco98167

facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70 24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at River Bend Station (RBS), and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1 Plant procedures do not permit more than 3 BWR fuel assemblies to be in storage or in transit between their associated shipping cask and dry storage rack at one time.

2 The k-effective of the fresh fuel storage racks filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water does not exceed 0.95, at a 95% probability, 95% confidence level.

3 If optimum moderation of fuel in the fresh fuel storage racks occurs when the fresh fuel storage racks are not flooded, the k-effective corresponding to this optimum moderation does not exceed 0.98, at a 95% probability, 95% confidence level.

4. The k-effective of spent fuel storage racks filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water does not exceed 0.95, at a 95% probability, 95% confidence level.

5 The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6 Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5 0 weight percent

By letter dated May 15, 1997, Entergy Operations, Inc. (EOI) requested an exemption from the requirements of section 70.24(a) of Title 10 of the *Code of Federal Regulations*, "Criticality Accident Requirements," for the River Bend Station (RBS). On June 11, 1997, the NRC requested that RBS address the seven criteria published in Information Notice 97-77, "Exemptions from the Requirements of Section 70.24 of Title 10 of the Code of Federal Regulations' in order to continue with the exemption process.

On August 12, 1998, EOI superseded its original May 15, 1997, letter and requested an exemption from the criticality accident monitoring requirements stipulated in 10 CFR 70.24(a) specifically for the areas containing incore detectors (which are not in use) and unirradiated fuel while it is handled, used, or stored on site.

In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittal and has determined that, except for Criteria 1 and 3 discussed below, RBS meets the applicable criteria.

RBS does not restrict fuel movement and storage of fuel assemblies that are out of their associated shipping cask to 3 assemblies. However, based on the elevation and configuration of the area where the assemblies are placed before storage into the new or spent fuel racks, the possibility of flooding is highly improbable. In addition, administrative controls are provided to restrict the fire-fighting practices employed in the fuel building to prevent low-density optimum moderation conditions. Fire-fighting foam is not permitted in the area and hose stations are equipped with straight-stream nozzles while handling fuel in the fuel building or storing fuel in the new fuel vault so that the array will not be covered with mist. Therefore, the staff concludes that any array of fuel assemblies in storage or in transit while outside of their associated shipping cask will be safely subcritical under the most adverse moderation conditions feasible, and the exception to Criterion 1 is acceptable.

Although the RBS new fuel racks are designed to maintain k-effective less than 0.95 when either dry or completely flooded with water, the new fuel racks cannot meet the 0.98 k-effective limit under accident conditions of low-density optimum moderation (e.g., foam or mist). Therefore, solid, noncombustible, gasketed covers are provided over the new fuel vault to preclude the entrance of optimum moderation media. When these covers are removed for fuel handling, the fuel is covered by a fire retardant material to ensure that the storage array is not moderated by low-density moderation. As previously mentioned, administrative controls are also provided to prevent optimum moderation conditions in the new fuel vault so that the array will not be covered with mist. Therefore, the staff concludes that a k-effective greater than 0.98 will not be attained in the new fuel storage racks and the exception to Criterion 3 is acceptable.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur. The low probability of an inadvertent criticality constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 70.24 for the RBS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (63 FR 63755).

This exemption is effective upon issuance

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 2nd day of December 1998

Roy P. Zimmerman,

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-33111 Filed 12-11-98; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-443]**

### Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing; North Atlantic Energy Service Corporation, et. al.

The U S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of the interest held by Montaup Electric Company in Facility Operating License No. NPF-86 for the Seabrook

Station, Unit No 1 (Seabrook Station), located in Rockingham County, New Hampshire, and considering issuance of a conforming amendment under 10 CFR 50 90.

Consent to the proposed transfer would authorize Little Bay Power Corporation (Little Bay) to possess the ownership interest in the Seabrook Station now held by Montaup Electric Company (Montaup). Little Bay is a wholly owned subsidiary of BayCorp Holdings, Ltd., which is the holding company that also owns Great Bay Power Corporation, an existing owner of the Seabrook Station North Atlantic Energy Service Corporation, the sole licensed operator of the facility, would remain as the Managing Agent for the 11 Joint Owners of the facility and would continue to have exclusive responsibility for the management, operation and maintenance of the Seabrook Station. The license would be amended for administrative purposes to reflect the transfer of Montaup's ownership interest to Little Bay.

The proposed transfer does not involve a change in the rights, obligations, or interests of the other co-owners of the Seabrook Station.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations

As provided in 10 CFR 2 1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2 1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50 91.

The filing of requests for hearing, and petitions for leave to intervene, and written comments with regard to the transfer application, are discussed below.

By January 4, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request should address the factors that the Commission will also consider, in reviewing untimely requests, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon the applicant; the General Counsel, U S. Nuclear Regulatory Commission, Washington, DC 20555, and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the Federal Register and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 13, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2 1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this Federal Register notice.

For further details with respect to this action, see the applications for consent to transfer Montaup's interest in the license and issuance of a conforming amendment submitted under cover of a letter dated September 29, 1998, from North Atlantic Energy Service Corporation which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 4th day of December, 1998.

For the Nuclear Regulatory Commission

**Cecil O. Thomas,**

*Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–33109 Filed 12–11–98; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8084]**

### Rio Algom Mining Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of a request from Rio Algom Mining Corporation to revise a site-reclamation milestone in License No. SUA–1119 for the Lisbon, Utah, facility and notice of opportunity for a hearing.

**SUMMARY:** Notice is hereby given that the U S Nuclear Regulatory Commission (NRC) has received, by letter dated October 23, 1998, a request from Rio Algom Mining Corporation (Rio Algom) to amend License Condition (LC) 55 A.(3) of Source Material License SUA–1119 for the Lisbon, Utah, facility. The license amendment request proposes to modify LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile. The date proposed by Rio Algom would extend completion of the final radon barrier by 18 years.

**FOR FURTHER INFORMATION CONTACT:** Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone (301) 415–6629.

**SUPPLEMENTARY INFORMATION:** The portion of LC 55 A.(3) with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable.

January 21, 1999

**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**


| | | |
|---|---|---|
| **In the Matter of** | ) | |
| **North Atlantic Energy Service** | ) | **Docket No. 50-443** |
| **Corporation, et al.,** | ) | **(License No. NPF-86)** |
| | ) | |
| **(Seabrook Station, Unit No. 1)** | ) | |

## CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January 1999 copies of the Answer of Little Bay Power Corporation to Motion of the United Illuminating Company for Leave to Intervene, and Petition to Allow Intervention Out-of-Time were served by facsimile and U.S. Mail on the following:

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications
Washington, DC 20555-0001
(original and two copies)

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Paul A. Gaukler

Document #. 706376 v.1