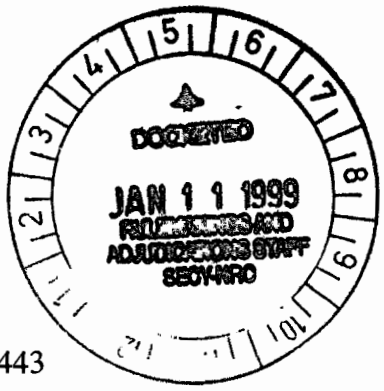

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
	)	Docket No. 50-443
North Atlantic Energy Service Corporation	)	
Montaup Electric Company	)	(License No. NPF-86)
	)	
	)	
(Seabrook Station, Unit No. 1)	)	

MOTION OF
THE UNITED ILLUMINATING COMPANY
FOR LEAVE TO INTERVENE
AND
PETITION TO ALLOW INTERVENTION
OUT-OF-TIME

I. Introduction

Pursuant to Subpart M of the US Nuclear Regulatory Commission ("Commission") Rules of Practice and Procedure, The United Illuminating Company ("UI") moves to intervene in the captioned proceeding. This proceeding involves the proposed transfer of the interest held by Montaup Electric Company ("Montaup") in the Seabrook Station, Unit No. 1 to Little Bay Power Corporation ("Little Bay"). Because the Federal Register notice of December 14, 1998 (63 Fed. Reg. 68801) provided that any person whose interest may be affected by Commission action on the application for license transfer could request a hearing by January 4, 1999, this Motion for Leave to Intervene is untimely by one week. Accordingly, UI petitions to allow it to intervene out-of-time, and addresses below the good cause requirements and other considerations which Commission regulations state are to be considered in reviewing an untimely request or petition.

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II. Background

Seabrook Station, Unit No. 1 ("Seabrook") is owned by eleven joint owners, and is operated by North Atlantic Energy Service Corporation, the sole licensed operator of the facility. Montaup, a minority owner, seeks authorization to transfer its approximately 2.9% ownership interest and financial responsibility for Seabrook to Little Bay, a wholly owned subsidiary of BayCorp Holdings, Ltd. ("BayCorp Holdings"). BayCorp Holdings also owns Great Bay Power Company ("Great Bay"), an approximately 12.1% owner of Seabrook. The assets of BayCorp Holdings and its subsidiaries are invested almost exclusively in Seabrook.

As part of the sales transaction, Montaup will transfer to Little Bay its interest in the Seabrook Decommissioning Trust Fund ("Trust Fund") and proposes to prepay the balance of the decommissioning obligations for its 2.9% ownership interest in Seabrook by depositing monies into the Trust Fund. The amount to be deposited has been calculated based on certain assumptions as to a future annual real rate of return. It also is based on the assumption by Montaup that Seabrook will continue to operate to the year 2026 (the current expiration of the Seabrook operating license) and will not have a premature plant shut down. It further is based on the assumption that the decommissioning funding estimates for Seabrook are accurate and will not be revised upward in the future.

In addition, as part of the sales transaction, Little Bay will pay Montaup $3.2 Million (subject to certain adjustments at closing) and will assume responsibility for Montaup's share

of Seabrook's future costs, including obligations for capital investment, operating expenses and escalations in decommissioning obligations above the amount to be prefunded by Montaup.

Montaup is a rate-regulated electric utility. As such, it has the right of rate recovery of required expenditure, including decommissioning expenditures, and is able to pay its obligations from rates which it charges to customers. Moreover, Montaup has assets, in addition to its ownership share of Seabrook, from which it realizes income. In contrast, Little Bay will be an exempt wholesale generator, not an electric utility, and will depend on market revenues from its share of the sale of power from Seabrook to cover its financial obligations. To meet those financial obligations, Little Bay will look to Great Bay, with whom it will have a contract obligating Great Bay to purchase Little Bay's share of the Seabrook power output. Great Bay's ability to meet its obligations to Little Bay primarily will depend on selling that output in the competitive bulk power market at a rate sufficient to cover such obligations. Thus, while Montaup, as a rate regulated utility, has the right to recover its required decommissioning expenditures and most of its other expenditure requirements through the rates which it charges, Little Bay will have no such right and must depend on the open marketplace.

III. Affected Interest

The United Illuminating Company is one of the joint owners of Seabrook. Its 17.5% share of Seabrook give UI the second largest share of ownership of the plant. As such, UI

has a significant interest in the ability of each joint owner to meet its financial obligations for the plant, including obligations for covering operating expenses, capital costs and decommissioning funding. If one or more of the joint owners is unable in the future to meet its financial obligations, the burden will fall on the other joint owners, including UI. Thus, the proposed transfer from Montaup to Little Bay involves a change which affects the rights of UI, and may affect its future obligations and interests.

IV. Discussion

UI is not opposed to the transfer of the ownership interest in Seabrook from Montaup to Little Bay, provided that two concerns are satisfactorily resolved -- concerns which go to the heart of the fundamental obligation of providing reasonable assurance of the public health and safety from safe operation and, ultimately, safe decommissioning of the Seabrook plant. The two concerns which UI has 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.

As noted above, Montaup is able to cover its financial obligations for Seabrook through rate recovery and through return on its other assets. In contrast, since the assets of Little Bay and Great Bay consist almost exclusively of Seabrook ownership, and since neither is a rate-regulated utility, Little Bay and Great Bay must rely on the marketplace. In connection with the application for transfer, Little Bay has provided to the Commission a

five-year projection of market revenues. Although such projections have been used in some cases in the past, the adequacy and accuracy of such a projection in the present circumstance is suspect, and must be carefully reviewed by the Commission. Since Seabrook represents substantially all of the assets of Little Bay and Great Bay, there is little or no margin for error if the projections are inaccurate. This contrasts with the situation currently with Montaup, where other assets provide a cushion for inaccurate forecasting.

The power situation in New England currently is in a state of great flux. Deregulation is underway and divestitures have become the goal in many cases. Retail access is a reality and plans for construction of in excess of 30,000 MW of new capacity for New England have been announced by developers. Although not all of this proposed generating capacity will be built, some of it certainly will be, and much existing capacity will be replaced. Accordingly, the five year revenue projections made by Little Bay are, or may be, highly uncertain, since their accuracy depends on the accuracy of the underlying assumptions made and those assumptions are questionable. Projections beyond five years may be even more suspect. In any consideration of this matter, the Commission needs to test the credibility of the projections.

Further, the method proposed for covering Little Bay's share of expenses of the operation of Seabrook assumes there will be no prolonged shutdown of the plant. The history at some nuclear plants demonstrates that a lengthy shutdown — sometimes of a year

or more — is not out of the question. If such a prolonged shutdown were to occur, Little Bay, with no other assets, will have no revenue to cover its obligation.

With respect to decommissioning funding, the amount of the proposed deposit by Montaup into the Trust Fund needs to be explored carefully by the Commission. 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. Moreover, the assumption underlying the deposit amount — that the Seabrook plant will remain operational until 2026 and that decommissioning expenditures will not occur until that date — has been questioned by some, given the premature shutdown of a number of reactors and the difficult climate for nuclear power in New England. If premature closure of Seabrook were to occur, Little Bay would not have any method of generating revenue to cover a shortfall in its decommissioning funding. Thus, the Commission must consider whether the proposed deposit by Montaup is sufficient to cover its decommissioning obligation and must determine whether Little Bay will be capable of fulfilling its decommissioning funding responsibilities if the proposed transfer is approved.

V. Remedies

New England Power Company ("NEP"), an intervenor in the present proceeding, suggested that the Commission should condition the transfer of Montaup's Seabrook ownership interest to Little Bay on the retention by Montaup of contingent responsibility for the financial obligations associated with the safe operation and decommissioning of the transferred ownership portion in the event of the default of Little Bay. Alternatively, NEP

requested a full hearing on the issue of whether Little Bay reasonably can be assured of having the requisite financial qualifications safely to operate and decommission its ownership share of Seabrook. (Motion of New England Power Company for Leave to Intervene, and Petition for Summary Relief or, in the Alternative, for a Hearing (December 31, 1998)).

While UI would support the remedy proposed by NEP, and the hearing alternative if that remedy is not adopted, UI believes that there are other remedies which the Commission could impose in approving the transfer of interest from Montaup to Little Bay. Such remedies would involve the imposition on BayCorp Holdings, Little Bay and Great Bay of certain conditions of the transfer, as opposed to having Montaup responsible on a residual basis for the failure of Little Bay to fulfill its financial obligations. Among the conditions UI would propose be imposed on any transfer are the following:

(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 existing 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 obligations 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, in it participation in the proceeding, may propose and could discuss other potential remedies, not included above, which would lessen the risk that a default by Little Bay would result in an increased financial responsibility being thrust upon UI and the other joint owners.

VI. Late Filing

UI submits that the late filing of this intervention petition will not delay or adversely affect the conduct of the proceeding, and that the participation by UI in any hearings or other procedures in this matter will enhance the proceeding and assist in the resolution of the issues. Further, UI submits that there is good cause for this late filed petition.

The License Transfer Application involved in this proceeding was filed with the Commission by Montaup and Little Bay on September 29, 1998. At the time of the filing, Commission regulations provided that petitions for intervention in Commission proceedings

were to be filed within thirty days of the notice appearing in the Federal Register. UI was aware at the time of the filing having been made on September 29, 1998, and reasonably believed that once the matter was noticed, it would have a thirty day period within which to file for intervention.

During the late summer and early fall of 1998, UI held discussions with Great Bay concerning the proposed purchase of Montaup's shares of Seabrook by Great Bay or Little Bay and offered a set of criteria which, if met, would result in UI agreeing not to oppose the sale before the Commission or the appropriate state regulatory agency. UI summarized those criteria in a letter to Great Bay dated September 3, 1998 (Attachment 1). The efforts by UI to reach an agreement with Great Bay were not successful.

More than two months (77 days) passed between the September 29, 1998 filing dates of the License Transfer Application and the December 14, 1998 Federal Register notice of Consideration of Approval by the Commission of the Proposed License Transfer. That notice, of course, provided for a twenty day period for filing a request for hearing or petition for leave to intervene, setting the date as January 4, 1998. This period was established pursuant to a newly adopted Commission rule, noticed in the Federal Register on December 3, 1998, (63 Fed. Reg. 66721), which amended Commission procedures for approval of license transfers.

If the License Transfer Application had been noticed prior to December 3, 1998, a thirty day period would have been provided for filing of any intervention petition. Because it was noticed after December 3, 1998, the period was shortened to twenty days. Although the December 14, 1998 notice provided that petitions for leave to intervene were to be filed by January 4, 1999, UI continued under the mistaken impression that it would have thirty days to file for intervention, or until January 13, 1999. For this reason, and also partly due to the press of year end activities and vacation schedules, consideration of a petition for intervention was set aside until after the beginning of the new year. The combination of the original thirty day period for filing, the newness of the revisions to Commission regulations, the Federal Register notice appearing just prior to the Christmas-New Year's holiday period and the failure to note the actual filing date in this proceeding caused UI to miss the timely filing date by one week. UI submits that under these unusual circumstances, good cause exists for a late filing.

Under Commission regulations, an untimely hearing request does not automatically mean that the petition for intervention must be denied. In this case, other circumstances also should be considered by the Commission in accepting the UI Motion for Leave to Intervene, including consideration of the two items mentioned in 10 CFR § 2.1308(b)(1) and (2).

(1) In this case Petitioner's interest would not be fully represented by NEP, the initial intervenor in this matter. Although the issues sought to be raised by UI are

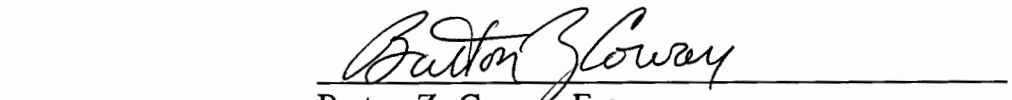
substantially the same as those raised by NEP, the remedies which UI would proposed are different. (See discussion above). UI needs to be a participant to directly put forth its position in this matter, both on the issues raised and on prospective remedies. The ownership interest of UI in the Seabrook facility is greater than that of NEP, although UI is a smaller company than NEP. Resolution of this matter thus will have a greater impact on UI than on NEP. Further, the UI view of the electricity market in New England is different in some respect from NEP. Thus, UI will bring a perspective on the issues that is different from NEP and could lead to a different result being obtained.

(2) The issues in the proceeding will not be broadened by admitting UI in this proceeding. As stated above, the issues raised by UI are substantially the same as those raised by NEP. Moreover, admission of UI in the proceeding should not delay final action on the application. The delay in this filing beyond the January 4, 1999 date is seven days — far less than the seventy-seven days between the application date and the Federal Register notice. Even if UI were not a party, the fact of the NEP intervention means that the Commission will have to consider and resolve the issues raised in this matter by NEP. Participation by UI in the proceedings could serve to speed final action, since UI as a party can assist in resolving the issues. In view of the short delay in filing for intervention, and the fact that the Commission is using a newly adopted procedure, fundamental fairness should lead to granting this Motion for Leave to Intervene and Petition to Allow Intervention Out-of-Time.

VII. Conclusion

For the reasons set forth above, The United Illuminating Company requests that its Petition to Allow Intervention Out-of-Time be granted and that UI be permitted to intervene in this proceeding.

Respectfully Submitted,



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January 11, 1999

Counsel for The United Illuminating Company

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James F. Crowe
Executive Vice President &
Chief Customer Officer

September 3, 1998

Mr. Frank W. Getman, Jr.
President & CEO
Great Bay Power Corporation
Cocheco Falls Millworks
100 Main Street, Suite 201
Dover, NH 03820

Dear Frank:

I am responding to your request for a statement of UI's position with respect to Great Bay's proposed purchase of Montaup's share of Seabrook.

I won't repeat the previous arguments except to say that UI remains concerned over the potential increased risk your proposed purchase places on UI. I offer the following set of criteria which if met, UI would agree not to oppose the sale at NRC or the Connecticut DPUC:

1. Great Bay agrees it will build a cash reserve sufficient to sustain a 1 year shutdown of the plant. Included herein is the cash reserve required to cover the existing and acquired Montaup share.

2. Great Bay agrees it will not take cash out of the corporation for purposes other than supporting its Seabrook share until the 1 year criteria is met.

3. Great Bay agrees it will not acquire any additional Seabrook shares until its cash reserve is sufficient to support any incremental purchases using the one-year criteria and until restructuring legislation is enacted in New Hampshire that removes any exposure to UI from a default of Great Bay (the SB 140 exposure).

4. Great Bay agrees it will actively participate in an effort to aggregate a large block of ownership of Seabrook for offering in the marketplace. (Of course Great Bay and others would need to reserve their rights whether or not to sell when offers are received).

5. Great Bay agrees it will obtain and keep in place business interruption insurance for its existing and incremental purchase of Seabrook.

6. Great Bay will only acquire the Montaup share if it can receive outside funding for this piece.

Sincerely,

James F. Crowe

JFC/blh
jcgreat.doc

cc: Mr. Frederick C. Anderson
Mr. Ted C. Feigenbaum
Mr. Frank W. Getman, Jr.
Mr. Alfred D. Houston
Mr. James J. Keane
Mr. John B. Keane
Mr. Kevin A. Kirby
Mr. Anthony J. Monteiro
Mr. James S. Robinson
Mr. Joseph O. Roy
Mr. Nathaniel D. Woodson

Certificate of Service

I hereby certify that copies of the foregoing MOTION OF THE UNITED ILLUMINATING COMPANY FOR LEAVE TO INTERVENE AND PETITION TO ALLOW INTERVENTION OUT-OF-TIME have been served upon the following persons in accordance with requirements of 10-CFR §2.1313.

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January 11, 1999