

UNITED STATES OF AMERICA
before the
NUCLEAR REGULATORY COMMISSION



_____)
In the Matter of)

North Atlantic Energy Service)
Corporation, *et al.*,)

(Seabrook Station, Unit No. 1))
_____)

Docket No. 50-443
(License No. NPF-86)

**ANSWER OF MONTAUP ELECTRIC COMPANY
TO MOTION OF NEW ENGLAND POWER
COMPANY FOR LEAVE TO INTERVENE AND
PETITION FOR SUMMARY RELIEF OR,
IN THE ALTERNATIVE, FOR A HEARING**

INTRODUCTION

Under date of September 29, 1998, North Atlantic Energy Service Corporation and Montaup Electric Company (Montaup) filed with this Commission a "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" (Application). The Application was for the transfer by Montaup of its 2.9% interest¹ in Seabrook Station, Unit No. 1 (Seabrook) to Little Bay Power Corporation (Little Bay), a wholly-owned subsidiary of Bay Corp. Holdings, Ltd. which, through another wholly-owned

¹Application at 2.

subsidiary, Great Bay Power Corporation, already is the owner of 12.1% of Seabrook². On December 14, 1998, this Commission caused to be published in the Federal Register a "Notice of Consideration of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing" in the above-captioned docket.³ *Inter alia*, the notice provided an opportunity for hearing pursuant to 10 C.F.R. 2, Subpart M.

Under date of January 4, 1999, New England Power Company (NEP) completed the filing and service⁴ of a document styled as a "Motion . . . for Leave to Intervene, and Petition for Summary Relief or, in the Alternative, for a Hearing" (The Motion). Herein, Montaup replies to The Motion and for the reasons set out below urges that it be denied.

ARGUMENT

The recently adopted regulations creating the streamlined process for approval of license transfers sets forth particularized requirements for all hearing requests and intervention petitions and the criteria under which this Commission will evaluate same.⁵ Each such petition, *inter alia*, must, under 10 C.F.R. § 2.1306(b):

²Application at 1.

³63 Fed. Reg. 68801 (Dec. 14, 1998).

⁴NEP's filing was initiated on December 31, 1998. However, the original filing "inadvertently omitted" an "attached affidavit." See, Letter, Berlin to Hoyle (Jan. 4, 1999). As a result, the complete filing and service did not take place until Jan. 4, 1999. *Id.* For reasons known only to NEP, service was made on a now non-extant Atomic Safety and Licensing Board which had been appointed in another *Seabrook* proceeding, See, 63 Fed. Reg. 49137 (Sept. 14, 1998), and the former parties to that other proceeding, which has since been terminated by virtue of the withdrawal of the application which gave rise to it. See, 63 Fed. Reg. 69684 (Dec. 17, 1998).

⁵10 C.F.R. §§ 2.1306, 2.1308.

"(2) Set forth the issues sought to be raised and

(i) Demonstrate that such issues are within the scope of the proceeding on the license transfer application,

(ii) Demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer,

(iii) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issues, and

(iv) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact;"

And 10 C.F.R. § 2.1308(a) provides that in determining whether to grant a petition to intervene or hearing request, the Commission will consider, *inter alia*:

". . . whether the relief requested is within the Commission's authority,"⁶

and, "[w]hether the issues sought to be litigated are-

(i) Within the scope of the proceeding;

(ii) Relevant to the findings the Commission must make to act on the application for license transfer;

(iii) Appropriate for litigation in the proceeding;

(iv) Adequately supported by the statements, allegations, and documentation required by § 2.1306(b)(2)(iii) and (iv)."⁷

⁶10 C.F.R. § 2.1308(a)(3).

⁷10 C.F.R. § 2.1308(a)(4).

Careful analysis reveals that The Motion at bar, on its face, meets virtually none of the above-quoted requirements.

Stripped of rhetoric, the NEP filing essentially recites that the transferee here involved, Little Bay, is not an electric utility; will, pursuant to the "prepayment" option provided for in the regulations,⁸ put aside \$11,800,000 for decommissioning purposes;⁹ and that Montaup's aliquot share of the decommissioning costs projected in 1998 dollars to be incurred in 2026 is \$14,200,000.¹⁰ On these facts, and these facts alone, NEP claims there is an issue of whether decommissioning costs have been adequately prepaid.¹¹

The language of the applicable regulations makes clear that decommissioning costs need not be paid in full, in advance, in order to satisfy the regulations. A sufficient prepaid amount set aside which can be projected to earn over the operating life of the facility sufficient income on the basis of reasonable projections to cover decommissioning at the end of the license period is sufficient to satisfy the regulations. The pertinent regulation, 10 C.F.R.

⁸10 C.F.R. § 50.75(e)(1)(i)

⁹Affidavit of James S. Robinson attached to the Motion at ¶ 8, p.3.

¹⁰*Id.*

¹¹In conclusory terms, NEP also alludes to an issue of whether Little Bay will be able to cover operating costs. However, NEP sets forth no assertions based on fact (as opposed to speculation) which would tend to contravene the facts set forth in the Application, Application at 8-9, which demonstrate that the contemplated transferee clearly will have funds to pay for five years of operating costs as contemplated by 10 C.F.R. § 50.33(f)(2).

§ 50.75(e)(1)(i), as last amended, 63 Fed. Reg. 57236 (Oct. 27, 1998), specifically provides that:

"A licensee may take credit for projected earnings on the prepaid decommissioning trust funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the projected decommissioning period. This includes the periods of safe storage, final dismantlement, and license termination,"

Montaup has assumed an even lower, and, therefore, more conservative, real rate of interest of 1.73% to be applied to the \$11,800,000 over expected operating life in order to cover its aliquot share of \$14,200,000.¹² It has long been the law that an applicant before this Commission need only meet the requirements of the regulations as they exist.¹³ Clearly, Montaup has satisfied the present regulations.

In short, the entire NEP Petition amounts to an attack on the regulations. NEP wants stricter rules applied to this transfer than appear in 10 C.F.R. § 50.75. Yet, NEP has not complied with the requirements of 10 C.F.R. § 2.1329, which sets out the rules for seeking a waiver of a rule or regulation in Subpart M proceedings. Doubtless, The Motion is not cast as such because NEP is fully aware that it would be unable to carry the day in demonstrating the existence of the "sole ground" for such a waiver, viz. that application of the regulations at issue in the case at bar would not serve the purpose for which they were adopted.¹⁴

¹²Application at 3.

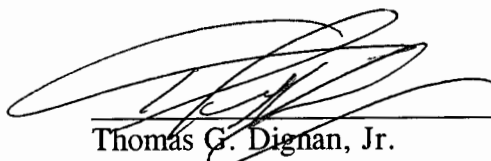
¹³*Maine Yankee Atomic Power Company* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003 (1973), *affirmed*, *Citizens for Safe Power v. NRC*, 524 F.2d 1291 (D.C. Cir. 1975).

¹⁴10 C.F.R. § 2.1329(b).

CONCLUSION

NEP has launched an attack on the regulations based in part on a theory that NRC regulations require absolute certainty with respect to the future - i.e. certainty that future costs will be covered. The standard under the Atomic Energy Act has never been one of certainty - rather it is one of reasonable assurance¹⁵ - and reasonable assurance is demonstrated by compliance with the regulations as they stand. The Motion of NEP should be denied.

By its attorneys

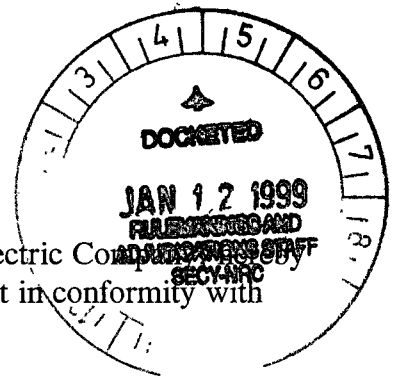


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Dated: January 12, 1999

¹⁵*Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996).

CERTIFICATE OF SERVICE



I, Thomas G. Dignan, Jr., one of the attorneys for Montaup Electric Company, certify that on January 12, 1999, I made service of the within document in conformity with U.S.N.R.C. Regulations upon the following persons:

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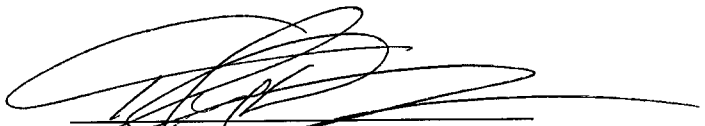
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NOTICE OF APPEARANCE

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Party: Montaup Electric Company

Admissions: Commonwealth of Massachusetts
Supreme Court of the United States
United States Courts of Appeal for the First, Second, Seventh and D.C. Circuits
United States District Courts for the Districts of Massachusetts and Rhode Island
United States Tax Court

Thomas G. Dignan, Jr.

Dated: January 12, 1999

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I, Thomas G. Dignan, Jr., one of the attorneys for Montaup Electric Company, hereby certify that on January 12, 1999, I made service of the within document in conformity with U.S.N.R.C. Regulations upon the following persons:

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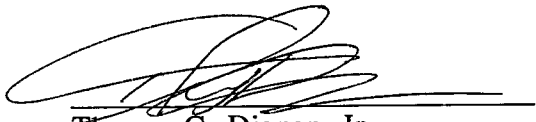
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January 12, 1999

**VIA FACSIMILE AND
REGULAR MAIL**

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Secretary of the Commission
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Washington, DC 20555-001

ATTN: Rulemakings and Adjudications Staff

Re: North Atlantic Energy Service Corporation, et al.
Docket No. 50-443 (License No. NPF-86)

Dear Ms. Vetti-Cook:

Enclosed herewith for filing in the above-entitled matter, please find the original and two copies of "Answer of Montaup Electric Company to Motion of New England Power Company for Leave to Intervene and Petition for Summary Relief or, in the Alternative, for a Hearing" and my appearance in this matter.

Very truly yours,



Thomas G. Dignan, Jr.

TGD:kdr:2188453 01
Enclosures

cc: Service List

