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January 4, 1999

VIA COURIER

John C. Hoyle, Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Attention: Rulemakings and Adjudications Staff

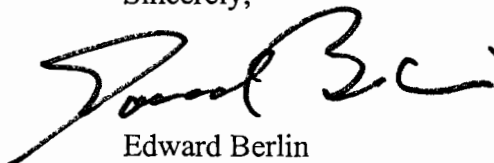
Re: Docket No. 50-443, License No. NPF-86

Dear Secretary Hoyle:

On Thursday, December 31st, we filed on behalf of New England Power Company a Motion for Leave to Intervene, and Petition for Summary Relief or, in the Alternative, for a Hearing. When the Motion was filed, the attached Affidavit of James S. Robinson was inadvertently omitted. Enclosed please find an original and two copies of the Motion which include the Affidavit.

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

Sincerely,



Edward Berlin

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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December 31, 1998

VIA COURIER

John C. Hoyle, Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
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Attention: Rulemakings and Adjudications Staff

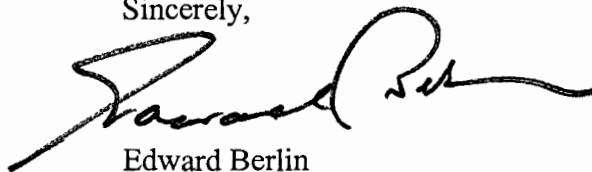
Re: Docket No. 50-443, License No. NPF-86

Dear Secretary Hoyle:

Pursuant to the Nuclear Regulatory Commission's Rules of Practice and Procedure, specifically 10 C.F.R. § 2.1306, please find enclosed an original and two copies of New England Power Company's Motion for Leave to Intervene, and Petition for Summary Relief or, in the Alternative, for a Hearing.

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

Sincerely,



Edward Berlin

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
North Atlantic Energy Service Corporation and)
Montaup Electric Company)
)
(Seabrook Station, Unit No. 1))
_____)

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

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

I. Introduction, Summary and Affected Interest

Pursuant to Subpart M of the Nuclear Regulatory Commission's ("Commission") Rules of Practice and Procedure and, specifically, 10 C.F.R. § 2.1306 (December 3, 1998), New England Power Company ("NEP") moves to intervene in the captioned proceeding and petitions either for summary relief or for a hearing.

In this proceeding, North Atlantic Energy Services Corporation ("North Atlantic"), the operator of the Seabrook nuclear unit, and Montaup Electric Company ("Montaup"), a minority owner and licensee of that unit, seek authorization for a license transfer of Montaup's ownership share, and ongoing financial responsibility for the unit, to Little Bay Power Corporation ("Little Bay"). Little Bay is a wholly-owned subsidiary of BayCorp Holdings, Ltd., a holding company that also wholly owns Great Bay Power Corporation, which owns approximately a 12.1% ownership interest in the unit. The effect will be to transfer financial responsibility for the unit from

a rate-regulated electric utility, to an Exempt Wholesale Generator that will be dependent upon market revenues for the satisfaction of its financial obligations.

As a joint licensee of Seabrook, NEP has a vital interest in the financial qualification of each licensee to meet its obligation for the safe operation and eventual decommissioning of the unit. Currently, there is a mechanism in place to ensure satisfaction of those obligations – the rate recovery assured Montaup under its approved restructuring settlements. Those rate recovery mechanisms are premised on an unassailable assumption: that it is not now possible accurately to predict the financial requirements associated with operation and decommissioning of a unit that is licensed to operate until 2026. Recognizing that the public interest in safe decommissioning, in particular, is so fundamental, those rate settlements take pains to provide adequate assurance even in the event of divestiture. Montaup would abandon that rate protection and replace it with a prefunded decommissioning payment and an assumption about the adequacy of future market revenues for the satisfaction of operating costs projected to be incurred over the next five years.

NEP recognizes that decommissioning prefunding and cost and revenue projections are alternative means of satisfying financial qualification for entities that do not qualify as "electric utilities" under 10 C.F.R. § 50.2. But it also is the case that the electric power industry is undergoing profound change – particularly in New England. In much of that market, consumer choice is now the paradigm, and access by alternative suppliers is assured. As a consequence, approximately 60 new, efficient power plants have been announced and they, together with inexpensive energy from Canada, are placing intense pressure on the competitiveness of existing generation. In the past six years, four of New England's nine nuclear units already have been retired. As described in the attached affidavit of Mr. James S. Robinson, NEP's Director of Generation Investments, these units

"were shutdown prematurely; well in advance of the expiration of their respective operating licenses." Aff. at ¶ 6.

While it may well remain appropriate, in the abstract, to conclude that a licensee dependent upon market revenues and a prefunded decommissioning fund could satisfy the financial qualification requirements, in the dynamic New England circumstance it is inappropriate, without more, summarily so to assume. Instead, in the context of the present applications it is incumbent upon the Commission to test the probity of the market revenue projections and the reasonableness of the assumption – critical to the Applicant's decommissioning funding representation – that Seabrook will indeed remain economic to operate for the remainder of its license term. If the experience in New England as to the operating life of nuclear units remains true for Seabrook, the prepayment that is proposed will prove significantly deficient. Moreover, the dynamic circumstances of the relevant market make the revenue projections very uncertain even for the five-year period discussed in the application and quite speculative thereafter.

These issues are directly relevant to the judgments that the Commission must make in response to the Applications. They are issues that affect NEP directly as a joint licensee of Seabrook. NEP will be injured if the Commission grants the application unconditionally, for without reasonable assurance of adequate funds for safe operation and decommissioning, NEP's license interest in the plant will not reasonably be protected from radiological injury.

In these circumstances the Commission has two alternatives: set the issue of financial qualifications for hearing or condition the transfer request on Montaup's agreement to remain contingently responsible should Little Bay prove unable to meet its financial obligations for the safe operation and decommissioning of the Seabrook unit.

We urge the latter, conditioning, alternative. First, it will avoid the necessity of the Commission having to make judgments about complex economic issues in a rapidly changing electric power market. Second, because it would leave ultimate responsibility, albeit contingent, with the rate-regulated company, it would make divestiture more palatable to the constituencies that have a vital stake in restructuring.

In accordance with 10 C.F.R. § 2.708(e) and 2.1306(b)(1), the following are designated as the persons on whom service of pleadings and other papers in this proceeding should be made:

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Associate General Counsel
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James S. Robinson
Vice President and Director of Generation Investments
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II. The Issues Presented

The issues presented are whether the Commission, under the unique facts of this case and the state of electric power restructuring in New England, may appropriately find:

- that the proposed level of funding for decommission is likely to be adequate;

- that the proposed licensee, Little Bay, is likely to have adequate financial resources to ensure the continued safe operation of the Seabrook unit.

NEP, as a joint licensee of the Seabrook unit, has an obvious protected interest in ensuring that those who assume ownership interests in that unit can reasonably be found to possess the requisite financial capability. Resolution of this issue of financial capability goes to the heart of the Commission's responsibilities when it is asked to approve a license transfer. In the context of this case, that issue, as shall be described presently, presents novel factual issues which either must be considered at an evidentiary hearing, or be addressed by conditioning the transfer authorization.

III. The Salient Facts

As proposed by the Applicants, following transfer of Montaup's ownership interest, Little Bay will assume Montaup's ongoing obligations for capital investment and operating expenses and for escalations in decommissioning obligations above an amount to be prefunded by Montaup. To meet its financial obligations to the unit, Little Bay will look exclusively to Great Bay which is obligated to purchase Little Bay's share of the unit's output. Neither Little Bay nor Great Bay will be "electric utilities" under 50 C.F.R. § 50.2. As such, neither will be rate-regulated or free to establish their own rate levels. Instead, Great Bay's sole ability to meet its obligations to Little Bay will turn, with one limited exception,¹ on its ability to sell Little Bay's share of the unit's output in a competitive bulk power market at rates sufficient to meet Little Bay's ongoing financial obligations to the Seabrook unit. Montaup, in contrast, is today an electric utility and will remain such. In this

¹For a limited period of time, extended not beyond 2009, Great Bay may have the ability to sell a portion of Little Bay's Seabrook entitlement to Montaup at prescribed rates. But even this limited right is extinguishable at any time by Montaup's customers choosing to obtain their power supplies from competitive sources.

capacity, it is and will remain rate-regulated. Moreover, in the restructuring settlements approved by its State and Federal rate regulators, Montaup has the right to rate recovery of required decommissioning expenditures and of the majority of ongoing nuclear capital and operational expenditure requirements. That regulatory commitment parallels rate agreements between other minority owners of the Seabrook unit and their rate regulators.

Recognizing that Little Bay would not qualify for the relaxed standard applicable to "electric utilities," the Applicants urge that the Commission take comfort from a proposed prepayment of decommissioning expenditures and from their five-year projection of market revenues.

NEP recognizes that the "prefunding" of anticipated decommissioning obligations has been an accepted means by which to satisfy that portion of a licensee's financial obligation and that it may remain so, in appropriate circumstances, in the future. On the record as it presently stands, however, the Commission cannot properly make a finding of funding sufficiency.

Applicants propose that Montaup deposit in its decommissioning fund the amount which, if the current decommissioning cost estimate remains unchanged will, based on an assumed earnings level, produce sufficient funds, assuming that decommissioning expenditures are not incurred until 2026, the expiration of the Seabrook license term. If today's estimate were to prove lower than actual or were the unit to cease operations and commence decommissioning expenditures prior to 2026, the prepayment could prove seriously deficient. And at that point the licensee for Montaup's portion would be an entity that lacked any revenue-generating resource, a fact that, importantly, distinguishes this proposed transfer from situations where the proposed licensee would have alternative means for the satisfaction of any decommissioning deficiency. Early retirement of nuclear units has been the norm in New England, even before pressure was exerted from efficient

new suppliers. Aff. at ¶ 6. If it were necessary to commence decommissioning activities at Seabrook prior to the expiration of its operating license, the prefunded share could be deficient, even assuming that the fund earns at the level projected by Applicants. Aff. at 8. The irony is that under Montaup's rate settlements there is absolutely no need to impose that likely prejudice on the public. Divestiture is not dependent on Montaup shedding itself of this obligation and, absent a probing inquiry into issues touching on the likely service life of Seabrook and the financial situation likely to be confronting Little Bay some ten or twenty years hence, the Commission, on the facts thus far presented, is in no position to find that Little Bay is capable of discharging its responsibility for the decommissioning of Seabrook or that the public interest would be served by authorizing the transfer as requested.

Nor is the Commission in a position to find that Little Bay is likely to have the financial capability to meet the ongoing capital and expense obligations associated with the ownership share of Seabrook that Montaup would transfer to it. Again, we recognize that in other circumstances the Commission has looked at five-year expense and earnings forecasts and that the Applicants here have presented that type of analysis, with the revenue portion submitted on a confidential basis and not currently available to NEP.

We already have referenced the fact that the electric power market in New England is in the midst of profound change. Divestitures are occurring and an Independent System Operator of the bulk transmission system has been put in place, each with the objective of stimulating power supply entry and competition for load. Retail access is now a reality. Retail access was not in place when the original Great Bay transfer was authorized, 62 Fed. Reg. 40549 (1997). As Mr. Robinson describes, developers have announced plans for no less than 60 new units (totaling in excess of

30,000 megawatts) to be constructed in New England. Moreover, because of transmission constraints between New England and the states on which it borders, it must be assumed that much of that capacity is being planned for the load within New England. While surely not every announced project will achieve commercialization, it must also be assumed that a good deal of existing capacity will be displaced. Indeed, in a recent order facilitating access to New England's transmission grid, the Federal Energy Regulatory Commission made this point abundantly clear (*New England Power Pool*, 85 FERC ¶ 61,141, 61,551 (1998)):

Currently, NEPOOL's new generation requests total approximately 30,000 MW of capacity. Since the existing resources within NEPOOL (25,000 MW) are presently in general equilibrium with load and reserve requirements, if all of these generation projects are developed, there would be a surplus of generating capacity within NEPOOL. Accordingly, it is unlikely that all of these generation projects will be constructed and, if constructed, it is likely that many will displace more expensive resources in serving existing load.²

In these particular New England circumstances, any revenue projections will be difficult and, depending on assumptions and analyses, very uncertain even for the first five years and quite speculative thereafter. Therefore, the Commission cannot accept the Applicants' revenue projections without subjecting them to the crucible of an evidentiary inquiry.

²In apparent response to this order, and that issued in a related docket, *Champion International Corporation and Bucksport Energy, L.L.C.*, 85 FERC ¶ 61,142 (1998), the purchaser of Central Maine Power Company's non-nuclear generation assets is seeking to set aside the sale, on the basis of an alleged material change, contending that it no longer can be assumed that it will be able to operate the units at a level comparable to their historical performance. *FPL Energy Maine v. Central Maine Power Co.*, Docket No. 98-CV-8162 (SD NY).

IV. NEP's Proposed Resolution

NEP is not at all hostile to the transfer of ownership interests in Seabrook. That transfer is indeed part of a commitment made by NEP and others as part of the restructuring effort that is underway in New England. As a leader in that restructuring effort and in the adoption of competition in place of the security of a captive service area franchise, NEP has a vital interest in assuring that restructuring works and that it in no way compromises nuclear safety. If the outcome of this or any other proceeding raises reasonable concerns about the consequences for ongoing safe operation and decommissioning, the restructuring effort that is so critical to the efficient evolution of the electric power industry can only be slowed, be subject to legitimate legislative and regulatory second-guessing, and ultimately impeded. Because NEP does not wish to see this happen, a sentiment that NEP is confident the Commission shares, we offer what we hope will be viewed as an eminently reasonable solution that will permit the restructuring efforts of Montaup and others to proceed apace, indeed without the need for a hearing.

To date, restructuring has proceeded, even where the divestiture of generation has been an essential component, upon the assumption that the electric utility will continue to meet its responsibilities as a nuclear licensee. Thus, while Montaup and others, including NEP, were obliged to sell their non-nuclear generation, they were only encouraged to sell their nuclear entitlements. State regulators and officials recognized that because of the unique safety considerations, nuclear investments had to be dealt with separately. Accordingly, along with encouraging the regulated firm to sell their nuclear ownership interests, rate protection adequate for the discharge of safe operations and decommissioning was put in place.

This is the appropriate paradigm. It leaves the licensee free to negotiate the best possible terms as part of the transfer of its ownership interest, as presumably Montaup has, while leaving in place the backstop protection of rate regulation should resort to it prove necessary to satisfy safety obligations.

Moreover, it is a paradigm that is restructuring-friendly for it not only alleviates public angst, it avoids the necessity that this Commission conduct a detailed inquiry into the financial qualifications of a new owner whose success will be dependent on exogenous and inevitably speculative market forces, and who, following retirement of the Seabrook unit, will not own a revenue-producing asset.

There is a simple resolution, one that is entirely in keeping with the objective upon which the Commission embarked in 1982 when it set out to streamline financial qualification reviews without at all compromising safety. The resolution is to use the Commission's inherent conditioning authority to authorize transfer of Montaup's Seabrook interest to Little Bay but only on the condition that Montaup agree to remain contingently responsible for required safety and decommissioning expenditures in the event of default by Little Bay.³ By assuring the public, other joint-owners, and local regulators and public officials who share this Commission's concerns about safe operation and decommissioning, that existing protections associated with being a rate-regulated "electric utility" (Montaup's circumstance) will remain in place -- protections that were relied upon when operation was authorized and were reaffirmed in rate settlements accompanying the restructuring of Montaup

³This case does not even present the concern that the new owner, following transfer of the license, could direct actions at the unit that increase the cost of decommissioning. Little Bay will not be empowered to make operating decisions. As has been the case, that will remain the province of North Atlantic.

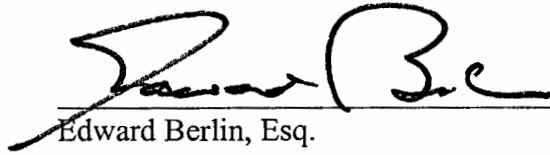
-- they will be able to proceed with restructuring free of what otherwise would be a significant cloud, if not outright impediment.

We urge the summary adoption of this "conditioning" suggestion. If adopted, we would see no need for a hearing or for any delay in approval of the transfer. If, however, the Commission is not yet persuaded of the appropriateness of our suggestion, then we do request that the Application be set for hearing, and that in advance of Commission approval of any transfer of Montaup's Seabrook ownership interest, the Commission permit full inquiry into the financial qualifications of Little Bay, including the assumptions being made about future market clearing prices.

CONCLUSION

For the foregoing reasons, New England Power Company requests that it be permitted to intervene in this proceeding and that it be accorded full party status. Further, the Commission should now condition the transfer of Montaup's Seabrook ownership interest 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 or, failing adoption of that condition, set for full hearing 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.

Respectfully submitted,



Edward Berlin, Esq.

J. Phillip Jordan, Esq.

Mark R. Klupt, Esq.

SWIDLER BERLIN SHEREFF FRIEDMAN

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December 31, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

AFFIDAVIT OF JAMES S. ROBINSON

James S. Robinson, being duly sworn, states as follows:

1. I am Vice President and Director of Generation Investments of New England Power Company ("NEP"), the wholesale electric generation and transmission subsidiary of New England Electric System ("NEES"), a public utility holding company.
2. NEP is a minority, non-operating owner of six nuclear units in New England - Seabrook, Millstone 3, Connecticut Yankee, Maine Yankee, Vermont Yankee and the Yankee plant in Rowe, Massachusetts.
3. I am responsible for oversight of NEP's nuclear investments. In that capacity I serve as a member of the Board of Directors of the four "Yankee" companies: Yankee Atomic Electric Company, Connecticut Yankee Atomic Power Company, Vermont Yankee Nuclear Power Corporation and Maine Yankee Atomic Power Company.
4. NEP is a 9.95766% joint owner of Seabrook Station.
5. The purpose of this affidavit is to describe events to date in New England with regard to the premature retirement of nuclear units, the current plans to construct a significant amount of

new generation in the region and the impact this may have on the going-forward safe operation of Seabrook Unit 1 and on adequate decommissioning funds being available to decommission the unit.

6. Since 1992, four of New England's nine commercial nuclear units have been permanently shutdown - the units operated by Yankee Atomic (located in Rowe, Massachusetts), Connecticut Yankee (located in Haddam Neck, Connecticut) and Maine Yankee (located in Wiscasset, Maine). Also, Millstone Unit 1 (operated by Northeast Utilities and located in Waterford, Connecticut), has been permanently retired. This represents almost one-half of the nuclear units which have operated in New England. The announced retirements of those units occurred in 1992, 1996, 1997 and 1998, respectively, prior to implementation of a fully competitive electric generation markets. All of these units were shutdown prematurely; well in advance of the expiration of their respective operating licenses.

7. Given the pending competitive generation marketplace in the region, 60 new generating facilities, totaling in excess of 30,000 megawatts, have been proposed or are under construction, in New England¹. This exceeds the total amount of megawatts currently installed and in-service in the six New England states. Although it is unlikely that all 60 projects will be constructed and placed into service, the large number of project announcements is indicative of the fact that the region is seen as providing opportunity for new and competitive markets.

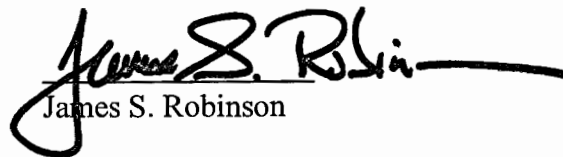
8. With regard to this proceeding, the amount of money to be deposited into Montaup's Decommissioning Trust Fund for Seabrook at the time of closing (of the sale of Montaup's

¹ Based upon information obtained from ISO New England, Inc., the entity which coordinates, reviews and provides technical input into the transmission interconnection study process in New England.

Seabrook interest to Little Bay Power Corporation) is based upon a \$489 million cost estimate in 1998 dollars assuming decommissioning commences at the end of its commercial operating license term in 2026. While Montaup's prorata obligation of the \$489 million estimate is about \$14.2 million, only \$11.8 million will have been set aside. The decommissioning trust funds are expected to grow over time based on the assumption that the earnings on the funds will grow at a rate faster than the corresponding obligation. In the event that the unit commences decommissioning at a time prior to the funds having grown to match the obligation, a deficiency could exist. It is not evident at this time that Little Bay Power will have the ability to fund the deficiency.

9. Given the fact that four nuclear units have been prematurely retired in New England to date and significant additional generation is currently under construction or planned, it is reasonable to assume that the remaining nuclear units in New England, including Seabrook Unit 1 will face increasing competitive pressure and may not operate through the term of their existing operating licenses. This increases the likelihood that a funding deficiency may exist at some time in the future for Montaup/Little Bay's share of operating expenses and the decommissioning obligation for Seabrook.

Signed under the pains and penalties of perjury, this 30th day of December, 1998.


James S. Robinson

Certificate of Service

DOCKETED
USNRC

I hereby certify that copies of the foregoing have been served upon the following persons by U.S. mail, first class, and in accordance with the requirements of 10 CFR § 201.24 AIC :23

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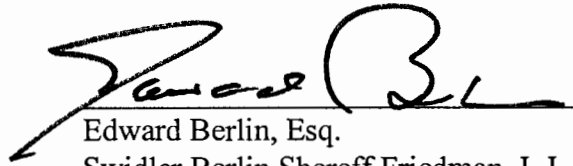
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Dated at Washington, DC, this 31st day of December, 1998



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