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## The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

June 28, 1979

D.P.U. 19738

Joint Application of Montaup Electric Company and New Bedford Gas and Edison Light Company, and The Connecticut Light and Power Company, under G.L. c. 164, §§97 and 101, as amended, for approval by the Department of Public Utilities of the purchase by Montaup Electric Company and New Bedford Gas and Edison Light Company and the sale by The Connecticut Light and Power Company of certain property and a determination that the terms thereof are consistent with the public interest.

D.P.U. 19743

Joint Application of Fitchburg Gas and Electric Light Company and The Connecticut Light and Power Company, under G.L. c. 164, §§97 and 101, as amended, for approval by the Department of Public Utilities of the purchase by Fitchburg Gas and Electric Light Company of certain property and a determination that the terms thereof are consistent with the public interest.

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STATEMENT OF THE CASE

On September 22, 1978, New Bedford Gas & Edison Light Company ("New Bedford"), Montaup Electric Company ("Montaup") and The Connecticut Light & Power Company ("CL&P") filed a petition for approval of the sale by CL&P of a portion of its ownership interest in Seabrook Units I and II to New Bedford and Montaup (D.P.U. 19743). A similar petition was filed by CL&P and Fitchburg Gas & Electric Light Company ("Fitchburg") on September 25, 1979 (D.P.U. 19738).<sup>1/</sup>

On October 13, 1978, the Department ordered all of the Petitioners to file direct testimony in support of the applications by November 9, 1978. On November 16, 1978, the Department issued an order of notice scheduling a pre-hearing conference for December 11, 1978.

At this pre-hearing conference, the Attorney General filed a petition for intervention, which was subsequently granted. Information requests were submitted to the Petitioners by both the hearing officer and the Attorney General on December 4, 1978, and December 15, 1978, respectively.

Responses to the information requests were filed by January 15, 1979, and the first hearing was scheduled for February 13, 1979. At that hearing, a motion by Fitchburg to consolidate the two proceedings was granted.

Fourteen days of hearings were held, concluding on April 11, 1979. Briefs and Reply Briefs were filed by all parties with the Petitioners' Reply Briefs received on June 1, 1979.

<sup>1/</sup> Hereinafter, New Bedford, Montaup, CL&P and Fitchburg are referred to collectively as the "Petitioners".

STANDARD FOR REVIEW

As the caption of this proceeding indicates, the companies' petitions have been brought pursuant to General Laws, Chapter 164, sections 97 and 101, as amended. Section 97 provides in pertinent part:

...any such domestic or foreign corporation or association may...sell any or all of its property to said first mentioned electric company, or merge and consolidate its capital stock and property with said first mentioned electric company; but, no such purchase and sale of any property exceeding thirty-five thousand dollars in value or merger and consolidation shall be valid or binding until the same and the terms thereof shall have been approved, at meetings called therefor, by vote of the holders of at least two-thirds of each class of stock outstanding and entitled to vote on the question of each of the contracting parties, and until the department, after notice and a public hearing, shall have approved the same and the terms thereof as consistent with the public interest. . . . (emphasis supplied)

Section 101 of Chapter 164 of the General Law Provides:

All applications for the approval by the department of purchases and sales or consolidation under sections twenty-six, ninety-six, ninety-seven and one hundred shall be filed with the department within four months after the passage by the contracting companies of votes authorizing such purchase and sale or consolidation.

No issue has been raised concerning the timeliness of the companies' petitions as required in section 101. Therefore we are left with the sole issue of deciding whether the proposed transfer is "consistent with the public interest" (G.L. c. 164, §97).

Not surprisingly, the parties urge us to apply widely differing standards in making our determination of consistency with the public interest. The Attorney General would have us take an expansive view and thus consider such factors as the need for power, available alternatives, ability to finance and the public health and safety issues

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surrounding nuclear power. The nuclear power issues raised by the Attorney General include the possibility of a unit malfunction and concomitant off-site release of radioactivity, the problem of storage and disposal of spent fuel and the decommissioning process. On the other hand, the Petitioners urge a very narrow interpretation of public interest. They argue that we are constrained to approve the transfer absent an affirmative showing of harm to the interest of the public. They find the record totally lacking of such evidence.

In arguing his broad view of consistency with the public interest, the Attorney General relies heavily on Udall v. Federal Power Commission, 387 U.S. 428 (1967). In that case, the Supreme Court, in dealing with an FPC decision involving a license for a hydroelectric project in the Pacific Northwest, indicated that the issues relevant to the "public interest" for the purposes of the Federal Water Power Act of 1920, as amended by the Federal Power Act, 49 Stat. 842, include:

future power demand and supply, alternative sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife (at 450).

The Attorney General argues that the similarity of the issues involved in the granting of a license for the construction of a hydroelectric facility and those associated with the acquisition of a portion of a nuclear generating station require us to examine the same issues articulated by the Court in Udall. While we agree that the issues associated with the need for power, related alternatives and ability to finance may be similar, we cannot agree that consistency with the public interest

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<sup>2/</sup> requires us to consider the public health and safety issues surrounding nuclear power. Specifically, we do not find any support in Udall for the Attorney General's position because the Federal Water Power Act as amended specifically provides that the project

shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes. (16 USC §63 (a)) (emphasis supplied).

Thus, it appears that the Federal Power Commission was specifically required by its statute to extend its consideration beyond need for power, alternative sources of power and ability to finance and address such issues as water resource management and recreation. In the instant proceeding, G.L. c. 164, §97 does not require us to specifically address public health and safety, and we decline to do so in these cases.

In so holding, we do not intend to preclude consideration of health and safety issues in all proceedings brought pursuant to G.L. c. 164, §97. However, we do believe that the scope of this and similar proceedings should be limited to those issues over which the Department has some demonstrable jurisdiction. We believe that a serious question exists as to whether the regulation of nuclear power and its concomitant radiological health and safety issues have been totally pre-empted by the Federal Government through the Atomic Energy Act of 1954 as amended

<sup>2/</sup> Indeed we question whether we have any authority at all to regulate in the area of radiological health and safety. See Northern States Power Company v. State of Minnesota, 447 P.2d 1143 (CA 9 1970), 405 U.S. 1035 (1972).



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(42 USC §2011 et seq) and the regulations of the Nuclear Regulatory Commission (10 CFR §§0-199). (See fn. 2 supra). In light of this question and the silence of our statute on this matter, we decline to address the nuclear health and safety issues argued by the Attorney General at this time.

Turning now to the standard of review argued by the Petitioners, we find ourselves in disagreement with their narrow interpretation of "consistent with the public interest." The Petitioners assert that the Department must approve the proposed transfer unless we have before us affirmative evidence of some sort of harm to the public interest. Moreover, they disassociate themselves from any notion that they bear the burden of proof in this proceeding, asserting instead that it is the Attorney General who bears the burden of proving harm to the public flowing from the proposed transaction.

We could not disagree more. The Petitioners have come to the Department seeking our approval of the proposed sale of interests in Seabrook Units I and II. They are the moving parties in this proceeding. The governing statute requires that the Department conduct a public hearing and approve the transaction only if we find it to be consistent with the public interest. Clearly the burden of establishing "consistency" rests with the moving parties. See Fryer v. Department of Public Utilities, 373 N.E. 2d 977 (1978); and Metropolitan District Commission v. Department of Public Utilities, 352 Mass. 18, 224 N.E. 2d 977 (1967). While we could not require the Companies to prove a negative, i.e. that there would be no harm to the public, Framingham v. Department of Public Utilities, 355 Mass. 138 (1969), we can and will require them to establish through credible evidence

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that this proposal is consistent with the interests of the public in a reliable supply of electric power at just and reasonable rates. Therefore, before the Department can find that this transaction is consistent with the public interest, each of the Petitioners must demonstrate that there is a need for the amount of capacity sought to be acquired, that the acquisition represents the most economical available alternative and that the purchasing company has the ability to finance the proposed acquisition without imposing an undue burden upon its ability to provide service currently and in the future.

APPLICATION OF THE STANDARD  
TO THE PROPOSED PURCHASES

The combined additional investment in Seabrook I and II which would be assumed by the three Massachusetts utilities as a result of this transaction totals 133 million dollars. This entire amount will, with the approval of the Department, eventually be passed on to Massachusetts consumers. The impact of such increases on the ratepayers of these three companies will be substantial.

This places upon the Commission the obligation to consider very carefully the proposed transactions and to grant its approval only if persuaded that the Petitioners' evidence in this proceeding satisfies the standard for review set forth above.

Our examination of the record in this case has convinced us that the evidence presented by each of the companies does not provide a sufficient basis for making such a determination at this time. As we will discuss in more detail later, additional information is needed from each of the

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three Massachusetts companies before an informed judgment on the merits of the transactions can be made.

Moreover, one major issue has been left largely unsolved; namely, the ability of Public Service Company of New Hampshire ("PSNH") to complete the Seabrook project. The importance of a satisfactory answer to this question can hardly be overstated. We do no more than state the obvious when we say that the ratepayers receive no benefit from these transactions unless the project is completed. In fact, should Seabrook and II not be built, ratepayers would most likely be asked to bear the costs of both the unfinished Seabrook project and the construction of any new capacity needed to meet demand in the 1980's.

In this proceeding, there was no opportunity to question PSNH directly about the viability of the Seabrook project. We have only the assurances of the four applicants that the two units will be completed. In general, we would be most reluctant to rely solely on such assurances given the huge sums of money at stake. To do so now would be totally inappropriate since PSNH itself has petitioned this Department for approval of proposed sales of portions of its ownership interests to two of the Massachusetts utilities involved in this case.<sup>3/</sup>

<sup>3/</sup> Joint application of Montaup Electric Company and New Bedford Gas & Edison Light Company, and of Public Service Company of New Hampshire, under G.L. c. 164, §§97 and 101, as amended, for approval by the Department of Public Utilities of the readjustment of certain interests in such property by Montaup Electric Company and New Bedford Gas and Edison Light Company and the corresponding reduction of the interest therein of Public Service Company of New Hampshire and a determination that the terms thereof are consistent with the public interest.



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On June 7, 1979, the Commission ordered PSNH to file direct testimony on the subject of the viability of the Seabrook project. Thus, the Commission will have the opportunity to explore this matter in the most recently opened proceeding involving PSNH itself without causing undue delay to any of the Petitioners.<sup>4/</sup> This PSNH proceeding also affords a convenient forum for examining the additional evidence we deem to be necessary before a finding can be made on whether these proposed transactions are consistent with the public interest. Accordingly, deferring a decision on the present petition and consolidating this case with the aforementioned petition of PSNH, Montaup and New Bedford is, in our judgment, the most reasonable course of action.<sup>5/</sup>

#### REQUESTS FOR ADDITIONAL INFORMATION

Each of the three areas included in the standard for review formulated by the Commission in this proceeding contains a myriad of complex and difficult issues. For example, demand forecasts require projections of many factors including population growth, economic trends and patterns of energy use. Although extensive testimony and exhibits have already been filed in this proceeding, a significant number of important issues have not been resolved to our satisfaction. These issues, about which additional information is sought, vary by company and are set forth below:

<sup>4/</sup> The Commission is aware that the present Agreements for Transfer of Ownership Shares are scheduled to terminate on June 30, 1979. However, we also note that the initial offering letter sent by CL&P to the other Petitioners was dated December 22, 1975. In addition, the present Agreements were recently extended from December 31, 1978 to June 30, 1979.

<sup>5/</sup> We previously denied a Motion for Conciliation by the Attorney General because we believed that we should attempt to reach a decision on the merits of this petition if possible. We have now examined the record in detail and have found that it is not adequate for that purpose.

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FITCHBURG

- A. Forecast: Please provide additional information to support the Company's assumptions in the following areas:
1. average annual kilowatthour consumption of existing non-space heating residential customers;
  2. average annual kilowatthour consumption of new non-space heating customers;
  3. number of new regular and space heating residential customers;
  4. commercial energy forecast;
  5. industrial energy forecast; and
  6. peak load forecast.
- B. Alternatives: Please recompute Exhibit F-4 using the General Electric Production Costing Model and the most current assumptions. 6/
- C. Financial: Update Exhibit F-3 with most recent projections of income and construction expenditures. The new exhibit should reflect the current schedule for commercial production of each nuclear unit in which the Company has an interest. Adjust long-term and short-term interest expense to reflect the current market realities for such financing. Correct return on equity to reflect currently allowed levels. Provide schedule of earned return on equity and allowed return for the period 1975 to present. Adjust interest cost of preferred stock to reflect the current market realities for such financing. Explain methodology employed in forecasting internal funds, including forecast of operating expenses and income and associated assumptions. Itemize all other construction expenditures forecast in the exhibit and explain methodology employed.

6/ Mr. Garlick testified that this program is available to Fitchburg (Tr. 1758).

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MONTAUP

- A. Forecast: Please provide additional information to support the Company's assumptions in the following areas:
1. penetration rates, conversion rates and saturation rate increases of:
    - a. space heating
    - b. hot water heaters
    - c. electric ranges
    - d. electric dryers
    - e. freezers
    - f. air conditioners;
  2. growth of "base use" for new and old customers;
  3. growth in annual kilowatthour consumption due to unforeseen appliances;
  4. effect of energy efficient appliances;
  5. effect of time-of-use rates and load management;
  6. effect of price elasticity;
  7. future commercial/industrial consumption ratios; and
  8. future annual load factors.
- B. Alternatives: Please submit a study which employs a computerized production costing model and the Company's most current assumptions, including load growth, to estimate the costs of each of the following combinations of capacity:
1. baseline capacity <sup>7/</sup> plus purchase of CL&P's Seabrook share;
  2. baseline capacity plus Somerset I and II;
  3. baseline capacity plus Somerset III and IV; and
  4. any other combinations of capacity which the Company believes are relevant.
- C. Financial: Update Exhibit M-3 with most recent projections of income and construction expenditures. The new exhibit

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2/ Baseline capacity has been defined as the Company's expected generation mix excluding Somerset I and II, Somerset III and IV, CL&P owned Seabrook and other proposed Seabrook purchases.

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should reflect the current schedule for commercial production of each nuclear unit in which the Company has an interest. Adjust long-term and short-term interest expense to reflect the current market realities for such financing. Correct return on equity to reflect currently allowed levels. Provide schedule of earned return on equity and allowed return for the period 1975 to present. Adjust interest cost of preferred stock to reflect the current market realities for such financing. Explain methodology employed in forecasting internal funds, including forecast of operating expenses and income associated assumptions. Itemize all other construction expenditures forecast in the exhibit and explain methodology employed. Sources and uses of funds statement for Brockton Edison for same period as that forecast in Exhibit M-3 with all supporting documentation requested above for Montaup's forecast.

NEW BEDFORD

- A. Forecast: Please provide additional information to support the Company's assumptions in the following areas:
1. number of new residential customers;
  2. number of new residential space heating customers;
  3. average annual non-space heating residential consumption;
  4. average annual new residential space heating consumption;
  5. effects of conservation, load management, and time-of-use rates;
  6. effect of price elasticity;
  7. commercial energy consumption;
  8. New Bedford "extreme weather" load factor; and
  9. Cambridge "extreme condition" coincidence factor.
- B. Provide all requested information for both New Bedford and Canal Electric.

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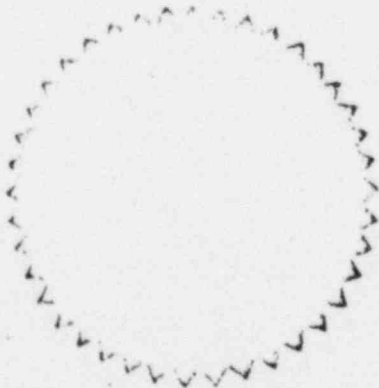
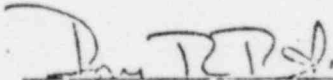
Financial: Update Exhibit AC-106 with most recent projections of income and construction expenditures. The new exhibit should reflect the current schedule for commercial production of each nuclear unit in which the Company has an interest. Adjust long-term and short-term interest expense to reflect the current market realities for such financing. Correct return on equity to reflect currently allowed levels. Provide schedule of earned return on equity and allowed return for the period 1975 to present. Adjust interest cost of preferred stock to reflect the current market realities for such financing. Explain methodology employed in forecasting internal funds, including forecast of operating expenses and income and associated assumptions. Itemize all other construction expenditures forecast in the exhibit and explain methodology employed.

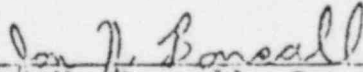
ORDER

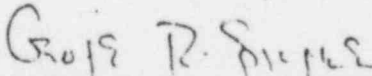
Accordingly, after due notice, hearing, investigation and consideration, it is

ORDERED: that the instant petitions be consolidated for further hearing, investigation and consideration with the petition docketed as D.P.U. 20055.

By Order of the Department,

  
  
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Doris R. Pote, Chairman

  
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John N. Bonsall, Commissioner

  
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George R. Sprague, Commissioner

Commissioners participating in decision of D.P.U. 19738 and D.P.U. 19743 were: Chairman Pote, Commissioner Bonsall and Commissioner Sprague.