



P.O. Box 300
Seabrook, NH 03874
Telephone (603) 474-9521
Facsimile (603) 474-2987

Ted C. Feigenbaum
Senior Vice President and
Chief Nuclear Officer

NYN- 92095

July 6, 1992

United States Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Document Control Desk

Reference: Facility Operating License No. NPF-86, Docket No. 50-443

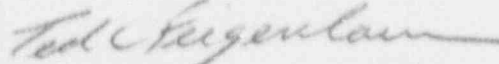
Subject: Securities and Exchange Commission (SEC) Order Authorizing Formation of
North Atlantic Energy Service Corporation

Gentlemen:

Enclosed please find the SEC Memorandum and Order that authorized the formation of North Atlantic Energy Service Corporation (North Atlantic). The order also denied the Town of Hudson's request for a hearing, and ordered that no material changes in the Service Agreements that North Atlantic has with NUSCO, Yankee Atomic, and PSNH shall become effective without written notice to the SEC.

If you have any further questions on this matter, please contact Mr. Terry L. Harpster, Director of Licensing Services, at (603) 474-9521, extension 2765.

Very truly yours,


Ted C. Feigenbaum

TCF:JBH/act

Enclosure

100001

9207130071 920706
PDR ADOCK 05000443
I PDR

• member of the Northeast Utilities system

ADD 1

United States Nuclear Regulatory Commission
Attention: Document Control Desk

July 6, 1992
Page two

cc: Mr. Thomas T. Martin
Regional Administrator
U.S. Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406

Mr. Gordon E. Edison, Sr. Project Manager
Project Directorate 1-3
Division of Reactor Projects
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Noel Dudley
NRC Senior Resident Inspector
P.O. Box 1149
Seabrook, NH 03874

Mr. George L. Iverson, Director
New Hampshire Office of Emergency Management
107 Pleasant Street
Concord, NH 03301

North Atlantic
July 6, 1992

ENCLOSURE TO NYN-92095

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; 70-7787)

Northeast Utilities, et al.

Memorandum Opinion and Order Authorizing Acquisition of
Subsidiary Service and Public-Utility Company and Related
Financing; Approving Service Agreements and Indemnification
Agreement; and Denying Request for Hearing

June 29, 1992

Northeast Utilities ("Northeast"), West Springfield,
Massachusetts, a registered holding company, its service company
subsidiary, Northeast Utilities Service Company ("NUSCO"),
Berlin, Connecticut, and two of its electric public-utility
subsidiary companies, Connecticut Light & Power Company ("CL&P"),
Berlin, Connecticut, and Yankee Atomic Electric Company ("Yankee
Atomic"), Bolton, Massachusetts, have filed an application-
declaration, as amended, under sections 6(a), 7, 9(a), 10, 12(b),
13(b) and 13(f) of the Public Utility Holding Company Act of 1935
("Act") and rules 43, 45, 86 through 91, and 93 through 95
thereunder, in connection with the proposed formation of North
Atlantic Energy Service Corporation ("NAESCO"), a wholly owned
subsidiary company of Northeast that will assume operating
responsibility for the Seabrook Nuclear Power Project
("Seabrook") in Seabrook, New Hampshire. ^{1/}

1/ The Seabrook Nuclear Power Project is a two-unit nuclear-
fueled electric generating facility. Seabrook Unit No. 1
received its full power operating license from the Nuclear
Regulatory Commission ("NRC") and began commercial
operations on August 17, 1990. Unit No. 2 has been
cancelled. In addition to its operating responsibility for
Unit No. 1, NAESCO will supervise the disposition of Unit
No. 2.

(continued...)

- 2 -

The Commission issued a notice of the application on June 7, 1991 (Holding Co. Act Release No. 25329) and received one request for a hearing from the Office of the Light and Power Department, Town of Hudson, Massachusetts ("Hudson"). 2/ Comments were received from the Taunton Municipal Lighting Plant ("Taunton") and the Massachusetts Municipal Wholesale Electric Company ("MMWEC"). 3/

BACKGROUND

Northeast, through its wholly owned public-utility subsidiary companies, provides electric service at retail in Connecticut and western Massachusetts. 4/ NUSCO provides centralized management, engineering and other support services to

1/ (...continued)

Four amendments to the application have been filed, the last on June 4, 1992.

2/ Hudson is a municipal electric utility serving the towns of Hudson and Stow, Massachusetts, and surrounding areas. Hudson holds a joint ownership interest of approximately 0.08% in Seabrook, and an entitlement to purchase an additional 1.59% of Seabrook power.

3/ Taunton, a consumer-owned electric system and a municipality, has a joint ownership interest of approximately 0.1% in Seabrook.

MMWEC, a Massachusetts joint action electric power agency, has a joint ownership interest of approximately 11.6% in Seabrook.

4/ At present, Northeast has three wholly owned public-utility subsidiary companies, CL&P, Western Massachusetts Electric Company and Holyoke Water Power Company. CL&P holds a joint ownership interest of approximately 4.1% in Seabrook.

the Northeast system companies. 5/ Yankee Atomic, a partially owned electric-utility subsidiary company, provides engineering and technical services to its sponsoring owners, including Northeast, through its Nuclear Services Division. 6/

The proposed formation of NAESCO is part of the reorganization of the Public Service Company of New Hampshire ("PSNH"). PSNH is New Hampshire's largest electric-utility company, supplying electricity at retail to approximately three-quarters of the state's population. Of interest here, PSNH holds a 35.6% joint ownership interest in Seabrook, 7/ and, through its

5/ The Commission authorized the proposed organization and conduct of business of NUSCO in Northeast Util. Service Co., Holding Co. Act Release No. 15519 (June 30, 1966).

6/ Yankee Atomic was organized by CL&P and eleven other sponsoring New England utility companies to construct and operate an atomic power plant. See Yankee Atomic Elec. Co., Holding Co. Act Release No. 13048 (Nov. 28, 1955). The Commission subsequently permitted Yankee Atomic to organize and conduct business as a service company through a new Nuclear Services Division. Yankee Atomic Elec. Co., Holding Co. Act Release No. 16141 (Aug. 20, 1968).

At present, Yankee Atomic acts as Disbursing Agent for the participants in Seabrook under an Agreement for Seabrook Project Disbursing Agent dated May 23, 1984, as amended ("Disbursing Agent Agreement").

7/ Twelve New England investor-owned and municipal utilities ("Joint Owners") participate in the ownership of Seabrook under an Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units dated May 1, 1973, as amended ("Joint Ownership Agreement"):

| <u>Joint Owner</u> | <u>Ownership Percentage</u> |
|---------------------------------|-----------------------------|
| PSNH | 35.56942 |
| The United Illuminating Company | 17.50000 |
| EUA Power Corporation | 12.13240 |

(continued...)

- 4 -

New Hampshire Yankee Division ("NHY"), manages Seabrook for the Joint Owners. 1/

On January 26, 1988, PSNH filed a petition for reorganization under Chapter 11 of the Bankruptcy Code. On January 2, 1990, NUSCO filed a proposed plan of reorganization ("Plan"), on behalf of Northeast, the official committees representing PSNH's unsecured creditors and equity security holders, and various bondholders, with the support of the State of New Hampshire. The Bankruptcy Court confirmed the Plan on April 20, 1990. 2/

1/(...continued)

| | |
|---|----------------|
| MMWEC | 11.59340 |
| New England Power Company | 9.95766 |
| CL&P | 4.05985 |
| Canal Electric Company | 3.52317 |
| Montaup Electric Company | 2.89989 |
| New Hampshire Electric Cooperative, Inc. | 2.17391 |
| Vermont Electric Generation and Transmission Cooperative | 0.41259 |
| Taunton | 0.10034 |
| Hudson | <u>0.07737</u> |
| | 100.00000 |

Under the Joint Ownership Agreement, each Joint Owner is entitled to a percentage of Seabrook capacity and output corresponding to its ownership interest. Operating and maintenance expenses, as well as any uninsured liability, are similarly shared in proportion to ownership interest. The Joint Ownership Agreement states that the obligations of the Joint Owners are several and not joint.

1/ PSNH acts as Managing Agent pursuant to the Joint Ownership Agreement.

2/ Order Confirming Third Amended Joint Plan of Reorganization, Public Serv. Co. of N.H., No. 88-0043 (Bankr. D. N.H.).

- 5 -

The Plan provided, inter alia, for (i) the emergence of PSNH from bankruptcy, (ii) the acquisition by Northeast of all of PSNH's common stock, (iii) the transfer of PSNH's 35.6% ownership interest in Seabrook to North Atlantic Energy Corporation ("NAEC"), a wholly owned public-utility subsidiary company of Northeast, and (iv) the assumption by a Northeast subsidiary of the Seabrook operating responsibility.

On May 16, 1991, PSNH emerged from bankruptcy pursuant to the Plan, as a stand-alone company subject to a merger agreement with NUSCO and a special purpose subsidiary of Northeast ("Acquisition Subsidiary"). Once certain conditions are met, the Acquisition Subsidiary will be merged with and into PSNH, with PSNH as the surviving corporation ("New PSNH"). 10/ New PSNH will be a wholly owned subsidiary company of Northeast.

On or after the merger date, New PSNH will transfer its Seabrook interest to NAEC. At the same time, New PSNH will transfer all of the assets, liabilities and employees of NHY to NAESCO, which will assume operating responsibility for Seabrook. 11/

10/ The Commission approved the proposed acquisition of PSNH by Northeast by orders dated December 21, 1990 and March 15, 1991. Northeast Util., Holding Co. Act Release No. 25221 (Dec. 21, 1990) ("Northeast Order"), supplemented, Holding Co. Act Release No. 25273 (Mar. 15, 1991), appeal docketed sub nom. City of Holyoke Gas & Elec. Dept. v. SEC, No. 91-1001 (D.C. Cir. Feb. 19, 1991).

11/ PSNH will assign to NAESCO its rights and obligations under various contracts entered into on behalf of the Joint Owners with respect to the management and operation of Seabrook.

(continued...)

- 6 -

PROPOSED TRANSACTIONS

To effect the transfer of operating responsibility for Seabrook, Northeast requests authority to organize and acquire NAESCO through the issuance and sale to Northeast of up to 1,000 shares of NAESCO's authorized but unissued common stock, \$1 par value, for an aggregate purchase price of \$10,000. ^{12/} As described below, NAESCO has entered into agreements with associate companies for services to be provided at cost. ^{11/} The applicants request authority to consummate the proposed transactions within twelve months from the date of the requested order of the Commission.

The role that NAESCO will assume in the Seabrook project is generally outlined in an agreement dated July 19, 1990 ("July 19, 1990 Agreement") among NUSCO and certain Joint Owners with an aggregate ownership interest of approximately 70.6% ("Majority

^{11/} (...continued)

NAESCO will also replace Yankee Atomic as Disbursing Agent for Seabrook.

^{12/} The applicants do not currently anticipate any need for NAESCO to raise additional capital, since NAESCO will be entitled to advance payment by the Seabrook participants for the costs it will incur in performing its duties. Any need for additional capital will be the subject of an application with the Commission.

^{11/} NAESCO will be a public-utility company within the meaning of section 2(a)(3) of the Act solely as a result of its operation of Seabrook Unit No. 1. NAESCO will not acquire any ownership interest in Seabrook or in any electric energy produced by the plant, nor will it have any role in the marketing of such energy.

. 7 .

Owners"). 14/ Among other things, the July 19, 1990 Agreement appointed NAESCO as Managing Agent and as Disbursing Agent for Seabrook. 15/

As contemplated by the July 19, 1990 Agreement, the Majority Owners approved a Managing Agent Operating Agreement ("Operating Agreement") on January 9, 1991. The Operating Agreement establishes the powers, duties, responsibilities, term of employment and compensation of NAESCO as Managing Agent. On the same date, the Majority Owners also approved an amended Disbursing Agent Agreement reflecting the designation of NAESCO as Disbursing Agent and incorporating certain provisions from the

14/ The July 19, 1990 Agreement states that "the [Majority Owners] accept each of the terms and conditions set forth in [the agreement] and agree to be bound thereby, unless they are precluded from doing so by those [Joint Owners] which are not signatories hereto." The Majority Owners are CL&P, PSNH, New England Power Company, The United Illuminating Company and Canal Electric Company. Hudson, MMWEC and Taunton were not signatories to the July 19, 1990 Agreement.

Generally, the Joint Ownership Agreement can be amended only with the approval of 80% or more of the ownership interests, although specified actions can be taken with the approval of 51% of the ownership interests. All Joint Owners must consent to changes that would change the relationship of the Joint Owners.

15/ The July 19, 1990 Agreement also set forth the Majority Owners' understandings and commitments concerning the transition to the new operational arrangements and provided specific terms and conditions to be included in one or more of the Joint Ownership Agreement, a new managing agent operating agreement and an amended Disbursing Agent Agreement.

- 8 -

July 19, 1990 Agreement. 16/ Both the Operating Agreement and the amended Disbursing Agent Agreement will take effect upon consummation of Northeast's acquisition of PSNH. 17/

Also as contemplated by the July 19, 1990 Agreement, NAESCO has entered into agreements with associate companies for services to be provided at cost. 18/ These agreements, with NUSCO, Yankee Atomic and New PSNH, respectively, will also take effect upon consummation of the acquisition of PSNH. 19/

16/ Under the Disbursing Agent Agreement, NAESCO will assume the duties Yankee Atomic currently performs, including the preparation of monthly bills to the Joint Owners for all project costs and expenses incurred by NAESCO pursuant to the Joint Ownership Agreement. NAESCO will establish and maintain an escrow account or accounts into which it will deposit the funds it receives from the Joint Owners in payment of its expenses.

17/ Although Taunton was not a signatory to the July 19, 1990 Agreement, the applicants represent that Taunton has signed the Operating Agreement and the Disbursing Agent Agreement.

18/ As previously noted, NAESCO will assume the role of operator of Seabrook with the same staff and contractor support resources that the NRC has previously evaluated and approved in connection with the technical qualifications of PSNH, including the engineering and technical resources supplied under the Yankee Atomic service contract. NAESCO, in the exercise of its management responsibility and discretion, will thereafter have the flexibility to determine how these existing resources can best be integrated with other available resources, including those of the Northeast system.

Under the July 19, 1990 Agreement, NAESCO may elect to appoint or retain an affiliated service company or agent to perform certain of its responsibilities under the Operating Agreement and the Joint Ownership Agreement.

19/ The Majority Owners approved the proposed service contracts with NUSCO and Yankee Atomic on January 9, 1991, and the proposed service contract with New PSNH on March 28, 1991.

- 9 -

Under these agreements, NUSCO will provide NAESCO, as requested, with administrative, general and technical support services similar to those NUSCO now provides to four nuclear plants operated by the Northeast system. 20/ Yankee Atomic will provide engineering and technical services similar to those it now provides to PSNH. Finally, to facilitate the transition to the new Managing Agent, New PSNH, if and as requested by NAESCO and for an initial term of two years, will provide certain limited administrative and general services that PSNH now provides to the Joint Owners. 21/

NAESCO will bill the Joint Owners at cost for the expenses it incurs in performing its duties under the Disbursing Agent Agreement, the Operating Agreement and the Joint Ownership Agreement. With respect to its service contracts with associate companies, NAESCO will be billed directly for costs incurred on its behalf or for its sole benefit. The applicants state that all other costs will be allocated among the Northeast system companies fairly and equitably, in accordance with the requirements of the Act. The Executive Committee of the Joint

20/ At present, NUSCO renders management and administrative services to PSNH, at cost, pending consummation of the PSNH acquisition by Northeast. See Northeast Order at n. 6.

21/ Citing the potential for economies of scale, the applicants anticipate that these contracts will result in costs of service lower than those which NAESCO would incur if it rendered such services itself.

- 10 -

Owners of the Seabrook project will also review and approve the methods of cost allocation. 22/

The New Hampshire Public Utilities Commission has authorized NAESCO to issue and sell its common stock to Northeast. 23/ The NRC has issued an amendment to the Seabrook operating license permitting the transfer of the license to NAESCO. 24/

ANALYSIS

The Commission has reviewed the proposed transactions and finds the applicable standards satisfied. 25/ We wish to address, in particular, the arguments raised by the intervenors.

22/ On July 2, 1991, the Executive Committee approved the cost allocation methodologies for the services to be provided by NUSCO, Yankee Atomic and New PSNH.

23/ North Atlantic Energy Serv. Corp. and Northeast Utils., Docket No. 91-100 (Aug. 27, 1991). The New Hampshire Public Utilities Commission approved the creation of NAESCO as a public utility for the purpose of managing and maintaining Seabrook in 1990. In re Northeast Utils./PSNH Reorganization Proceeding, Docket No. 89-244 (July 20, 1990).

24/ North Atlantic Energy Serv. Co., Docket No. 50-443 (May 29, 1992) (amendment to facility operating license, authorizing transfer of responsibility for construction, operation and maintenance of Seabrook Unit No. 1, from PSNH to NAESCO).

25/ The issuance and sale of the NAESCO common stock requires Commission approval under sections 6 and 7 of the Act. Northeast's acquisition of the stock is subject to sections 9 and 10. The Operating Agreement and the Disbursing Agent Agreement between NAESCO and the Majority Owners, and the service agreements between NAESCO and NUSCO, Yankee Atomic and New PSNH, respectively, are governed by section 13 and rules 86 through 91. Section 12(b) and rule 45 thereunder govern the indemnification of Yankee Atomic under its service agreement with NAESCO.

- 11 -

1. Hudson

Hudson, in its request for hearing, has raised various issues relating to NAESCO's proposed capitalization, as well as to the company's intended role in the management and operation of Seabrook. Hudson does not expressly object to Northeast's acquisition of PSNH and operation of Seabrook but, instead, voices concern that the proposed operational arrangements will adversely affect the minority owners by insulating Northeast from liability. 26/ Hudson argues that a well-capitalized subsidiary of Northeast such as CL&P or New PSNH should manage Seabrook, or, alternatively, Northeast should guarantee NAESCO's performance of its obligations. 27/

We have considered Hudson's arguments in light of the provisions and purposes of the Act. Many of the contentions concern a possible abrogation of the rights of the minority Joint Owners. Indeed, Hudson generally focuses upon the contractual arrangements among the Joint Owners rather than the findings the Commission must make under the Act. 28/ To the extent Hudson

26/ Hudson complains that the cost overruns associated with Seabrook have more than doubled Hudson's average power costs. Northeast suggests that "Hudson's hearing request and objections represent one more effort to find a litigated solution to its Seabrook-related grievances."

27/ This argument is discussed infra at pages 20-21.

28/ Hudson cites various provisions in the Service Agreements adopted pursuant to the July 19, 1990 Agreement to which it was not a party.

(continued...)

- 12 -

addresses the provisions of the Act, its challenges consist of summary conclusions that the statutory requirements are not met.

Hudson contends, under section 6(a), that the proposed capitalization of NAESCO would be detrimental to the public interest or the interest of investors or consumers ("protected interests"). In its review under sections 6 and 7, the Commission considers the capital structure of the company issuing the securities and the effect on the capital structure of the holding company system. ^{28/} NAESCO, in its capacity as service company, is similar to other subsidiary companies formed under the Act to perform services in connection with the operation of

28/ (...continued)

Under these provisions, NAESCO and its associate companies are liable only for willful misconduct. Further, the Joint Owners have no right of set-off under the agreements. In addition, the NUSCO, Yankee Atomic and New PSNH service agreements warrant only that services will be performed in accordance with "Prudent Utility Practice," and the Yankee Atomic agreement requires NAESCO to meet certain insurance and indemnification obligations.

The Commission's findings, however, are directed to those issues which are within our jurisdiction. To the extent that Hudson seeks resolution of potential contractual disputes, the Commission considers only those aspects of the proposed transactions that are relevant to the issues properly before us. See Mississippi Valley Generating Co., 36 S.E.C. 159, 160, 167 (1955) (Commission's findings confined to issues within the jurisdiction conferred by the Act).

29/ Section 6(a) prohibits the issuance or sale of securities by a registered holding company or its subsidiary, absent Commission authorization under section 7. Section 7(d)(1), in turn, bars approval of the issue or sale of a security that the Commission finds "not reasonably adapted to the security structure of the declarant and other companies in the same holding company system."

- 13 -

the nuclear facilities of a registered holding company system. 30/

Because NAESCO will not have any debt, its proposed equity base is satisfactory. We note that the Joint Ownership Agreement requires the Joint Owners to reimburse NAESCO in advance for all costs to be incurred in operating Seabrook. 31/ Under this arrangement, NAESCO should maintain an adequate cash flow and have no need for additional working capital. 32/ Finally, the proposed issuance and sale of the NAESCO common stock will have a de minimis pro forma effect on the Northeast system's capital structure after consolidation. 33/ Accordingly, it does not

30/ In determining whether a special purpose operating company is adequately capitalized, the Commission considers, among other things, the business purpose of the company. See, e.g., Entergy Corp., Holding Co. Act Release No. 25100 (Jun. 5, 1980); General Pub. Utils. Corp., Holding Co. Act Release No. 21708 (Sept. 5, 1980) (authorizing organization of new wholly owned service company subsidiary to consolidate the operation and management of system nuclear facilities).

31/ Northeast notes that the "substantially capitalized" operator sought by Hudson could increase the costs to the Joint Owners because rule 91 includes a return on capital in the determination of "cost."

32/ As noted supra at note 12, any need for additional capital will be the subject of an application to the Commission.

33/ The NAESCO common stock represents less than 0.0001% of the system's current capital structure, which the Commission approved in the Northeast Order. Northeast will acquire the securities with internally generated funds.

- 14 -

appear that the proposed capitalization would be detrimental to the protected interests. 34/

Hudson asserts that the proposed transactions do not meet the standards of section 10(b)(1). 35/ It appears that Hudson again is challenging the formation of NAESCO as a special purpose subsidiary within a registered holding-company system. As noted above, the Commission has previously recognized the benefits of a single purpose nuclear plant operating company, 36/ and found that such an acquisition would not threaten the protected

34/ Under section 1(c), all provisions of the Act are to be interpreted to protect the interests of "investors, consumers, and the general public."

35/ Under section 10(b)(1), the Commission may not approve an acquisition that:

will tend towards interlocking relations or the concentration of control of a kind or to an extent detrimental to the public interest or the interest of investors or consumers.

Hudson disputes that benefits will actually accrue to the protected interests from NAESCO's "interlocking [Northeast] relationship." See American Natural Gas Co., Holding Co. Act Release No. 12991 (Sept. 20, 1955) (common directors among associate companies of registered holding company systems is permissible; an integrated public-utility holding company system presupposes interlocking relations). Accord Northeast Order.

36/ The Southern Co., Holding Co. Act Release No. 23212 (Dec. 14, 1990); Entergy Corp., Holding Co. Act Release No. 25100; and General Pub. Utils. Corp., Holding Co. Act Release No. 21708 (authorizing the formation of wholly owned service company subsidiaries to consolidate the operation and management of nuclear facilities owned in whole or in part by system companies).

- 15 -

interests. ^{37/} Similarly, we find that no adverse findings are warranted in this matter.

Hudson contends that the acquisition will not lead to "the economical and efficient development of an integrated public utility system," as required by section 10(c)(2). ^{38/} It appears that Hudson is raising two challenges, one under section 10(c)(1), the other under section 10(c)(2).

Hudson first alleges that the proposed transactions will lead to "the layering of thinly capitalized corporations," and will allow Northeast "to do whatever it wants within a hidden system." Hudson appears to suggest that the acquisition of NAESCO will result in undue corporate complexities. ^{39/} The Commission has recognized that the addition of a new first-tier wholly owned subsidiary company, such as NAESCO, does not unduly complicate the capital structure of a registered holding-company

^{37/} Energy Corp., Holding Co. Act Release No. 25100 (findings under section 10(b)(3)).

^{38/} Section 10(c)(2) requires a Commission finding that a proposed acquisition "will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system." See generally Centerior Energy Corp., Holding Co. Act Release No. 4073 (Apr. 29, 1986) (specific dollar forecasts of future savings are not necessarily required; a demonstrated potential for economies will suffice even when these are not precisely quantifiable).

^{39/} Section 10(c)(1), by reference to section 11(b)(2), prohibits an acquisition that would result in an unduly complicated corporate structure.

- 16 -

system. 40/ Accordingly, no adverse finding is required under section 10(c)(1). 41/

Second, Hudson challenges the projected savings of \$500 million to the Joint Owners as a result of NAESCO's operation of Seabrook. Hudson characterizes these savings as "purely speculative." The Commission's review under section 10(c)(2) is limited to the extent to which an acquisition will tend to result in economies and efficiencies for the integrated public-utility system. 42/ Northeast forecasts that approximately \$198 million in savings, on a cumulative net present value basis, will accrue to the Northeast system from the system's experience in operating

40/ Energy Corp., Holding Co. Act Release No. 25100 (findings under sections 10(b)(3) and 10(c)(1)).

41/ Hudson alleges, without elaboration, that the proposed transactions "[violate] Section 11(b)(1) of the Act as inconsistent with the requirement of a single 'integrated public-utility system', as well as Section 11(b)(2) as 'unduly or unnecessarily' complicating." As noted above, we have reviewed the proposed acquisition under section 10(c)(1), which prohibits approval of an acquisition that would be "detrimental to the carrying out of the provisions of section 11," and find that section satisfied.

42/ The economies and efficiencies must be derived "by virtue of the affiliation." Wisconsin's Envtl. Decade, Inc. v. SEC, 882 F.2d 523, 528 (D.C. Cir. 1989), citing Union Elec. Co., 45 S.E.C. 489, 494 (1974). Specific dollar forecasts of future savings are not necessarily required; a demonstrated potential for economies will suffice even when these are not precisely quantifiable. See Centexior Energy Corp., Holding Co. Act Release No. 24073; American Elec. Power Co., 46 S.E.C. 1299 (1978).

- 17 -

nuclear facilities and the benefits associated with NAESCO's affiliate service contracts. 43/

In its review of the proposed acquisition of PSNM, the Commission considered the economies and efficiencies to be realized in the transaction, including the savings attributable to NAESCO's operation of Seabrook, and found "it is probable that the projected savings would result." 44/ In this matter, the record demonstrates that the proposed transactions will tend to result in economies and efficiencies for its integrated public-utility system. Accordingly, section 10(c)(2) is satisfied.

Hudson objects under section 12(a) to the provision in the service agreement between NAESCO and Yankee Atomic that requires the Joint Owners to indemnify Yankee Atomic for any damages resulting from Yankee Atomic's performance under the contract, unless such damages are caused by willful misconduct. 45/ An indemnification of a subsidiary company by its associate company is subject to section 12(b) of the Act. 46/ The Commission has

43/ See supra note 21.

44/ See Northeast Order at 51-53 and n.84.

45/ CL&P and NAEC, together with the other Joint Owners, could thus be obligated to indemnify Yankee Atomic for damages.

46/ Under section 12(a), a registered holding company cannot receive an indemnity from its subsidiary company. That section, by its terms, does not apply in this matter.

- 18 -

reviewed the indemnification under that provision, and finds the statutory requirements satisfied. 47/

Hudson objects under section 13(b) to NAESCO's provision of services on behalf of its associated Joint Owners. Hudson contends that the Operating Agreement, the Disbursing Agent Agreement and the service agreements between NAESCO and NUSCO, Yankee Atomic and New PSNH (collectively, "Service Agreements"), as they affect the Northeast companies, will "unilaterally waive the rights of Hudson and similarly situated Joint Owners and participants, in favor of [Northeast]." The precise nature of the grievance is unclear. To the extent that Hudson's complaint goes to the activities of the Northeast companies, we have reviewed the Service Agreements, and have considered in particular the provisions of those agreements concerning the allocation of and accounting for costs, and the requirement in each instance that services be rendered at cost. We find that the requirements of section 13(b) of the Act and rules thereunder are satisfied.

Further, Hudson mistakenly contends that the performance of services by NUSCO and Yankee Atomic is prohibited by rule under section 13(b). NUSCO and Yankee Atomic (through its Nuclear Services Division) currently perform services pursuant to

47/ See Energy Corp., Holding Co. Act Release No. 25136 (Aug. 27, 1990).

- 19 -

Commission orders under section 13(b) and rule 88. 48/ By this application, they request additional authority to provide similar services to NAESCO. As we have previously stated, the Service Agreements meet the requirements of section 13(b) and rules thereunder.

Finally, Hudson argues that the Service Agreements, as they may affect the nonaffiliated Joint Owners, are unlawful under section 13(f). 49/ The Service Agreements, however, do not

48/ See *supra* notes 5 and 6. Under rule 86, a subsidiary company of a registered holding company must obtain Commission approval by rule, regulation or order before performing any services for an associate company. Rule 87 provides that a subsidiary service company, the organization and conduct of business of which the Commission has approved under section 13 of the Act pursuant to rule 88, may perform services for associate companies.

49/ Section 13(f), in pertinent part, provides:

It shall be unlawful for any person . . . to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company, . . . in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers

Section 13(f) was intended to complement section 13(b) with respect to nonassociate public-utility companies. The legislative history explains:

This provision is essential in order that the prohibitions already set forth in [section 13] cannot be exceeded under the guise of apparently independent servicing, sales, and construction contracts.

(continued...)

- 20 -

distinguish between associate and nonassociate Joint Owners. The applicants represent that each Northeast company will perform its duties with respect to both in compliance with the rules applicable to intrasystem transactions. 50/ Accordingly, no adverse findings are warranted.

Hudson repeatedly suggests that Northeast or a subsidiary company of Northeast with significant assets should be liable for any failure of NAESCO to perform in accordance with Prudent Utility Practice, as defined in the proposed agreements, or that Northeast should be required to guarantee NAESCO's performance of its contractual obligations. In requesting a guaranty, Hudson's underlying concern appears to be that Northeast improperly is attempting to limit its exposure with respect to Seabrook. 51/

The Commission generally has authorized a registered holding company to guarantee the obligations of its service company subsidiary only when the guaranty was commercially necessary. 52/

49/ (...continued)

S. Rep. 621, 74th Cong., 1st Sess. 37 (1935); H.R. Rep. 1318, 74th Cong., 1st Sess. 19 (1935).

50/ See rules 86 through 91.

51/ Section 12(b) of the Act and rule 45(a) thereunder require prior Commission approval for a registered holding company to "lend or in any manner extend its credit to or indemnify any company in the same holding-company system."

52/ See, e.g., American Elec. Power Co., Holding Co. Act Release No. 24460 (Sept. 15, 1987); Middle South Util., Inc., Holding Co. Act Release No. 21552 (May 6, 1980); Middle South Util., Inc., Holding Co. Act Release No. 19520 (May 10, 1976).

- 21 -

The Operating Agreement approved by the Majority Owners does not require Northeast to guarantee NAESCO's performance. We have previously found that the capitalization of NAESCO meets the requirements of the Act. Accordingly, no guaranty is necessary. 53/

In analyzing a hearing request, the Commission determines whether the request raises a significant issue of fact or law relevant to the findings the Commission must make under the Act. 54/ A summary conclusion that a particular standard is not met is insufficient. 55/ In this matter, it does not appear that the issues properly before the Commission would be further developed in a hearing. 56/

Although Hudson claims to have documentary evidence supporting its request, it has declined to produce such evidence

53/ Finally, Northeast notes that NAESCO, NUSCO, Yankee Atomic and New PSNH may be expected to provide services to Seabrook in a careful and efficient manner, since their associate companies will hold by far the largest ownership interest in Seabrook, approximately 40% following the acquisition of PSNH.

54/ See Wisconsin's Envtl. Decade, Inc. v. SEC., 882 F.2d at 526 ("It is well settled that evidentiary hearings are required only when a genuine issue of material fact exists.").

55/ See Connecticut Bankers Ass'n v. Board of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980) (bald or conclusory allegations insufficient to require hearing).

56/ Eastern Utils. Assoc., Holding Co. Act Release No. 24641 (May 12, 1988), citing City of Lafayette v. SEC., 454 F.2d 941, 953 (D.C. Cir. 1971) (hearing not required "in matters where the ultimate decision will not be enhanced or assisted by the receipt of evidence").

- 22 -

"until submission is approved by appropriate Commission order." Hudson states that the "Major Joint Owners, including [Northeast], assert that these documents are privileged and will not consent to their submission to the Commission, even subject to a satisfactory protective order."

Again, Hudson is asking the Commission to resolve a potential contractual dispute, concerning privilege, that is not within our jurisdiction. It appears that these "allegedly privileged documents" have little relevance to the issues properly before the Commission and, instead, relate largely to the historical cost overruns associated with Seabrook's design, construction and maintenance. Accordingly, the request for a hearing is denied.

2. Taunton

Taunton filed comments and proposed language for inclusion in the Commission's order. First, Taunton requests that the Commission include language "to ensure that costs will be incurred and allocated in accordance with the Act and the [service agreements between NAESCO and NUSCO, Yankee Atomic and New PSNH, respectively]." ^{57/} In particular, Taunton is

^{57/} Taunton requests the following language:

Nothing in this Order is intended to require any of the Joint Owners of Seabrook to pay a greater share of allocated costs, either direct or indirect, to NAESCO than (i) would be just and equitable under the Public Utility Holding Company Act of 1935 and the Commission's rules thereunder, or (ii) that

(continued...)

- 23 -

concerned that the Northeast system companies could unilaterally reject a cost allocation method approved by the Executive Committee of the Joint Owners of Seabrook. 58/

We note that each of the Service Contracts requires costs thereunder to be "fairly allocated and calculated, all consistent with the requirements of the Act and the rules and regulations and orders thereunder." Taunton appears to suggest that the Northeast affiliates might not observe their contractual obligations. As we noted previously, the Commission's findings are directed to those issues which are within our jurisdiction. To the extent that Taunton seeks resolution of a potential

57/ (...continued)

the Joint Owners would otherwise pay pursuant to cost allocation methods set forth in NAESCO's respective Service Agreements with NUSCO, [Yankee Atomic], and [New PSNH].

58/ Taunton's concerns focus on a statement in the application that:

NUSCO will not be obligated to perform any services under this service contract if any cost allocation method approved by the Executive Committee would require the [Northeast] system companies to bear a disproportionately large portion of those indirect costs.

Taunton reads this statement to suggest that the Northeast companies could refuse to perform under the Service Agreements.

The applicants respond that the statement was intended to assure the Commission that "the cost methodologies approved by the Executive Committee will be fair and equitable and will not allow the Joint Owners to benefit at the expense of [Northeast] and its subsidiaries"

- 24 -

contractual dispute, the Commission does not consider or pass upon those aspects of the proposed transactions that are not related to the issues properly before us. ^{59/}

Second, Taunton urges that the Northeast affiliates be required to make quarterly filings with the Commission concerning the incurrence and allocation of costs under the Service Agreements. ^{60/} NAESCO, NUSCO, Yankee Atomic and New PSNH will each file a Form U-13-60 annually. ^{61/} The form requires comprehensive disclosure with respect to services provided during the reporting period. Among other things, service companies must itemize all significant expenses incurred, as well all costs,

^{59/} See supra note 28, citing Mississippi Valley Generating Co., 35 S.E.C. 159.

^{60/} Taunton requests a condition that NUSCO, Yankee Atomic and New PSNH:

submit to the Commission on a quarterly basis a filing containing information and data relating to the performance of services by [those companies] for NAESCO or any other [Northeast] system company. Such filing shall include (i) a statement specifying the direct and indirect costs incurred and how such costs are determined, (ii) a listing of billings and charges, both direct and indirect, stemming from such services, and [(iii)] a description of how the allocations of costs are calculated, including a statement of how the costs are allocated among the companies for which the subsidiary service company provides service.

^{61/} As noted above, the Service Agreements are subject to section 13(b) and, as the agreements affect companies in the Northeast holding company system, rules 88, 93 and 94. Form U-13-60 is an annual report filed pursuant to rule 94.

- 25 -

both direct and indirect, charged to associate companies. Companies must also disclose the methods of allocation used during the reporting period.

In addition to the information that NAESCO, NUSCO, Yankee Atomic and New PSNH will file on the Form U-13-60, Taunton requests that the companies disclose "how such costs are determined." The appropriate procedure for obtaining this information would be an audit of NAESCO. The applicants represent that an independent auditor selected by the Joint Owners that are not affiliated with NAESCO will perform an annual audit of NAESCO so long as NAESCO is the Managing Agent. 52/

Although Taunton requests quarterly filings, the Commission is satisfied that disclosure on an annual basis will enable it to monitor effectively the associate transactions under the Service Agreements. 53/

52/ Although the Joint Ownership Agreement appears to contemplate an annual audit of the operator, at the expense of the Joint Owners, the Operating Agreement which was adopted pursuant to the July 19, 1990 Agreement indicate that an audit of NAESCO is discretionary. Without the applicants' undertaking to request an annual audit, Taunton could be required to bear the cost of an audit.

53/ The applicants note that the Operating Agreement and other Service Agreements provide the Joint Owners access to information concerning services under these agreements.

The Operating Agreement requires NAESCO to keep complete and accurate accounts of all receipts and expenditures under the agreement in accordance with the rules and regulations of this Commission and the Uniform System of Accounts under the Federal Power Act.

- 26 -

3. MMWEC

MMWEC has submitted comments asking the Commission to address "the anticompetitive aspects of [Northeast's] management and operation of Seabrook through NAESCO." In particular, MMWEC objects to the limitation of liability provisions in the Service Agreements, and asks the Commission to condition its approval "to prohibit [Northeast], NAESCO and their affiliates from freeing themselves from liability for negligence or other misconduct."

It appears that MMWEC is challenging the effect of ~~NAESCO~~ provisions which were adopted pursuant to the July 19, 1983 Agreement to which it was not a party. As we noted previously, the Commission's findings are directed to those issues which are within our jurisdiction. To the extent that MMWEC seeks resolution of a potential contractual dispute, the Commission does not consider or pass upon those aspects of the proposed transactions that are not related to the issues properly before us. 64/

Fees and expenses in the estimated amount of \$ 1,068,900, including \$614,100 of legal fees, are anticipated in connection with the proposed transactions. Except as noted above, it is stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

64/ See supra note 28, citing Mississippi Valley Generating Co., 36 S.E.C. 159.

- 27 -

Due notice of the filing of the application-declaration has been given in the manner prescribed in rule 23 promulgated under the Act. On the basis of the facts in the record, we conclude that the proposed transactions are consistent with the applicable standards of the Act and rules thereunder, that no adverse findings are necessary and that no hearing is required to develop the facts further.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that the application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in rule 24 under the Act, except that applicants may consummate the proposed transactions within twelve months from the date of the order;

IT IS FURTHER ORDERED that no material change in a Service Agreement shall become effective except upon written notice to the Commission no later than 60 days prior to the proposed effective date of such change; provided that no material change shall become effective except upon further order upon application if the Commission so notifies the applicants; and

IT IS FURTHER ORDERED that the request for a hearing be, and it hereby is, denied.

By the Commission.

Jonathan G. Katz
Secretary