

DE 02-075

**NORTH ATLANTIC ENERGY CORPORATION,
THE UNITED ILLUMINATING COMPANY,
NEW ENGLAND POWER COMPANY,
NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.
AND
CANAL ELECTRIC COMPANY**

Proceeding to Approve the Sale of Seabrook Station Interests

Prehearing Conference Order

O R D E R N O. 23,981

May 31, 2002

APPEARANCES: Robert A. Bersak, Esq., Northeast Utilities System representing North Atlantic Energy Corp., Connecticut Light & Power Co., and Public Service Co. of New Hampshire; Devine, Millimet & Branch, Mark W. Dean, Esq., on behalf of the New Hampshire Electric Cooperative; Timothy N. Cronin, Esq., for Canal Electric Company; Laura S. Olton, Esq., for New England Power Company; Devine, Millimet & Branch, Frederick J. Coolbroth, Esq. and Wiggin & Dana, Cynthia Brodhead, Esq., on behalf of United Illuminating Company; McLane, Graf, Raulerson & Middleton, Sarah B. Knowlton, Esq., representing Great Bay Power Corp. and Little Bay Power Corp.; Mary Metcalf for Seacoast Anti-Pollution League; Robert Backus, Esq., on behalf of the Campaign for Ratepayers Rights; Donald Green, for the Lake Preservation Committee of Aziscoos Lake Campers Association; Pierce Atwood, Raymond Hepper, Esq., Chris Roach, Esq., and Mitchell Ross, Esq., for FPL Energy Seabrook; Brown, Rudnick, Berlack, Isreals, Howard Siegel, Esq and Paul Corey, Esq. on behalf of JP Morgan Securities; the Office of Consumer Advocate, Michael W. Holmes, Esq., representing Residential Ratepayers; and Gary Epler, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

In Order No. 23,443 (April 19, 2000), the New Hampshire Public Utilities Commission (Commission) conditionally approved the Public Service Company of New Hampshire (PSNH) settlement agreement on restructuring (Settlement). The Order, like the Settlement, addressed PSNH's divestiture of its power generation assets. See Order No. 23,443 at p. 218; *Conformed Settlement* at p. 42. The Commission found that the stated goal of divesting the assets through auction in order to maximize the net proceeds from the sale was consistent with the mandates of RSA 374-F and the public interest. *Id.* Accordingly, it approved, among other things, the divestiture of Seabrook Nuclear Power Station (Seabrook).

As a result of Order No. 23,443 and the subsequent Order No. 23,550 in Docket No. DE 99-099, and as required by RSA 369-B:3, IV (b)(13)¹, an auction of Seabrook was initiated. In order to facilitate a timely asset sale process, the Commission issued a notice on December 1, 2000 in Docket No. DE 00-272. The notice required interested parties

¹The statute requires that the Commission "administer the liquidation of any electricity generation asset required to be sold by the [Public Service Company of New Hampshire (PSNH) restructuring] settlement [agreement]" and to "select the independent, qualified asset sale specialist who will conduct the asset sale process."

to file with the Commission comments regarding the efficient administration of the asset liquidation and the selection of an asset sale specialist.

Thereafter, the Commission issued a request for proposals and ultimately selected J.P. Morgan Securities Inc. (JPMorgan) as the asset sale specialist to conduct the sale of Seabrook under the administration of the Commission Staff (Staff).² The sale process commenced on December 3, 2001, with an issuance of a joint press release by the Commission and the Connecticut Department of Public Utility Control (DPUC). At the same time, JPMorgan distributed an "Offering Memorandum" describing the nuclear generation assets and the associated property to be sold.

On April 13, 2002, the Selling Owners³ of Seabrook executed a purchase and sale Agreement with FPL Energy Seabrook, LLC (FPLE Seabrook) to sell 88.2 percent of the station for an aggregate price of \$836.6 million. As a result

² The Staff administered the asset sale in conjunction with the Connecticut Department of Public Utility Control (DPUC). The Commission and the DPUC entered into a Memorandum of Understanding dated July 10, 2001 (MOU), requiring the commissions to coordinate their official duties with respect to the sale.

³ The Selling Owners consist of North Atlantic Energy Corporation (NAEC), the United Illuminating Company (UI), Great Bay Power Corp., New England Power Company (NEP), Connecticut Light and Power Co. (CL&P), Canal Electric Company (Canal), Little Bay Power Corp., and the NH Electric Cooperative (NHEC).

of the Agreement, the Applicants, *i.e.*, NAEC, UI, NEP, CL&P, NHEC and Canal⁴, jointly applied to the Commission for approval of the sale of their ownership interests in Seabrook.

The Commission received a motion filed by the Selling Owners on April 22, 2002, requesting the current docket be initiated so that the sale transaction could be closed by the end of this calendar year. The Commission then issued an Order of Notice on April 24, 2002, setting a prehearing conference for May 7, 2002.

At the prehearing conference, the Chairman requested that the Parties provide comments no later than May 10, 2002, regarding the procedural matters of intervention, bifurcation, scope and recusal. The only comments received were those of the Joint Applicants. The comments included the following proposed schedule for the proceeding.

May 17	Formal Application with supporting materials
May 22	Technical Session with JPMorgan
May 31	Discovery Requests on Application and materials
June 7	Responses to Discovery
June 13	Technical Session
June 21	Testimony from intervenors, OCA and Staff
June 28	Discovery on intervenor, OCA and Staff testimony
July 5	Responses to Discovery
Jul 15-18	Hearings

⁴Great Bay Power Corporation and Little Bay Power Corp. are considered Non-Applicant sellers.

August 2 Briefs
August 30 Order

In accordance with the above schedule, the Applicants submitted the actual application and prefiled testimony in support of the application on May 17, 2002.

II. REQUESTS FOR INTERVENTION

Pursuant to the May 3, 2002 deadline for submitting requests for intervention, as established in the Order of Notice, Public Service of New Hampshire, Great Bay and Little Bay Power Corporation, Canal Electric, FPLE, Seacoast Anti-Pollution League (SAPL), and the Aziscoos Lake Preservation Committee filed requests to participate in the docket.

The Conservation Law Foundation (CLF) submitted its request for intervention after the date established by the Commission, as did the Campaign for Ratepayers Rights (CRR). Additionally, the Office of Consumer Advocate (OCA) notified the Commission of its intent to participate in the docket on April 25, 2002.

III. PRELIMINARY POSITIONS

A. Joint Applicants

The Joint Applicants ask that the Commission approve the sale of Seabrook and find that the transaction is in the public interest pursuant to RSA 374:30. They also ask that the Commission make findings pursuant to the Public Utility

Holding Company Act of 1935 (1935 Act) necessary to support FPLE Seabrook's application to the Federal Energy Regulatory Commission (FERC). As to further scope, the Joint Applicants believe that any decommissioning funding issues should be handled by the Nuclear Decommissioning Finance Committee (NDFC) and considered separately from the issues before the Commission.

In the Joint Applicants' May 10, 2002 letter, they further stated that the Commission should not consider issues that will be considered fully by other administrative agencies. Specifically, the Applicants argue the Commission should not review issues that are within the jurisdiction of the Nuclear Regulatory Commission, such as issues relating to FPLE Seabrook's qualifications to obtain the license to operate Seabrook and matters relating to security.

The Joint Applicants took no position on the issue of the designation of Staff and did not believe the recusal of the Chairman was necessary, concluding that the Chairman was able to fulfill his statutory duties as the Chair of both the Commission and the NDFC. The Joint Applicants did, however, object to the intervention of Aziscoos Lake, noting that Aziscoos has no rights, duties, immunities or other substantial interests that might be affected by this docket.

B. OCA

At the prehearing conference, the OCA noted that it would like to probe market power issues associated with FPLE's purchase given the fact that the Company has other generating assets in New England. Moreover, the OCA believes the docket should address Unit 2 sale proceeds and whether those proceeds will be a credit to stranded costs.

C. SAPL

The SAPL noted its concerns over the history and reputation of FPLE as operators of nuclear plants and indicated that issues related to security plans, off-site monitoring, and radiation monitoring should be addressed during the proceeding.

D. CRR

CRR asserts that as part of the public interest finding issues related to FPLE's environmental compliance must be addressed.

In an e-mail received at the Commission on May 10, 2002, CRR asserts that the bifurcation statute, RSA 363:32, should be applied to all Staff who had any role in the auction. CRR specifically posits that Attorney Gary Epler should be disqualified from advising the Commission, along with any other Staff member involved in the auction process.

CRR agreed, however, that Chairman Getz could serve as both Chairman to the Commission and to the NDFC.

E. Great Bay and Little Bay

Great Bay and Little Bay raised no issues at the prehearing conference. The Companies expressed the desire to only monitor the proceedings.

In an April 19, 2002 letter addressed to the Commission, the Companies sought to clarify their status as non-utility owners of Seabrook. The Companies indicated as exempt wholesale generators they were not considered public utilities in the state and, therefore, had no requirement to seek Commission approval of the sale of their respective interests in Seabrook.

F. FPLE Seabrook

The purchaser expressed the desire to see that the Commission make the appropriate findings so as to allow the transaction to move expeditiously. In that regard, the purchaser noted that it would submit the testimony of Florida Power & Light's Chief Nuclear Officer to address several of the issues raised concerning the Company's record and ability to run a nuclear plant. The Company also expressed its desire to keep the NDFC proceeding separate, concurring with the Joint Applicants on the matter.

FPLE asserted that other issues raised should not be addressed by this Commission as they would be addressed fully in other venues. For example, FPLE contends that the market power issue, while an important one, should be addressed at FERC. The Company suggests that it will be making both the 203 and 205 filings required by the Federal Power Act; therefore a full market power analysis can be aired at the federal level. Additionally, FPLE suggests that some safety and security issues and off-site monitoring issues are better addressed at the Nuclear Regulatory Commission (NRC).

G. Aziscoos Lake Campers Association

Aziscoos asserts that it does not believe that FPLE is obeying the conditions of its license to operate a hydroelectric facility located in Maine. Accordingly, Aziscoos desires to address issues related to environmental damage associated with an organization they believe shows little demonstrable concern for environmental issues in New England.

Aziscoos submitted a letter to the Commission on May 10, 2002, responding to the Joint Applicants' objection to its intervention in the docket. Aziscoos asserts that sound environmental stewardship is the substantial interest it has in the proceeding. It argues that the environment is not

limited geographically and that it has a substantial interest in protecting itself from the cumulative impact of FPLE's environmental indiscretions and from a company that is less likely to respond to environmental concerns if it develops a larger share of the energy market.

H. Staff

Staff asserts that it is ready to provide a report that the process of the auction and the results achieved meet all statutory mandates.

IV. COMMISSION ANALYSIS

A. Intervention

On May 16, 2002, we orally deliberated the requests for intervention and found that we could not approve Aziscoos Lake's intervention as a full intervenor. The intervention request is apparently the result of disputes with FPLE concerning a FERC license for a hydroelectric project on Aziscoos Lake. While Aziscoos Lake asserted various environmental interests, as an association of residents on a lake in Maine 100 miles from the Seabrook Station they have not established a sufficient basis for full party intervenor status in this proceeding. Moreover, we believe generalized environmental interests will be adequately represented by other parties to this proceeding. Accordingly, we deny the

Aziscoos Lake request for intervention but approve all others, including the late filed intervention of the Conservation Law Foundation.

B. Recusal

The May 16, 2002 oral deliberations also addressed the issue of Chairman Getz's ability to sit as both Chairman of the Commission and of the NDFC. We note that no party raised concerns about the dual roles and determine the Chairman may properly serve in both capacities.

C. Schedule

We also had the opportunity to address the schedule for the proceeding at our May 16, 2002 meeting. The schedule is adopted as proposed. Accordingly, hearings will be held on July 15 through 18, 2002.

D. Designation of Advocates

At the prehearing conference, we raised the issue of designating employees as advocates under RSA 363:32 and asked the participants to address the need for such designation at the technical session following the conference. We also designated JPMorgan and Brown, Rudnick as advocates at that time. The only response received regarding bifurcation was the May 10, 2002 e-mail from CRR to our General Counsel, Gary Epler, suggesting that all Staff who participated in the

auction process be designated as advocates.

As no request was made under RSA 363:32, I, we will make no designation pursuant to that provision. We will, however, pursuant to RSA 363:32, II, on our own initiative designate Mr. Epler as staff advocate for the entirety of this proceeding. As he was appointed to manage the auction process on a day-to-day basis we believe the designation is appropriate. Because no other Staff member had as active a role in the process, there is no need for further designation.

E. Scope

The purpose of this proceeding is to examine the proposed transfer of ownership of the Seabrook Station to FPLE Seabrook. We envision, given our statutory mandate to ensure that the transaction is in the public interest, an investigation extensive enough to determine whether the transfer of ownership interest in Seabrook to FPLE is for the public good which, among other things, concerns FPLE's financial, managerial and technical capabilities. However, we will not extend our inquiry to the issue of the adequacy of decommissioning funding assurances, which is solely within the purview of the Nuclear Decommissioning Financing Committee.

In order to ensure that the investigation process does not become unmanageable, we believe an administrative

process to deal with discovery and procedural issues is essential. In Docket No. DE 99-099, the Restructuring of PSNH, we assigned a Presiding Officer/Hearing Examiner to the docket, with limited authority to decide all discovery and schedule disputes, with right of appeal to the Commission. We believe this approach allowed DE 99-099 to proceed efficiently. Accordingly, we will adopt the same procedure here.

Also, as in DE 99-099, objections to data requests are to be made within five business days of the receipt of such requests, with copies filed with the designated Hearings Examiner and the Executive Director and Secretary. Responses to objections are to be submitted within five business days of receipt of objections with copies also provided as indicated.

All pleadings, petitions, letters, or similar filings with the Commission wherein the filing party requests the Commission take any action, shall be considered "motions" and must comply with the requirements of N.H. Admin. Rule, Puc 203.04(d)(1) and (2). The requirements of N.H. Admin. Rule, Puc 203.04(b), which direct parties to seek the concurrence of all other parties relative to any motion that is filed, are hereby waived in this docket unless and until we order otherwise. We encourage parties, however, to attempt to

continue their practice of filing joint motions, or motions that state any concurrences, where, because of a particular party's stated position, it is apparent that it will support a moving party's pleading.

The requirements of N.H. Admin. Rule, Puc 203.04(c), which provide that objections to motions be filed within 10 days of the date the motion is filed shall be shortened to 5 business days, given the limited procedural schedule in the docket, except in situations in which good cause exists to extend the objection period.

This process will allow for a timely and efficient proceeding where all involved are aware of the administrative requirements. Should a discovery dispute arise it will be handled as expeditiously as possible and resolved balancing the interests of all concerned.

F. Great Bay and Little Bay's Status

In their April 19, 2002 letter, Great Bay/Little Bay asked that the Commission confirm that the Companies were not required to seek Commission approval of the sale of their respective interests as they are not public utilities in the state. We interpret the applicable law in the same manner as do the Companies. While at one time Great Bay was a public utility in the state, RSA 362:4-c, enacted in 1998, excuses

them from such status as they have "exempt wholesale generator" (EWG) standing from FERC.

Based upon the foregoing, it is hereby

ORDERED, that the various motions to intervene are granted with the exception of the Aziscoos petition; and it is

FURTHER ORDERED, that General Counsel, Gary Epler, is designated as Staff Advocate pursuant to RSA 363:32, II; and it is

FURTHER ORDERED, that the proposed schedule is adopted; and it is

FURTHER ORDERED, that the scope matters as set forth above are hereby adopted; and it is

FURTHER ORDERED, that Great Bay Power Corporation and Little Bay Power Corporation are not required to seek approval of the sale of their respective interests in Seabrook Station as neither company is a public utility in the state.

By order of the Public Utilities Commission of New
Hampshire this thirty-first day of May, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary