COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The Connecticut Light and Power Company	)	D.T.E. 02-35

THE CONNECTICUT LIGHT AND POWER COMPANY'S PETITION FOR FINDINGS UNDER SECTION 32(c) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 (ELIGIBLE FACILITIES)

The Connecticut Light and Power Company ("CL&P") hereby petitions the Department of Telecommunications and Energy (the "Department") to issue findings pursuant to Section 32(c) (15 U.S.C.A. § 79z-5a) of the Public Utility Holding Company Act of 1935 ("PUHCA") in connection with the sale by CL&P of its generation assets in Seabrook Nuclear Station in New Hampshire ("Seabrook Station"). CL&P owns 4.05985 percent of Seabrook Station.

As explained more fully in the enumerated paragraphs below, it is critical for the Seabrook Station assets to be afforded "eligible facility" status under PUHCA. In order for the assets to qualify for such status, the public utility commissions in each state in which an electric company affiliate of CL&P operates must issue certain findings, described below. Because the Department has jurisdiction over the retail rates of Western Massachusetts Electric Company ("WMECO"), which along with CL&P is an electric company affiliate of a registered holding company under PUHCA, CL&P seeks the findings set forth below.

In support of this Petition, CL&P states as follows:

1. CL&P is a wholly-owned operating company subsidiary of Northeast Utilities ("NU"), a registered holding company under PUHCA. CL&P is an electric

public service company providing retail service in Connecticut and is subject to the jurisdiction of the Connecticut Department of Public Utility Control ("CT DPUC") pursuant to Title 16 of the Connecticut General Statutes. CL&P has no customers in Massachusetts.

2. CL&P is divesting its generating assets pursuant to Section 7(b) of Connecticut Public Act 98-28, 'An Act Concerning Electric Restructuring' ("P.A. 98-28") (codified as Conn. Gen. Stat. Section 16-244g) ("CT Act"). The divestiture of CL&P's generating assets will not affect Massachusetts customers' rates.

3. Seabrook Station was offered for sale in a public auction. The auction was conducted pursuant to New Hampshire RSA 369-B:3, IV(b)(13) and the CT Act. Each of the joint owners, except for the Massachusetts Municipal Wholesale Electric Company ("MMWEC"), the Taunton Municipal Lighting Plant and the Hudson Light and Power Department, have offered their joint ownership interest for sale.

4. Pursuant to RSA 369-B:3, IV(b)(13) and Section 6(b) of the CT Act, the New Hampshire Public Utilities Commission ("NHPUC") and the CT DPUC selected J.P. Morgan Securities ("JPMorgan"), a nationally prominent investment-banking firm, to conduct the auction. The auction was supervised by the NHPUC staff and the CT DPUC's specially appointed Utility Operations Management and Analysis auction team ("UOMA").

5. In conducting the auction, JPMorgan used a confidential process, consisting of an initial identification of potential bidders, followed by the bidder due diligence procedure, in which bidders were given access to an electronic data room. Bidders were allowed to submit confidential questions and participate in individual pre-

bid meetings. The binding bids ultimately submitted were subject only to on-site verification. JPMorgan, in consultation with the NHPUC staff and UOMA, chose the winning bidder. The auction process is described in more detail in the joint filing of CL&P and The United Illuminating Company ("UI") to the CT DPUC, dated May 17, 2002. This filing will be forwarded to the Department shortly.

6. On April 13, 2002, a Purchase and Sale Agreement was entered into between CL&P and other owners of Seabrook Station and the winning bidder, FPL Energy Seabrook, LLC ("FPLE Seabrook"). FPLE Seabrook is an indirect, wholly-owned special-purpose subsidiary of FPL Energy, LLC, the independent power producer subsidiary of FPL Group. FPLE Seabrook is a wholly-owned direct subsidiary of ESI Energy, LLC, which is, in turn, a wholly-owned direct subsidiary of FPL Energy, LLC. FPL Energy, LLC, is a leader in producing electricity from clean and renewable fuels and is the nation's leader in wind energy, operating a 5,117-megawatt portfolio of plants in 14 states. FPL Group, through Florida Power and Light Company, also owns and operates four nuclear generating units similar in design to Seabrook Station. The company's Turkey Point site includes two pressurized water reactors with 1,386 megawatts of generating capacity, located 25 miles south of Miami. FPL Group's 1,553-megawatt St. Lucie site also includes two pressurized water reactors located near Ft. Pierce and Stuart adjacent to the Atlantic Ocean. Both Turkey Point and St. Lucie have consistently maintained the highest of safety and operational performance based upon the Nuclear Regulatory Commission's safety indicators as well as the World Association of Nuclear Operators' overall performance index.

7. As indicated above, other owners of Seabrook Station participated in the sale. Included in this group were two Massachusetts entities, New England Power Company ("NEP") and Canal Electric Company ("Canal"). NEP and Canal have each submitted separate petitions with the Department today for approval of that sale and for the findings necessary under PUHCA for the NEP and Canal assets being sold to FPLE Seabrook.

8. As a condition to closing CL&P's sale to FPLE Seabrook, FPLE Seabrook must obtain the determination of the Federal Regulatory Commission ("FERC") that FPLE Seabrook is an "exempt wholesale generators" ("EWG") under Section 32 of PUHCA. EWG status is critical to FPLE Seabrook because it allows it to own and operate the assets without regulation as a public utility company under PUHCA.

9. FERC's EWG finding must be based, in part, on a determination that the purchased facilities are "eligible facilities."[1] If the cost of such facilities (other than costs recovered through wholesale rates) were reflected in the seller's retail rates as of October 24, 1992, FERC's determination that they are "eligible facilities" depends on specific determination by:

(1) the state regulatory commission having jurisdiction over such facilities, and

(2) every state commission having jurisdiction over the retail rates and charges of an affiliate, if the seller is part of a registered holding company, as defined by PUHCA.

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[1] Section 32(a)(2) of PUHCA defines "eligible facility" as:

> a facility, wherever located, which is either (A) used for the generation of electric energy exclusively for sale at wholesale, or (B) used for the generation of electric energy and leased to one or more public utility companies, Provided, however, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 824d and 834e of Title 16.

As stated above, CL&P is a subsidiary of a registered holding company. Therefore, in order to obtain the required "eligible facilities" determination from FERC, a specific determination must be obtained from the Department (because CL&P's affiliate WMECO operates in Massachusetts) and other applicable state commissions.

10. The specific determination required of the Department is that allowing the divested assets to be "eligible facilities":

(a) will benefit consumers;

(b) is in the public interest; and

(c) does not violate state law.[2]

11. The determination set forth in the prior enumerated paragraph should be made for several reasons. First, consumers will benefit because additional generating capacity will be available for sale in the competitive market. Because the competitive market is expected to function more efficiently than the rate-regulated system of generation, consumers should ultimately benefit through lower prices. This benefit has been recognized by the Department in the context of electric utility restructuring in Massachusetts. Second, designation of the facilities as eligible facilities is in the public

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[2] In pertinent part, Section 32(c) of PUHCA (15 U.S.C.A. § 79z-5a(c)) provides as follows:

(c) State Consent for Existing Rate-Based Facilities. If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate state law; Provided, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company;….

interest because it supports the Commonwealth's stated goals of eliminating the vertical integration of the electric utility industry and of making electricity generation a competitive function. Third, such designation does not violate State law. On the contrary, the sale is completely consistent with the Massachusetts Electric Utility Restructuring Act (Chapter 164 of the Acts of 1997) and G.L. c. 164.

12. The determination sought by CL&P from the Department is identical to those sought and obtained by CL&P in D.T.E. 99-80 (November 26, 1999) (sale of certain CL&P assets to NRG Energy, Inc. and Northeast Generation Company) and in D.T.E. 00-69 (December 21, 2000) (sale of CL&P assets in Millstone 1, 2, and 3 to Dominion Nuclear Connecticut, Inc.).

13. In support of these findings, CL&P will submit to the Department its application for approval of the asset divestiture, filed with the CT DPUC on May 17, 2002, together with supporting testimony.[3]

14. The Department's approval, and that of the other state commissions considering this transaction must be issued before FPLE Seabrook can file its FERC application for EWG status. Because the FERC process is likely to take up to 60 days, and because the parties are targeting a closing in late November 2002, a decision from the Department is needed by August 30, 2002. CL&P requests that the Department act on and approve this Petition contemporaneously with the two requests for approval of asset divestiture filed on this date by NEP and Canal (*see* D.T.E. 02-33 and D.T.E. 02-34,

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[3] As stated in paragraph 5, above, the CL&P filing to the CT DPUC is submitted jointly with that of UI, another Connecticut owner of Seabrook Station.

respectively), which would facilitate a simultaneous closing on all Seabrook Station ownership interests being sold.

WHEREFORE, in order to fulfill the requirements of Section 32 of PUHCA, CL&P hereby respectfully requests that the Department make a specific determination that allowing the divested generating assets to be "eligible facilities" as defined in Section 32 (15 U.S.C.A. § 79z-5a(a)(2)): (1) will benefit consumers; (2) is in the public interest; and (3) does not violate State law.

CL&P further requests that the Department grant any other approvals and make any other findings as may be necessary or appropriate.

Respectfully submitted,

THE CONNECTICUT LIGHT AND POWER COMPANY

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