



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 00-01-11RE01 **JOINT APPLICATION OF CONSOLIDATED
EDISON, INC. AND NORTHEAST UTILITIES
FOR APPROVAL OF A CHANGE OF
CONTROL - RECONSIDERATION**

November 22, 2000

By the following Commissioners:

Donald W. Downes
Glenn Arthur
Jack R. Goldberg
John W. Betkoski, III
Linda Kelly Arnold

DECISION

I. BACKGROUND

On October 19, 2000, the Department of Public Utility Control (Department) issued its final Decision in this Docket No. 00-01-11 (the Decision). On October 26, 2000 the Department received a petition for reconsideration of that Decision from the Attorney General for the State of Connecticut (AG). On November 2, the Department received a petition for reconsideration of that Decision from the Office of Consumer Counsel (OCC). On November 3, the Department received a petition for reconsideration of that Decision from Consolidated Edison, Inc. (CEI) and Northeast Utilities (NU) (collectively, the Applicants).

Pursuant to Section 4-181a of the General Statutes of Connecticut, the Department hereby reopens the instant docket to consider the petitions for reconsideration. The reopened docket is hereby designated Docket No. 00-01-11RE01,

Joint Application of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Change of Control - Reconsideration.

II. AG AND OCC PETITIONS

The AG's petition for reconsideration states that the Department erred in assessing the financial risk presented to Connecticut's consumers, and that the benefits that the Department required as a condition for its approval of the merger are insufficient to offset the merger-related costs. Further, the AG argues that conditions imposed by the Department to alleviate concerns regarding CEI's environmental record, to preserve open space lands and to mitigate market power are inadequate.

The OCC's petition for reconsideration states that the CEI did not demonstrate the requisite managerial suitability to acquire NU, that the earnings sharing mechanism adopted by the Department violates Connecticut law and should be removed, that the Department did not adequately address market power concerns, and that the stranded cost write-down required in the October 19, 2000 final Decision was insufficient.

The Department fully and carefully considered each of the above arguments in issuing its October 19, 2000 final Decision. Consequently, the Department hereby rejects the petitions for reconsideration of AG and OCC.

III. APPLICANTS' PETITION FOR RECONSIDERATION

The Applicants petitioned for reconsideration on several bases. The Department hereby grants in part and rejects in part the Applicants' petition for reconsideration. The Department will not reconsider its Decision with respect to the amount or timing of the immediate reductions to the rates of the Yankee Gas Company (Yankee). The Department also will not reconsider its decision with respect to the amount or timing of the immediate reductions to the rates of The Connecticut Light and Power Company (CL&P), or the amount of the stranded cost write-down required in the October 19, 2000 final Decision. Consequently, the "pillars" of the October 19, 2000 final Decision remain unchanged.

The Department also will not reconsider the dividend restrictions established in the Decision. The Department will not reconsider its Decision with respect to the Applicants' request to modify the pension condition that requires the Applicants to obtain the Department's approval prior to making any changes in the NU Defined Benefit Plan, although other pension-related conditions are modified below.

In its final Decision, the Department required the Applicants to certify that they acknowledge the conditions established in that Decision and agree to comply with each such condition. Several of the arguments contained in the Applicants' petition request clarification of some of the Decision's requirements. Because the Applicants are expected to fully comply with each such condition, the Department will, in the following section clarify some of the conditions.

IV. MODIFICATIONS AND CLARIFICATIONS

A. EQUITY RATIO

The Decision requires that both CL&P and Yankee maintain, at minimum, their current capital structures as indicated in Tables 11 and 12 of the Decision. Those tables reflect the equity ratio as of December 31, 1999. According to the Applicants, it will be difficult to commit to attain the December 31, 1999 equity ratio for CL&P in the near term.

Although the Department would like to see CL&P's post-Merger capital structure at a level as good as or better than that depicted in Table 11, the Department is cognizant that CL&P's current capital structure falls short of that level and that CL&P will undergo several financial changes resulting from securitization and the completion of the auction of the Millstone units. The Department is also aware that upon completion of these financial transactions, CL&P shall be provided with large inflows of cash requiring CL&P to reconfigure its capital structure. Consequently, the Department modifies its October 19, 2000 Decision to require, within six months of the date of completion of the Merger, CL&P to achieve, at minimum, the capital structure depicted in Table 11 consisting of 38% common equity and 62% total debt plus preferred. As for Yankee, the stated minimum equity level as depicted in Table 12 shall be required immediately upon completion of the Merger.

Consequently, at pages 37 and 133 of the final Decision, Financial Condition No. 1 is modified to read as follows:

1. Within six months of the date of completion of the Merger CL&P shall achieve and maintain, minimally, its capital structure as indicated in Tables 11 of 38% common equity and 62% total debt plus preferred. Should the common equity level fall below this minimum, the Applicants must explain the shortfall to the Department. Immediately upon completion of the Merger, Yankee shall maintain, minimally, its current capital structure as indicated in Table 12 of 43% common equity and 57% total debt plus preferred. Should the common equity level fall below this minimum, the Applicants must explain the shortfall to the Department.

B. SALARY EQUIVALENCE

The Decision requires that "the Applicants commit to maintaining a salary base between New York and Connecticut until December 31, 2003 that is approximately equivalent." Decision, pp. 87 and 136. However, the Applicants state that a condition that requires the Applicants to maintain salary bases that are "approximately equal" (as in "approximately 50%"), or, in the alternative, "approximately proportionate," would restrict management's discretion to locate job functions in the most cost effective and efficient manner, and would create an administrative burden. The Applicants state that they are prepared to accept a condition that if job functions were transferred from Connecticut to New York, that an equivalent number of positions would be transferred to or created in Connecticut.

While the Department rejects the Applicants' proposal in this regard, their petition highlights the need to clarify this condition. The Department's intention in establishing this condition is to require approximately proportionate salary bases between Connecticut and New York until December 31, 2003, not approximately equal. Consequently, Employment Condition No. 7 at pages 87 and 136 are modified to read as follows:

7. The Applicants commit to maintaining a salary base between New York and Connecticut until December 31, 2003, that is approximately proportionate.

C. LOCATION OF THE SERVICE COMPANY FOR THE NEW ENGLAND OPERATIONS

The Decision requires all service company functions relating to the New England operations to be located in Central Connecticut. According to the Applicants, this requirement creates a question as to whether any services for the New England states could ever be performed by personnel anywhere except Connecticut.

The Department intended that the Service Company be located in Connecticut, not that all functions be performed in Central Connecticut. The Department therefore modifies Employment Condition No. 4 at pages 86 and 136 as follows, to clarify that while the headquarters for the Service Company for the New England operations shall be located in Central Connecticut, with significant operations occurring in Connecticut, some Service Company functions can be performed from locations outside of Connecticut:

4. The Service Company for the New England operations shall be located in Central Connecticut with a significant portion of its operations occurring in Connecticut.

D. PENSION FUND

The Department's October 19, 2000 Decision requires the Applicants to maintain the NU Defined Benefit Plan assets on a separate basis from Consolidated Edison Company of New York, Inc. (CECONY) and Orange and Rockland Utilities, Inc. (O&R) plans. The Applicants request confirmation of their interpretation that this condition permits the commingling of the NU pension fund assets with CEI's pension fund assets, provided that there is separate accounting and actuarial analysis for each plan. The Department therefore clarifies Pension Condition No. 1 at pages 44 and 134 to read as follows:

1. The NU DB Plan assets must be maintained on a separate legal, accounting, and actuarial basis from CECONY's and O&R's DB Plans.

The Department's Decision also required that ratepayers receive the full benefit of any overfunding of the NU Defined Benefit Plan. The Applicants request confirmation of its understanding that this condition requires that Connecticut customers receive any rate benefit that results from pension overfunding in the future, subject to ERISA requirements.

Consequently, the Department concurs with the Applicants' interpretation, and therefore modifies Pension Condition No. 4 at pages 45 and 134 as follows:

4. On an ongoing basis and for ratemaking purposes, CL&P's customers shall receive the full benefit of the NU DB Plan's overfunded status. In the event that the NU DB Plan is terminated, CL&P's ratepayers shall receive the full benefit of the NU DB Plan's overfunded status as calculated by or subject to ERISA requirements for plan termination.

E. COSTS TO ACHIEVE

The October 19, 2000 Decision requires that executive separation costs will not be direct charged or allocated to CL&P or Yankee customers now or in the future, except to the extent they are included in rates. The Applicants state that even if costs are not to be charged to customers in any manner, to properly account for these costs, they must be booked by the subsidiaries making the payments. The Applicants, therefore, intend to record the charges for executive separation below the line, and request confirmation that this approach is acceptable.

The Department concurs with the Applicants' understanding, and therefore modifies the Cost to Achieve Condition No. 1 at pages 64 and 134 to read as follows:

1. Executive separation costs will not be direct charged or allocated to CL&P or Yankee now or in the future except to the extent that they are included in rates. CL&P and Yankee shall record these costs below the line, so that customers will not be affected by them.

F. CERTIFICATION CONDITION

In the final Decision, the Department required the Applicants to file, within 30 days of the date of the final Decision, a certification acknowledging the conditions established in that Decision and agreeing to comply with each such condition. In their petition, the Applicants state that they interpret this condition to mean that they need not give the certification until 30 days after they have made their final decision to consummate the merger. According to the Applicants, this will only occur after all state and regulatory approvals are received and the Applicants have had an opportunity to review any conditions imposed by other approvals. The Applicants request clarification that their interpretation is correct.

The Department agrees that the certification should be filed after all approvals are received. Therefore, the Department modifies that condition to require the certification to be filed within 30 days after all state and federal regulatory approvals are received.¹

¹ The Department does not agree that the certification should be filed until 30 days after the Applicants have made their final decision to consummate the merger.

Consequently, the Certification Condition on page 133 is modified to read as follows:

1. If the Applicants decide to consummate this Merger, they shall, within 30 days after all state and federal regulatory approvals are received, file a certification signed by an authorized representative of each of the Applicants, acknowledging the conditions of this Decision and agreeing to comply with each such condition.

V. CONCLUSION

For the reasons set forth above, the Department hereby modifies certain limited aspects of its October 19, 2000 final Decision as set forth above. All other aspects of the Decision, including all rate reductions and stranded cost write-downs ordered in the Decision remain unchanged.

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This Decision is adopted by the following Commissioners:

Donald W. Downes

Glenn Arthur

Jack R. Goldberg

John W. Betkoski, III

Linda Kelly Arnold

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

11/22/00
Date