



STATE OF CONNECTICUT

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

DOCKET NO.
98-10-08RE04

THE DPUC REVIEW OF THE CONNECTICUT LIGHT AND
POWER COMPANY'S DIVESTITURE PLAN - SALE OF
PPA'S

January 24, 2001

By the following Commissioners:

Donald W. Downes
Glenn Arthur
John W. Betkoski, III

DECISION

DECISION

I. INTRODUCTION

A. SUMMARY

In this Decision, the Department of Public Utility Control rejects the June 16, 2000 application filed by The Connecticut Light and Power Company and J.P. Morgan Securities, Inc. requesting approval of the Capacity and Associated Energy Resale and Agency Agreement dated April 10, 2000 by and between CL&P and Constellation Power Source, Inc. The Application was for the sale and transfer of approximately 345 megawatts (MWs) of long term purchase power contracts. Although the auction was conducted in a commercially reasonable manner by J.P. Morgan, the Department concludes that the proposed transaction does not fully mitigate stranded costs.

B. BACKGROUND

By Application filed on June 16, 2000, (Application), pursuant to the Department's order on January 8, 1999 in the instant Docket, The Connecticut Light and Power Company (CL&P or Company) and J.P. Morgan Securities, Inc. (J.P. Morgan) (Collectively, Applicants) requested approval by the Department of Public Utility Control (Department) of the Capacity and Associated Energy Resale and Agency Agreement dated April 10, 2000 (Agreement) between CL&P and Constellation Power Source, Inc. (Constellation).

C. CONDUCT OF PROCEEDING

By Notice of Hearing dated August 15, 2000, a public hearing was held on this matter in the Department's offices, Ten Franklin Square, New Britain, Connecticut on September 13, and 29, 2000. The hearings were continued to October 11, 2000. That hearing was cancelled. By notice dated October 31, 2000, the hearing was closed.

The Department issued a draft Decision in this matter on December 20, 2000. All parties were afforded an opportunity to file written exceptions to and provide oral arguments on the draft decision.

D. PARTIES AND INTERVENORS

The Department recognized The Connecticut Light and Power Company, P.O. Box 270, Hartford, Connecticut 06141-0270; J.P. Morgan Securities, Inc., 60 Wall Street, New York, NY 10260-0060; The Office of Consumer Counsel (OCC), Ten Franklin Square, New Britain, Connecticut 06051; and the Utility Operations Management Analysis, Ten Franklin Square, New Britain, Connecticut 06051 as Parties to this proceeding.

The following participants were denied Intervenor status: Hartford Power Sales, Bristol Resource Recovery Facility, Connecticut Resource Recovery Authority, and Southeastern Connecticut Regional Resources Recovery Authority.

II. DEPARTMENT ANALYSIS

A. GENERAL

The Agreement with Constellation covers power purchased by CL&P under Power Purchase Agreements (PPAs) with fifteen separate entities that aggregate approximately 345 megawatts (MWs). The Applicants seek rulings from the Department that CL&P may recover costs associated with this transaction through the competitive transition assessment (CTA), such as (1) the full amount of the support payments, and (2) in the event of a default under the Agreement, any unmitigated stranded costs associated with the Power Purchase Agreements. The Applicants also seek a ruling that the initial funding of an escrow account is eligible for funding through rate reduction bonds. Specifically, the Applicants state that the auction was conducted on a commercially reasonable basis, that it fully mitigates stranded costs associated with the PPAs and that Constellation was the winning bidder.

B. PROCESS

The auction employed an outside consultant and advisor to oversee the process, and appointed a designated team of Department personnel, the Utility Operations Management Unit (UOMA), to ensure the auction was fair and to monitor its compliance with the requirements of Public Act 98-28, An Act Concerning Electric Restructuring (Act). The Department retained J.P. Morgan, an outside consultant and independent advisor. J.P. Morgan worked closely with UOMA and a sell team established by CL&P to develop a competitive auction process and schedule.

The auction was conducted in two rounds. J.P. Morgan and CL&P compiled a contact list of 279 companies of which 18 submitted non-binding bids. J.P. Morgan then evaluated each bidder's financial status, business practices and ability to satisfactorily meet and abide by the Terms of Transfer. Based on this evaluation and discussions, 15 bidders were invited to participate in a second round of bidding. J.P. Morgan's second round review criteria, which evaluated the effect on CL&P's stranded costs, contractual terms/conditions, and the feasibility of closing the transaction in an expeditious manner, resulted in the elimination of ten of the fifteen second round bidders. Of the five remaining bids, three contained legal and/or structural issues that were considered non-conforming to the bid instructions. Of these three, two bidders refused to alter their terms and withdrew from the process. The third bidder amended its terms. However, the value of this bid was so poor that it was eliminated. The two finalists separately and independently proposed an agency structure under which they would take the capacity and energy associated with the PPAs and pay the contractual price for the power while receiving a stream of support payment over time that matched the terms of their bid. Upon final review of the economics and the remaining contract negotiation issues, Constellation was selected as the winning bidder. Kretsge PFT, pp. 6, 7, 9 and 18.

CL&P states that the auction was conducted in accordance with the Department's January 8, 1999 Decision in the instant docket. Additionally, CL&P states that a strict

code of conduct was observed by CL&P and the confidentiality of bidders and bids was maintained throughout the process. CL&P Brief, p. 2.

J.P. Morgan states that the auction was conducted in accordance with normal investment banking procedures in a commercially reasonable manner. The auction was to identify the bidders that offered the lowest possible bids. All bidders were given equal access to information on a non-discriminatory basis and full confidentiality of bidders' identities and other relevant data was maintained. J.P. Morgan believes that the auction represents the mitigation of stranded costs to the fullest extent possible and that the market has spoken. Additionally, J.P. Morgan considers a market test of value conducted in a commercially reasonable manner, to be the purest form of valuation. Kretsge PFT, p. 19.

UOMA believes that the auction was designed and conducted to provide equal opportunity to potential qualified bidders to successfully bid on the PPAs. Potential bidders were provided equal access to compete and obtain accurate information on the PPAs. Additionally, all decisions made throughout the auction process resided with UOMA and J.P. Morgan under UOMA's supervision. UOMA, in its role of verifying the fairness of the auction, attests to the integrity and robustness of the auction process and submits that the results of the auction represent fair market value. UOMA Position Paper, 7/26/00.

The Department believes the auction process was fair and was conducted in a commercially reasonable manner.

C. AGREEMENT

1. Benefit to Ratepayers

The Agreement states that CL&P will sell and deliver to Constellation all capacity and associated energy received by CL&P pursuant to the PPAs. Constellation will pay a monthly charge to CL&P, and CL&P will make monthly support payments to Constellation. The support payment amounts were determined by the auction and are to continue throughout the terms of the PPAs, the last expiring in approximately 30 years. CL&P will be required to make monthly support payments to Constellation regardless of production from the Independent Power Producer (IPP). Therefore, production from any (IPP) declines, CL&P and ratepayers are still liable to make support payments to Constellation. Essentially, the total support payments become fixed stranded costs through 2030.

J.P. Morgan states that a well-conducted auction is a market-based mechanism to identify and realize the maximum market value for the PPAs. J.P. Morgan indicated that by going to the market and having approximately 200 companies review and bid on the PPAs, that the value of these contracts was properly determined by the market. As a result, J.P. Morgan is confident with the results of this process. Tr. 9/13/00, pp. 1307 and 1308. Additionally, J.P. Morgan states the auction was designed to achieve the highest possible bid for these contracts. The bid in this case is the minimum stream of payments from CL&P required to compensate Constellation for the stranded costs associated with the PPAs. The auction, thus, produces the minimum feasible level of stranded costs.

Kolbe PFT, p. 8. By maximizing value for ratepayers, the agreement mitigates stranded costs associated with the PPAs to the fullest extent possible. J.P. Morgan Brief, p. 1.

UOMA states that accepting the auction results is beneficial to ratepayers because the PPAs will end up in the hands of the person that most values them. Tr. 9/13/00, pp. 1566 and 1567.

CL&P states that it is not in a position to know whether or not stranded costs will be mitigated to the fullest extent possible, because its involvement in the auction process was extremely limited. Tr. 9/13/00, p. 1303. CL&P states it did not participate in the auction, therefore it, remains neutral with respect to the economic terms of the Agreement. CL&P Brief, pp. 4 and 5.

OCC believes ratepayers would be better off without the Agreement because ratepayers will be obligated to make support payments regardless of production or default. OCC believes that merely because Constellation placed the highest bid (resulting in the lowest support payment) does not mean that Constellation's bid mitigates stranded costs to the fullest extent possible. OCC Brief, p. 11. Additionally, any savings related to a future buyout or curtailment flow to Constellation, not the ratepayers. Finally, to the extent that the price of power rises above the level implicit in Constellation's bid, Constellation gets another windfall, and ratepayers have been sold out too cheaply. OCC Brief, p. 10-11 and Tr. 9/13/00, pp. 1401, 1402 and 1407.

Neither CL&P, J.P Morgan nor UOMA have provided any economic analysis to indicate that the transaction will provide economic benefits to ratepayers or reduce stranded costs. The benefit that these parties offer in support of the Agreement is that fixing the support payments to Constellation will reduce ratepayers' risk. Response to Interrogatory EL-42.

The OCC testified that simply because Constellation provided the lowest support payment bid, it does not mean the purchase price is reasonable. OCC Brief, p. 11. The Department agrees with the OCC and, therefore, must evaluate the reasonableness of the transaction to ensure that it is more beneficial to ratepayers than to continue under the existing arrangements.

The Agreement cannot be considered beneficial to ratepayers on either an absolute or relative basis. Under this Agreement, stranded costs will increase on a nominal and present value basis when compared to the Department market price of power forecasted in Docket No. 99-02-05, Application of the Connecticut Light and Power Company for Calculation of Stranded Costs. In the fossil/hydro auction, an analysis was provided that compared the sales price per kWh and book value basis to other sales and identified customer benefits. Additionally, the Department has always been provided an economic analysis for buyouts and buydowns of PPA contracts. This analysis has showed savings in all cases when compared to the market price of power. No analysis was provided in this case. The parties state that since it was a good auction, the price is reasonable. Tr. 9/13/00, pp. 1307 and 1308.

The break-even prices developed by the Department result from the difference between contract prices and support payments. They are not a forecast. The Department has compared the break-even prices with the Department market forecast; however, the market price must only be above the break-even rates for customers to be negatively impacted.

The break-even point to ratepayers is also low in absolute terms. If the average market price is above approximately \$.03/kWh over the thirty-year period, ratepayers will suffer as a result of the Agreement. The average break-even rate is even lower during the first 10 years. CL&P and UOMA testified that they believe that average price of electricity would be higher than \$.03/kWh. Tr. 9/13/00, pp. 1538, 1567, and 1568.

The Department commends J.P. Morgan and UOMA for conducting a competitive auction. However, it is essential that the results of the auction fully mitigate stranded costs. The Department notes that these PPA contracts were previously fixed based on the forecasts of future cost of electricity. This resulted in stranded costs that we are trying to reduce today. The Department does not want this repeated by locking in stranded costs based on low electricity price projections.

The Department believes that it is in the best interest of ratepayers to continue to bear market value rather than locking into 30 years of fixed stranded costs under the auction. Approving the Agreement would effectively preclude any potential benefit that higher electric prices may have on reducing customer's future payments of stranded costs. CL&P will be required to continue mitigation efforts consistent with Section 8(c) of Public Act 98-28.

2. Economic Analysis

At the Department's request, CL&P provided two economic analyses to evaluate the impact of the proposed transaction on ratepayers. Late Filed Exhibit Nos. 3 and 5. Late Filed Exhibit 3 indicates that ratepayer stranded costs will increase as a result of proposed Agreement on both a nominal and present value basis. This analysis compares the support payment to the Department's market price forecast. Late Filed Exhibit No. 5 is a comparison of the IPP contract amount less the support payments divided by MWh. In this analysis Constellation's bid is calculated. This break-even rate includes the effects of transmission and distribution wheeling revenues, and the cash effects of the proposed escrow account.

J.P. Morgan argues that the Department analysis is inappropriate, stating, "There is no basis for the Department to second guess the market, particularly using an administrative price forecast that was developed for a much more limited purpose." J.P. Morgan Brief, p. 22. In addition, J.P. Morgan states that the support payments reflect the market value of a particular bundle of rights and obligations in the PPA's, including the market assessment of risk of managing the fixed price, long term purchasing obligation thereunder. Response to Interrogatory EL-42.

UOMA states the Department should not rely on an administratively developed price curve and recommends relying on the results of the auction process. Tr. 9/13/00, pp. 1569 and 1570.

The Department disagrees with J.P. Morgan and UOMA. The Department must evaluate the reasonableness of the transaction. Both analyses are consistent with the analysis the Department has used for all PPAs when first approved and most recently when buyouts and buydowns have been evaluated. The market price forecast was developed for the purpose of estimating the stranded costs associated with generation assets including the PPA contracts.

This Agreement is a buyout, not unlike the other buyouts the Department has analyzed. The only difference is that a third party (Constellation) is receiving the buyout (support) payments, which were determined through an auction rather than through a bilateral negotiation.

J.P. Morgan repeatedly mentions that the Department did not consider the benefits associated with reducing risk to ratepayers by fixing the payments. As explained below, the Department places little value on this proposed benefit and by considering this benefit, the Department's conclusion will not be materially altered. The same benefit could be claimed for all the buyouts and buydowns the Department has approved; in which case, this project remains the worst for ratepayers. Further, the legal standard for approval is not that the transaction quantifies and fixes stranded costs; rather, it is that the transaction mitigates stranded costs to the maximum extent possible. Conn. Gen. Stat. §16-245e. The record herein demonstrates that the transaction does not fully mitigate stranded costs and does not provide ratepayer benefit.

Whether the Department accepts the deal or denies it, we must evaluate the economics of the transaction based on some estimate of future market prices. The Department cannot agree that simply because the auction was good that the price is reasonable. Market price uncertainty is the strongest reason why the Department should not fix stranded costs by approving the Agreement.

Currently, stranded costs associated with the PPAs are the difference between the PPA contract price and market value for power. Energy prices have been in an upward trend and as a result, ratepayers have benefited through lower stranded costs. Constellation's bid for the energy is below the current market price. This means that ratepayers would absorb additional stranded costs. In fact, Constellation's bid is less than ISO New England's twelve-month average for months ending May through September 2000.

J.P. Morgan points out that fuel prices and the market price of power could decline as new generators enter the market. J.P. Morgan Brief pp. 46 and 47. The Department agrees; however, the Department's market price forecast considered the increase in capacity from new units over the next few years and was based on fuel costs that were significantly lower than current prices.

Finally, J.P. Morgan criticizes the Department analysis saying that if the market price of power increases due to higher fuel costs so will the purchase rates from PPAs. J.P. Morgan Brief, p. 36. This implies that the Department is incorrect in its conclusion that ratepayers would be better off by not entering this transaction if the market price is above \$.03/kWh. The Department disagrees, purchase power rates under these contracts are much less sensitive to changes in fuel costs than the market price of power which is generally determined by the marginal cost of intermediate or peaking units which use oil or gas. J.P. Morgan's brief indicates that 44% of the contracts are not subject to any escalation, 29% escalate based on the GNP deflator and only 27% escalate based on an energy component. J.P. Morgan Brief, p. 45. Although purchase rates are not completely fixed they are less sensitive so that they would not increase at a great enough rate to offset the increase to stranded costs that would result from higher market prices.

It is perfectly understandable why Constellation bid low. Even if Constellation thought that forward market prices were exactly the same as the Department's forecast, Constellation would bid lower to increase the likelihood of making a profit. The greater the perceived risk of market price volatility, the lower the price they would bid. CL&P, however, does not make any return on the administration of PPA contracts. Therefore, the full revenues associated with their sale into the market are used to offset stranded costs.

For the above reasons the Department concludes that this Agreement is not in the best interest of ratepayers.

3. Market Prices

The ISO wholesale energy market began operating in May 1999. Table 1 demonstrates the monthly average spot price (ISO Price) for energy since that time.

Table 1

ISO New England
Monthly Average Wholesale
Energy Prices
(\$ MWh)

1999		2000	
May	\$28.20	January	\$37.15
June	\$49.18	February	\$34.17
July	\$41.14	March	\$23.90
August	\$29.25	April	\$26.17
September	\$28.42	May	\$72.78
October	\$24.78	June	\$38.80
November	\$24.90	July	\$37.14
December	\$24.33	August	\$42.23
		September	\$43.15
		October	\$50.32
		November	\$49.30

Source of Data: ISO New England web site, www.iso-ne.com.

As Table 1 demonstrates, ISO Prices have increased since the market was established. Table 2, below, reflects the 12-month rolling average energy prices (Average ISO Prices) for May through November 2000.

Table 2

ISO New England
Annual Avg. Wholesale
Energy Price For 12-Months Ending
(\$ MWh)

May 2000	\$34.68
June 2000	\$33.82
July 2000	\$33.48
August 2000	\$34.56
September 2000	\$35.79
October 2000	\$37.92
November 2000	\$39.95

Source of Data: Table 1

As Table 2 shows, the Average ISO Price has increased.

Critical to the Department's review of this Agreement is an evaluation of the effect on CL&P's stranded costs. Unlike J.P. Morgan's evaluation, which compared bids to determine ratepayer benefit, the Department must compare the winning bid, and resulting total revenue from the Agreement, with the alternative revenue stream from these PPA contracts if retained by CL&P. The PPA contracts are sold into the market by CL&P and are paid the ISO rate. Tr. 9/29/00, pp.1615-1621. Therefore, the ISO Price is the appropriate comparative revenue stream.

The Average ISO Prices noted in Table 2 are above the average price per MWh provided in the Agreement. Therefore, ISO Prices yield greater revenues than the revenues provided under the Agreement. This, in turn, reduces stranded costs. However, a complete analysis must consider the likelihood that the Average ISO Prices will remain equal to or above the average price from the Agreement. In conducting that review, the Department considered past, current and projected fuel prices, current and planned capacity, and projections for regional demand. Based on our analysis it is highly unlikely that ISO Prices will decline to a level that will provide revenues below those provided under the Agreement.

Based on the foregoing, the Department concludes that the Agreement will not mitigate stranded costs, but instead will likely increase these costs. Thus, the Agreement does not satisfy the requirements that the sale of the PPAs fully mitigate stranded costs.

4. Discount Rate

J.P. Morgan provided comments in their brief and written exceptions which state that ratepayers would benefit from the transaction. J.P. Morgan Brief, p. 23 and Written Exceptions, p. 16. According to J.P. Morgan, the present value of relatively predictable future cash flows – such as the support payments, payment obligations under the PPAs, and transmission and distribution costs, should be established using a relatively low discount rate. The present value of the market price of electricity should be established using a relatively high discount rate. Tr. 9/13/00, p. 1344 and J.P. Morgan Brief, p. 23.

The Department does not agree with the discount analysis in this situation. By applying a higher discount rate to the market revenues and a lower discount rate to the future payment obligations under the existing PPA contracts, J.P. Morgan calculates stranded costs to be greater than that calculated by the Department. This analysis incorrectly justifies higher support payments than is appropriate. If the economic analysis is based on higher stranded costs as suggested by J.P. Morgan, and such costs are lower than expected, ratepayers will be economically harmed as a result of this transaction.

Simply reducing the volatility of stranded costs by fixing the payments is not the primary reason for buyouts, as J.P. Morgan states. J.P. Morgan Written Exceptions, p. 15. The purpose is to reduce stranded costs and fix the payments. Ultimately, the Agreement will be judged on how the support payments compare to the stranded costs the Company would have incurred absent the Agreement.

Discounting is used to compare options with different revenue streams and risk. A revenue stream is reduced to a fixed number by discounting. The greater the risk, the higher the discount rate. In most cases, if actual revenues are lower than expected, savings are reduced and losses may result. Reducing the amount one is willing to pay for the revenue stream reduces the risk of losses. If the revenues are higher than expected then there are additional benefits.

The analysis in this case is different from the analysis of most projects because there is a comparison of support payment to potential stranded costs. In this case, if market price revenues are higher than expected, stranded costs are reduced, resulting in fewer savings to ratepayers. Therefore, the decision to approve this Agreement should be based on the possibility of lower stranded costs. A higher discount rate should be applied; however, it should be used to discount stranded costs not just the market revenues. Due to risk, stranded costs must be heavily discounted to better ensure that a fixed support payment will provide savings to ratepayers.

The Department concludes that the conservative and prudent choice is to discount the entire estimate of stranded costs using the Company's cost of capital in order to evaluate the support payments. This is consistent with the Department's analysis in the instant docket as well as other buyout and buydown decisions.

5. Risk

CL&P states that the auction transfers the risk associated with future stranded costs from CL&P customers to Constellation, to the benefit of customers by fixing the support payments (stranded costs). This benefit is echoed repeatedly by J.P. Morgan and UOMA. However, no other ratepayer benefits are identified. J.P. Morgan states that rejecting the Agreement based on speculation about future energy prices or recent market trends would constitute a gamble by the Department and to accept the Agreement is not a gamble at all. J.P. Morgan Brief, p. 6.

The Department strongly disagrees. Fixing stranded costs by accepting the Agreement is a serious gamble while rejecting the proposal will guarantee that customers pay actual stranded cost. Stranded costs become less volatile by fixing the payments but as the OCC points out this is not necessarily a benefit to customers. Fixing the payments of the purchase power contracts resulted in stranded costs. By fixing the payments it increases the risk that customers will pay more or less than actual stranded costs. Given the low break-even rate, the Department is very concerned that locking the payments could adversely impact ratepayers again. On the other hand, if the contracts are not transferred to Constellation, ratepayers will receive the actual market price of power from these units and, therefore, will pay 100% of actual stranded costs. The parties repeatedly discuss risk benefit; however, none could quantify its value. The Department has not considered this in any other PPA buyout or buydown.

The Department does not believe that the market price will drop significantly below the break-even rate. A \$.01/kWh reduction in the market price below the break-even rate would result in approximately a \$13 million dollar increase to stranded costs. This would result in approximately a 4.3% increase to the CTA rate and an increase of less than 1% to overall rates. On the other hand, electric rates could increase substantially over the next thirty years.

J.P. Morgan fails to mention that by selling the contracts to Constellation, ratepayers give up the possibility of future benefits if the project at some time cannot produce power. Under the current contracts, ratepayers make a payment if energy is actually delivered. Under the Agreement, ratepayers will be required to make all support payments to Constellation regardless of output from the IPPs.

Default under the current contracts carries certain penalties, including reimbursement from the IPP for past payments by CL&P's ratepayers. Under the Agreement, CL&P's rights to default-related remedies would be assigned to Constellation. Therefore, should any of these facilities default, Constellation would benefit in two ways. First, it would receive any default-related payments from the facility, which can be substantial. Second, as described above, Constellation would no longer be obligated to make payments for energy under the Agreement but would continue to receive full payment from CL&P. This provides a tremendous incentive for Constellation to pursue default. Lastly, ratepayers remain responsible for future unknown costs if Constellation defaults.

Proposed Ruling No. 4.

Although these projects have proven to be reliable, operating at relatively consistent capacity factors throughout their lives, these plants are aging. Under the Agreement, each plant would need to maintain its standard of performance through the remaining term of each contract, some for 30 years. As with any generating plant, there is no guarantee that an extended forced outage will not occur or the capacity factor might otherwise deteriorate. As a plant ages its components wear, subjecting the unit to more frequent outages generally resulting in lower capacity factors. As such, calculation of CL&P's payments based on historical capacity factors provides a benefit to Constellation.

Similarly, if the Agreement is approved, the Department and CL&P will forever give up the possibility of negotiating future buyouts or buydowns with the PPA's since they will be controlled by Constellation. Although CL&P has been unsuccessful with this group of contracts in the past, circumstances could change in the future which could make such negotiation favorable. This option and the potential benefits of lower stranded costs, will no longer exist if the Agreement is approved.

The aforementioned risks were considered in the Departments' analysis of the Agreement.

6. Restructuring Act

J.P. Morgan states that rejection of the agreement due to fluctuations in energy prices would violate the Act and would contradict basic financial and economic analysis and undermine the integrity of these auctions.

The Act does not require CL&P divest or sell its interest in the PPA agreements, but does require the Company to take actions to mitigate stranded costs and to approve auctions if there are ratepayer benefits. Reasonable steps have been taken to attempt to reduce stranded costs, however, the Applicants hold the burden of proof and have failed to show that the Agreement will mitigate stranded costs to the fullest extent possible.

The Department does not believe that denying this transaction would undermine the auction process. The Department has approved the results of the fossil/hydro auction and endorsed the concept by attempting to auction the PPAs although it was not required. Everyone must recognize that not all auctions are successful and should not expect the Department to approve a transaction that it believes would harm ratepayers. Since the Department is rejecting the proposed transaction based on economic reasons, the Department does not need to address the legality of the auction under the Restructuring Act, including whether or not the escrow account can be securitized.

7. Securitization

One of the benefits of a buyout is that the power purchase payment stream is reduced to a fixed value that is securitized. Securitization has two benefits. First, it results in increased savings due to lower financing costs. Second, the securitization amount is generally paid off over a shorter period than if the contract continued. This is consistent with the goal to pay off stranded costs so the CTA charge can be removed from customer

bills. Although buydowns do not totally eliminate payments over the life of power purchase contracts they greatly reduce them, again, consistent with the goal of reducing the CTA charge.

Under this Agreement payments will not be reduced to a lump sum and will not be securitized. The transfer of the purchase power contracts to Constellation will fix the payment stream but will not reduce payments or alter their timing. CL&P is required to make support payments to Constellation every year until 2029. The payment stream proposed is not consistent with the Department's objective to pay off stranded costs and reduce and eliminate the CTA.

8. Administrative Costs

The divestiture of generation assets typically results in a reduction of costs associated with operating and support service personnel. For example, when the fossil/hydro units were divested, there was a reduction of hundreds of employees. Similarly, hundreds will be affected by the nuclear divestiture. In contrast, only four people administer the PPAs under review in this transaction. Tr. 9/13/00, p. 1312.

CL&P originally stated its administrative costs may slightly decrease. Response to Interrogatory EL-12. However, CL&P was unable to quantify any savings. CL&P went on to say that none of the positions associated with administration of purchase power contracts positions are expected to be eliminated and that administration costs could actually increase since the transactions under the proposed sale are more complicated than before. Tr. 9/13/00, pp. 1313 and 1314.

9. Renewables

The portfolio of contracts that Constellation would acquire under this Agreement consists of 51 MWs of Class II Renewable Resources and 7 MWs of Class 1 Renewable Resources. Although the market for renewables is not fully developed, testimony by CL&P indicated that there could be a pricing premium for renewable energy as a result of current portfolio requirements. Tr. 9/29/00, p. 1610-1612. Accordingly, the portfolio of generation being purchased under the Agreement is heavily weighted with renewable sources and the pricing could be expected to be higher than the market price for non renewable sources. Since Constellation was obviously aware of the composition of the resources and renewable portfolio requirements in the region this was taken into account in their bid. This reinforces the Department's conclusion that the break-even price resulting from Constellation's bid is low compared to ISO Market Prices.

10. Escrow Account

The Agreement requires an escrow account be established and funded as part of the CTA securitization. The escrow account essentially represents CL&P's support payment obligation to Constellation, interest, and or any surplus as a result of the PPAs expiring that will be used to fund the support payment. Kolbe PFT, p. 6. The escrow account requires initial funding of \$90 to \$100 million. According to testimony, the escrow

account is needed because CL&P customers are paying CL&P, not Constellation. Constellation is therefore relying on CL&P for its payments, and is exposed to the risk of CL&P defaulting on those payments. Additionally, CL&P's receipts from its customers associated with the IPP contracts are not distinct from other CL&P assets, such that Constellation would not have special call on those receipts in the event of default by CL&P. The escrow account is a credit enhancement vehicle for mitigating some of the risk of default by CL&P. J.P. Morgan's consultant testified that such credit enhancement vehicle is necessary to achieve a viable auction result. Response to Interrogatory EL-31. The risk Constellation is exposed to was identified as CL&P going bankrupt. Tr. 9/13/00, p. 1295. However, as a regulated entity with a substantial customer base CL&P's probability of filing for bankruptcy is very low. Tr. 9/29/00, p. 1597.

Since the Agreement is being denied there is no need to address the escrow account.

11. Transaction Costs

As a result of the auction the total transaction costs are approximately \$5,445,000. These costs include administrative and legal fees of CL&P, J.P. Morgan's auction fee and administering and funding the escrow account. Kolbe PFT, p. 10 and Kretsge PFT, p. 19.

The details of the costs were provided as protected material. Although the auction results are not approved, the Department believes that CL&P has taken reasonable steps to mitigate stranded costs and therefore approves the fixed fee for J.P. Morgan to conduct the auction, J.P. Morgan and CL&P expenses, legal fees, and consultant fees as identified in response to Interrogatory OCC-124. Since the Department is not approving the transaction, any J.P. Morgan incentive payments relating to closing the transaction or savings to ratepayers are not approved for collection from ratepayers. Similarly, the cost of administering and funding the escrow account is denied.

III. FINDINGS OF FACT

1. The Agreement with Constellation covers power purchased by CL&P under PPAs with fifteen separate entities that in total equal approximately 345 MWs.
2. The auction included employing an outside consultant and advisor to oversee the process, and appointed a designated team of Department personnel, the Utility Operations Management Unit (UOMA) to ensure the auction was fair and monitor compliance with the requirements of the Act.
3. The Department retained J.P. Morgan, an outside consultant and independent advisor, to conduct the auction in a commercially reasonable manner consistent with the requirements of the Restructuring Act.
4. Constellation was selected as the winning bidder.

5. The Agreement states that CL&P will make monthly support payments to Constellation.
6. The total support payments become fixed stranded costs through 2030.
7. Neither CL&P, J.P. Morgan or UOMA provided any economic analysis to indicate the Agreement will provide economic benefits to ratepayers or reduce stranded costs.
8. CL&P took no position and remains neutral with respect to the economic terms of the agreement.
9. Currently, stranded costs associated with the PPAs are the difference between the PPA contract price and market value.
10. Constellation's bid for the energy is below the current market price meaning ratepayers absorb additional stranded costs.
11. Constellation's bid is less than ISO New England's twelve-month average for months ending May through November 2000.
12. Stranded costs will increase on a nominal and present value basis when compared to the Department market price of power.
13. In each of the previous PPA buyouts there were savings to ratepayers.
14. If the average market price is above \$.03/kWh over the thirty-year period, ratepayers will suffer as a result of the agreement.
15. The ISO wholesale energy market began operating in May 1999.
16. ISO prices have increased since the market was established.
17. One of the benefits of a buyout is that the power purchase payment stream is reduced to a fixed number and securitized. The buyout payments under this agreement will not be securitized, therefore, there are no securitization savings.
18. CL&P is required to make support payments to Constellation every year until 2029.
19. Currently, if the IPPs do not produce, CL&P is not required to pay.
20. The proposed agreement requires CL&P to continue making monthly support payments to Constellation regardless of production.
21. The agreement requires an escrow account be established and funded as part of securitization.
22. The escrow account requires initial funding of 90 million to 100 million dollars.

23. On a present value basis, the escrow account penalizes ratepayers.
24. The total costs of the auction are approximately \$5,445,000.
25. CL&P will not reduce administrative costs as a result of the proposed agreement.
26. Stranded costs will be fixed as a result of the proposed agreement and the timing of payments remain the same as the original contract for each IPP project.
27. The CTA will continue for thirty years under this agreement.

IV. CONCLUSION

Based on the evidence in this case, the Department concludes that the Applicants have failed to demonstrate that stranded costs will be mitigated as a result of this Agreement. Therefore, the Department denies the application dated June 16, 2000, filed by The Connecticut Light and Power Company and J.P. Morgan Securities, Inc. that requested approval of the Capacity and Associated Energy Resale and Agency Agreement between CL&P and Constellation Power Source, Inc.

**DOCKET NO.
98-10-08RE04**

**THE DPUC REVIEW OF THE CONNECTICUT LIGHT AND
POWER COMPANY'S DIVESTITURE PLAN - SALE OF
PPA'S**

This Decision is adopted by the following Commissioners:

Donald W. Downes

Glenn Arthur

John W. Betkoski, III

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

1/25/01

Date