STATE OF CONNECTICUT

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

DOCKET NO. 98-07-06 DPUC REVIEW OF THE CONNECTICUT LIGHT AND POWER COMPANY'S CORPORATE UNBUNDLING PLAN

May 5, 1999

By the following Commissioners:

Glenn Arthur
Linda Kelly Arnold
Donald W. Downes

DECISION

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I. INTRODUCTION

A. SUMMARY

Section 5(a) of Public Act 98-28, An Act Concerning Electric Restructuring, codified at Conn. Gen. Stat. §16-244e(a), requires that, not later than October 1, 1998, each electric company must submit an unbundling plan to the Department to unbundle and separate, by October 1, 1999, all the company's generation assets that have not been sold pursuant to Conn. Gen. Stat. §16-43, or will not be divested as of January 1, 2000. The unbundling plan must also provide for the allocation of the rights and responsibilities between the electric distribution company and generation entities or affiliates.

This Decision determines that CL&P's unbundling plan will achieve the required separation of the generation function from the regulated transmission and distribution functions of the Company, except as it pertains to Vermont Yankee. In particular, the Department approves of the Company's plan to submit its nuclear generation assets to a public auction held in a commercially reasonable manner no later than January 1, 2004. The Department also approves of the placement of the nuclear generating assets into a separate corporate division of CL&P between October 1, 1999, and full divestiture pursuant to the public auction. However, the Plan does not discuss treatment of the Vermont Yankee nuclear plant and the Department directs the Company to amend the Plan to indicate what that treatment will be. Last, the Department will review CL&P's proposed financial accounting system (Business Segment Reporting) for separating the accounting and financial reporting of the nuclear operations from CL&P's distribution functions at the time the Company seeks approval of the sale of its non-nuclear assets. The Department believes that the appropriate segregation of costs according to business segment will insure that the regulated distribution company does not in any way subsidize the unregulated nuclear generation division.

B. BACKGROUND

On October 1, 1998, pursuant to §§ 5 and 6 of Public Act 98-28, An Act Concerning Electric Restructuring (Act), The Connecticut Light and Power Company (CL&P or Company) filed a Petition for Approval of Corporate Unbundling Plan (Plan) with the Department of Public Utility Control (Department). According to the Company, the Plan describes how CL&P will separate its generating assets from its distribution and transmission assets.

C. CONDUCT OF THE PROCEEDING

By Notice of Hearing dated January 25, 1999, the Department conducted a public hearing in this matter at its offices, Ten Franklin Square, New Britain, CT on March 10, and 24, 1999.

On February 1, 1999, the Department issued a Notice of Scope of Proceeding (Notice) limiting the issues to be considered in this docket to those directly related to corporate unbundling, including the financial accounting system associated with corporate restructuring.

The Department issued a draft Decision in this matter on April 20, 1999. All parties and intervenors were provided an opportunity to submit written exceptions to and give oral argument on the draft Decision.

D. PARTIES AND INTERVENORS

The Department recognized The Connecticut Light and Power Company, P. O. Box 270, Hartford, CT 06141-0270; Enron Energy Services, 2 Capital Plaza, Concord, NH 03301; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, CT 06051, as parties to the proceeding.

In addition, the Department designated Cellnet Data Systems, Connecticut Cogeneration Coalition, Connecticut Fund for the Environment, Connecticut Industrial Energy Consumers, Connecticut Municipal Electric Energy Cooperative, Housatonic Valley Council of Elected Officials, Office of the Attorney General and The United Illuminating Company as intervenors.

II. COMPANY'S PROPOSAL

CL&P's original Plan contained two major components: (1) auctioning its non-nuclear generating facilities and purchased power and Hydro-Quebec contracts; (2) placing its nuclear units in a separate corporate affiliate or, if there are federal regulatory constraints, to a separate division until they are auctioned. If the Company is unsuccessful in auctioning any of its non-nuclear plants, it will transfer them to a separate corporate affiliate. The Company proposes to sell the output from its nuclear plants in the wholesale market, unless it is needed to provide standard offer service. The Plan also provides for a financial reporting system that separates nuclear costs from distribution and transmission. Plan, pp. 1-37.

By letter dated January 8, 1999, CL&P advised the Department that it would not be able to create a separate corporate affiliate for its nuclear assets by the October 1, 1999 deadline mandated by the Act. The Company indicated its intent to modify its Plan to indicate that its nuclear holdings would be transferred to a separate division of the Company. The revised Plan was filed with the Department on January 13, 1999.

III. DEPARTMENT ANALYSIS

A. NON-NUCLEAR ASSETS

By letter dated February 3, 1999, in Docket No. 98-10-08, DPUC Review of The Connecticut Light and Power Company's Divestiture Plan, the Department found CL&P's revised divestiture plan acceptable. The divestiture plan provided for the auctioning of the Company's non-nuclear generating assets, purchased power and Hydro-Quebec contracts. If the Company is unsuccessful in auctioning its non-nuclear

generating assets, it will transfer them to an affiliated corporation as provided in Section 5(a)(2) of the Act. Unauctioned purchased power or Hydro-Quebec contracts will remain with the regulated Company, but placed in a separate division, in accordance with Section 5(a)(5) of the Act. In light of the ruling in Docket No. 98-10-08, there is no need for the Department to take further action on this component of the unbundling Plan.

B. TRANSFER OF NUCLEAR ASSETS INTO CORPORATE DIVISION

CL&P owns 81 percent interest in Millstone Units 1 and 2, approximately 52 percent interest in Millstone Unit 3, and an approximately 4 percent interest in Seabrook. CL&P also has interests in the Yankee nuclear plants, all of which have been retired except for Vermont Yankee. Although CL&P is a co-licensee of the Millstone Units and Seabrook, it and the other joint owners have designated Northeast Nuclear Energy Company (NNECO) and North Atlantic Energy Service Corporation (NAESCO), respectively, to operate the units. Both are service company subsidiaries of Northeast Utilities (NU), the parent of CL&P.

CL&P proposes to offer its entitlements to the energy and capacity from its ownership share of the Millstone and Seabrook units for sale in the wholesale market during the period between the functional unbundling of these plants and their ultimate sale, on or before January 1, 2004. However, CL&P intends to be able to purchase the output from the nuclear entitlements, if the price is at least comparable to other supply options, to service the standard offer load. Plan, pp. 33-34. In this case, the output from these nuclear assets would be used for retail customers.

On January 8, 1999, CL&P notified the Department that it would modify its original corporate unbundling proposal filed on October 1, 1998, which evidenced an intent to create a legally separate affiliate for the Company's nuclear generation assets. The Company's revised plan called for functional separation of its nuclear assets by putting them into a separate corporate division. Plan, pp. 23-30. In support of this plan, the Company stated that the separate affiliate method would take longer and be more costly " . . . to comply with the Act." Tr. 3/10/99, pp. 14-15. It was the Company's reading of the Act that the necessary findings and approvals from the Nuclear Regulatory Commission would have had to be done by October 1, 1999. Both the original and revised Plan call for the permanent sale of the nuclear assets. Plan, pp. 2-3.

Because NNECO operates Millstone Units 2 and 3 and NAESCO operates Seabrook, CL&P believes that the operation of its nuclear plants is already functionally separate from the operation of its distribution functions. Plan, p. 33. CL&P intends to implement a financial reporting system, through the separate nuclear division, that achieves a strict separation of the relevant costs associated with the nuclear assets. Plan, p. 34, Exhibit 8.

Both OCC and AG take legal exception to the Company's proposal to transfer the units to a corporate, but functionally separate division. OCC Brief, pp.1-4; AG Brief, pp. 3-8. It is their belief that the Company is required to transfer the units to a subsidiary

and that the transfer to a division would violate section 5(a)(3) of the Act.[1] They argue that CL&P is required to transfer its nuclear assets into a corporate affiliate and may keep them in a division only if it can show that it is required to do so by the NRC. AG Brief, p. 2; OCC Brief, p. 2. Further, during the April 30, 1999 Oral Arguments on the draft Decision in this matter, OCC and AG argued that permitting the Company to put its nuclear assets in a separate division would have results that are prejudicial and harmful to ratepayers. They expressed the positions that such a structure would result in cross subsidization and be anti-consumer.

The Department believes that CL&P's plan to divest itself permanently of its ownership interests in its nuclear assets by January 1, 2004, is in accord with the requirements of the Act. Further, CL&P's plan to unbundle and separate these generation assets on a functional basis, effective October 1, 1999, by placing them in a corporate division is in accordance with sections 5 and 7 of the Act. Between October 1, 1999 , and January 1, 2004, it is entirely appropriate to accomplish the required section 5 functional unbundling and separation by the placement of nuclear assets in a separate corporate division. CL&P does not intend to retain and transfer its nuclear assets on a permanent basis, but rather to submit these assets to a public auction. CL&P's plan is to divest as required by section 7 of the Act in order to recover stranded costs. Plan, p. 3. The January 1, 2000 date is cited in section 5(a)(3); however, it used as a definitional term to identify the assets to which the section refers (i.e., those "nuclear assets that will not be sold by January 1, 2000"), rather than as a mandatory date for the Company to complete an act. Contrast the use of the date in section 5 with language that cites a date by which an act is required to be done, such as in section 7(d)(2): "Not later than January 1, 2004, the electric distribution company shall transfer the nuclear generation assets . . . to one or more separate corporate affiliates." Section 5 merely directs that, for assets not sold by January 1, 2000, unbundling and separation shall occur by divestiture pursuant to section 7. The language of section 7 of the Act is clear and unambiguous: it does not require an electric company to transfer its nuclear generation assets to a corporate affiliate until January 1, 2004. The Department is satisfied that the functional unbundling and separation of these assets as of October 1, 1999, is achieved by their placement in a separate corporate division until divested no later than January 1, 2004.

In further support of this interpretation, the Department notes the time frame set forth in section 7(e). Section 7(e) addresses the recovery of costs associated with nuclear generation assets in the competitive transition charge. The language in this section states: "On or **after** January 1, 2000, and **prior** to the date when a nuclear generation asset is sold at public auction **or** transferred to a corporate affiliate. . . ." (Emphasis added.) According to the argument of OCC and AG, no such time period

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[1] Section 5(a)(3) provides: For any nuclear generation assets that will not be sold by January 1, 2000, unbundling and separation shall occur by (A) divestiture pursuant to Section 7 of this Act, (B) transfer on a functional basis to one or more corporate affiliates that are legally separate from the company's distribution and transmission assets and all related operations and functions, or (C) if required to comply with rules, regulations or licensing requirements of the United States Regulatory Commission, transfer on a functional basis to one or more divisions that are structurally separate from the electric distribution company.

would exist, as they believe section 5 requires the transfer of nuclear assets (either to a subsidiary or division, if required by the NRC) not later than January 1, 2000.

The clear legislative intent in section 7 is that January 1, 2004, is the date by which the transfer of nuclear assets to a corporate affiliate must be accomplished. The fact that section 5 states that unbundling and separation shall occur by way of divestiture pursuant to section 7 makes both sections of the Act internally consistent. There would be an irreconcilable conflict between the time frame set forth in section 7 and the AG and OCC interpretation of the use of the January 1, 2000 date in section 5. The Department is required to interpret statutes with the presumption that the Legislature created a harmonious and consistent body of law.

The Plan is silent on the treatment of Vermont Yankee ownership shares. The Department will require the Company to amend the Plan to include Vermont Yankee.

C. FINANCIAL AND ACCOUNTING FUNCTIONAL SEPARATION

Currently, nuclear costs are tracked through the use of Source Accounting Units (SAU) and Charge Accounting Units (CAU), which are components of the accounting code block on source documents used in all financial transactions. The SAU is used to identify the company that provides resources and the CAU identifies the company that is being charged with a cost. The SAU and CAU, together with other codes that break down costs into more detail, process accounting transactions through the core accounting system to accumulate costs and produce actual as well as budgeted financial information. Application, Exhibit 8.

The Company proposes to separate the accounting and financial reporting of the nuclear operations from CL&P's distribution functions as part of the interim nuclear functional separation plan. CL&P proposes to implement, through a separate division, a financial reporting system that accomplishes the separation of costs. Through this process, termed Business Segment Reporting (BSR), costs and revenues will be segregated by each particular business unit to provide the capability for planning, budgeting, and tracking costs. CL&P believes that the implementation of the BSR system should occur at the same time as the conclusion of the non-nuclear divestiture process and the inception of the rendering of unbundled bills. Application, p. 37. The Company stated that it would not incur any incremental costs in preparation of its accounting system and all peripheral systems to accommodate the separate nuclear division. Tr. 3/10/99, p. 42.

According to the Company, there is a corporate strategy at the operating company level to segregate costs according to business function to facilitate tracking and managing functions separately. This would include a separation of nuclear from transmission, distribution, fossil/hydro and customer service functions. This objective would be met through an effort that is currently underway to produce complete income statements and balance sheets by business segment beginning in 2000. Application, Exhibit 8.

The Department believes that the reporting system described by the Company should adequately allow for the identification of assets, costs and other financial data for the newly created nuclear division. Since CL&P has not completed its new accounting

and allocation system, the Department will review CL&P's proposal as it pertains to the accounting and financial separation of the newly created nuclear division at the time the Company seeks approval of the sale of the non-nuclear generation assets.

D. CODE OF CONDUCT

In its brief, the Attorney General took the position that the Department should require that any dealings CL&P has with the nuclear division be governed by the code of conduct mandated in § 15 of the Act. Brief, p. 9. OCC notes that the Company has not submitted a code of conduct, but expects one in a separate proceeding. Brief, p. 4.

Sections 16-244h-1 through 7, inclusive, of the Regulations of Connecticut State Agencies, which constitute the code of conduct mandated by the Act, will apply to any transactions between CL&P and its newly formed nuclear division. The definition of generation entity or affiliate in § 16-244h-1 refers to § 16-1 of the Conn. Gen. Stat., which specifically includes " . . . a separate division of an electric company after unbundling has occurred pursuant to Section 5 . . . " of the Act. Thus, CL&P and its nuclear division are bound by the code of conduct and no further filing by the Company, as contemplated by OCC, is required.

IV. FINDINGS OF FACT

1. The Department approved the auctioning of the Company's non-nuclear generating assets and purchased power and Hydro-Quebec contracts in Docket No. 98-10-08.

2. CL&P proposes to put its nuclear assets in a separate division prior to auctioning them.

3. The Plan is silent on the treatment of Vermont Yankee.

4. Nuclear costs are currently tracked using Source Accounting and Charge Accounting Units.

5. CL&P proposes a financial accounting system, Business Segment Reporting, that would achieve separation of nuclear costs.

6. The Act requires a nuclear division within the Company to be bound by the code of conduct mandated in Section 15 of the Act.

V. CONCLUSION AND ORDER

A. CONCLUSION

Based on the evidence presented, the Department finds that CL&P's unbundling plan, as revised, comports with the Act and will achieve functional separation of generation from transmission and distribution; however, it is silent on the treatment of Vermont Yankee and must be amended. The Department will review CL&P's proposal for the accounting and financial separation of the newly created nuclear division at the time the Company seeks approval of the sale of its non-nuclear generation assets.

B. ORDER

For the following Order, please submit an original and 12 copies of the requested material, identified by Docket Number, Title, and Order Number to the Executive Secretary.

1. No later than May 12, 1999, the Company shall amend the Plan to include treatment of Vermont Yankee.

DPUC ELECTRONIC LIBRARY LOCATION K:\FINL_DEC\FILED UNDER UTILITY TYPE, DOCKET NO., DATE

DOCKET NO. 98-07-06 DPUC REVIEW OF THE CONNECTICUT LIGHT AND POWER COMPANY'S CORPORATE UNBUNDLING PLAN

This Decision is adopted by the following Commissioners:

Glenn Arthur

Linda Kelly Arnold

Donald W. Downes

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.

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