



STATE OF CONNECTICUT

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

**DOCKET NO. 98-10-08 DPUC REVIEW OF THE CONNECTICUT LIGHT AND
POWER COMPANY'S DIVESTITURE PLAN**

January 8, 1999

By the following Commissioners:

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DECISION

I. INTRODUCTION

A. SUMMARY

Section 6 of Public Act 98-28 requires each electric company that elects to divest itself of nonnuclear generating assets to submit a plan for such divestiture to the Department of Public Utility Control. The Divestiture Plan must include, among other things, a detailed description of the process for the sale and transfer of nonnuclear generation assets. The Department is required to issue a final order approving or modifying the Plan in a time frame that will allow divestiture to be accomplished by January 1, 2000. In this Decision the Department finds The Connecticut Light and Power Company's Divestiture Plan must be modified in certain aspects to meet the overall public interest and directs the Company to file a revised Divestiture Plan incorporating those changes.

The salient modifications include enhancements to the proposed Code of Conduct so that no staff transfers may occur between Buy and Sell teams within the Company, and no other deviations from the Code may occur, without prior consent of the Department. The Department balances the requirements of complete divestiture of Company generating assets at public auction with the public policy goals of minimizing environmental and recreational impacts. Towards this end, the Department provides the State and affected Towns the opportunity to purchase or negotiate recreational and environmental easements pertaining to land that will be sold along with the generating assets. In particular, the Department hereby approves the Memorandum of Understanding between CL&P and DEP with respect to certain lands and interests in lands. Parcels particularly addressed in the MOU include portions of the Shepaug hydro facility, the Norwalk Harbor Station, and the Bull's Bridge hydro unit. The Department also imposes restrictions on the lands subject to Candlewood Lake recreational resource uses and has allowed the DEP and/or affected Towns within the Housatonic Valley Council of Elected Officials the right to purchase or negotiate an environmental or land use easement. Other lands associated with the generating assets are being offered at public auction with easements to maintain current environmental and recreational practices. These apply to obligations within current FERC licenses for those hydro plants licensed by FERC as well as those voluntary environmental practices which CL&P has maintained over the years.

The Department finds that the public interest would be better served by having the Department's consultant, rather than the Company, auction the purchased power contracts in parallel with the generating facilities auction. Nonetheless, the Department encourages the Company and contract holders to continue negotiations and will exempt any contract for which there is a bilateral agreement filed no later than March 15, 1999. The Department also rules that CL&P must include the Cos Cob facility in the auction portfolio, rejecting the Company proposal to retain this facility. Other modifications include the rejection of CL&P's proposed call back provisions to supply its standard offer obligations and, at the time that stranded costs are to be recovered, a recognition of allowable expenses for CL&P's consultant in its more limited role as financial advisor.

B. BACKGROUND OF THE PROCEEDING

On October 1, 1998, pursuant to Sections 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 and Divestiture Plans (Petition) with the Department of Public Utility Control (Department). The Petition was filed in Docket No. 98-07-06, DPUC Review of The Connecticut Light and Power Company's Corporate Unbundling Plan. The Petition describes CL&P's plans to separate generating assets from distribution and transmission assets (Unbundling Plan), and includes a proposal to sell non-nuclear generating plants and purchased power contracts through a public auction (Divestiture Plan). The Petition also contained the information required by the Procedural Order adopted in the Decision dated August 26, 1998, in Docket No. 98-06-12, DPUC Determination of Documentation to Be Included with Electric Company Divestiture Plans (Procedural Order).

By letter dated October 7, 1998, the Department advised the Company that it would consider the Unbundling Plan and the Divestiture Plan in separate dockets. The Unbundling Plan would remain in Docket No. 98-07-06, and the Divestiture Plan would be considered in the instant docket.

By letter dated October 21, 1998, the Department notified the Company that it had determined that the Divestiture Plan did not comport with the Act in that the Company proposed that its consulting firm would administer the proposed auction. The Department stated that the clear intent of the Act was for the Department to retain a consultant to conduct the auction process. The Department requested that the Company resubmit the Divestiture Plan to make the appropriate changes to meet the intent of the Act.

The Company responded by letter dated October 23, 1998, and apologized for any confusion generated by the Divestiture Plan. CL&P stated that it understood that the Department's consultant would conduct the audit and the Company's consultant would work cooperatively with the Department and its consultant, when selected. The Company indicated that it never intended to conduct the auction. The Company did not submit any revisions to the Divestiture Plan.

At the November 2, 1998 hearing, the presiding Commissioner advised the parties and intervenors in this docket that after some deliberation, the Department had determined that its consultant would conduct an independent auction process that would include developing the offering memorandum for the generating assets to be sold, designing the bidding process and packaging the assets. The Commissioner indicated that this clarification of the consultant's role rendered some of the information required by the Procedural Order unnecessary. The Commissioner further stated that neither the Company's offering memorandum, nor bidding or administrative aspects of the auction process would be considered in this docket. In addition, items five and six of the Procedural Order were eliminated from the scope of the proceeding. Tr. 11/2/98, pp. 8-10.

Pursuant to representations made by CL&P and DEP that they were engaged in negotiations on certain parcels of land, a Memorandum of Understanding (MOU) was filed with the Department on December 11, 1998. By Notice of Reopening of Evidentiary Record dated December 16, 1998, the Department reopened the evidentiary record for the limited purpose of receiving the MOU into the record.

C. CONDUCT OF THE PROCEEDING

By Notice of Hearing dated October 15, 1998, and Notice of Rescheduled Hearing dated October 21, 1998, a public hearing was held on this matter on November 2, 3, and 16, 1998, at the Department's offices, Ten Franklin Square, New Britain, CT. The Department issued a draft Decision in this matter on December 17, 1998, and all parties and intervenors were provided an opportunity to file written exceptions to and give oral argument on the draft Decision.

By Notice of Request for Briefing of Issue dated November 20, 1998, the Department requested that the Parties and Intervenors in this proceeding include in their briefs a discussion as to whether, pursuant to Section 6 (b)(1) of the Act, CL&P would be eligible to claim stranded costs if it retained the Cos Cob generating plant for transmission reliability, as the Company proposed.

D. PARTIES AND INTERVENORS

The Department recognized the following as parties to this proceeding: The Connecticut Light and Power Company, P.O. Box 270, Hartford, CT 06141-0270; Enron Energy Services c/o Murtha, Cullina, Richter & Pinney, 185 Asylum Street, Hartford, CT 06103-3469; and the Office of the Consumer Counsel, Ten Franklin Square, New Britain, CT.

The following were designated as intervenors by the Department: American Ref-Fuel Company; Bristol Resource Recovery Facility Operating Committee; Cellnet Data Systems; Connecticut Cogeneration Coalition; Connecticut Fund for the Environment, Inc.; Connecticut Industrial Energy Consumers; Connecticut Municipal Electric Energy Cooperative; Connecticut Resources Recovery Authority; Connecticut Small Power Producers Association; Housatonic Valley Council of Elected Officials; Southeastern Connecticut Regional Resources Recovery Authority; State of Connecticut Office of the Attorney General; and State of Connecticut Department of Environmental Protection.

II. COMPANY'S PROPOSAL

The Divestiture Plan contains two main proposals: 1) the sale of non-nuclear generating plants through public auction; and 2) the sale of purchased power obligations, including the Hydro-Quebec (HQ) Phase II Firm Energy Contract and the HQ Energy Banking Agreement, through public auction. The Company proposes to conduct the two auctions concurrently. Divestiture Plan, p. 10. The Company indicated that its parent, Northeast Utilities (NU), may bid on CL&P's non-nuclear generating assets through an unregulated affiliate. The Company submitted " . . . an internal code of conduct to govern

the interaction between employees within the NU system that are working on the sale of CL&P's generating assets with those who may be involved in the proposal to bid on such assets." Id., p. 17.

The Company requested the following rulings regarding the Divestiture Plan:

1. CL&P's plan to auction its non-nuclear generating facilities and purchased power obligations is consistent with and satisfies the requirements of the Act;
2. The auction process proposed by the Company is commercially reasonable; and,
3. CL&P is authorized to proceed with the auctions.

A list of the generating plants CL&P proposes to auction is attached hereto as Appendix A.

III. DEPARTMENT ANALYSIS

A. AUCTIONING THE NON-NUCLEAR GENERATING ASSETS

1. Company Proposal

The Company proposes to divest its non-nuclear generating assets through sale at public auction, consistent with Section 6(b)(1)(B) of the Act. CL&P retained Morgan Stanley Dean Witter (Morgan Stanley) " . . . to assist it in preparing for and administering the proposed auctions." Divestiture Plan, pp. 10 and 11. As indicated in Section I,B, above, the Department, through its consultant, intends to conduct the auction. Therefore, the Department approves the Company's proposal to sell the generating assets by auction, but rejects its proposal to administer the auction.

The Department expects to name its consultant in the very near future. The selection will be the result of a process that has included issuing a Request for Proposals, reviewing the proposals submitted and interviewing several of the firms. The interviews included active participation by representatives of the Office of Consumer Counsel. The consultant will make the sole determination as to the winning bid or bids.

2. Conduct of the Auction

The Act at Section 6(b)(2) directs the Department, in consultation with the Office of Consumer Counsel, to "appoint a consultant who shall be an entity unrelated to said company that meets qualifications set by the Department, to conduct the auction process." As noted in Section I, above, the presiding Commissioner advised during the hearing that the Department's consultant, and not the firm hired by the Company, would conduct an independent auction process. To that end, the Department caused a Request for Proposals to be promulgated, and members of the Department and the OCC interviewed the majority of those firms that submitted proposals.

The process of interviewing consultants and reviewing their proposals made it clear to both the Department and the OCC that the nature of the assets to be auctioned and the potential purchasers precluded a public, ascending bid process that one commonly associates with the term "auction." Each of the investment banking firms that submitted proposals and that were experienced in conducting auctions of this magnitude and complexity proposed a private process. The private auction process winnows out unsuitable bidders, and entails active, one-on-one negotiations with qualified bidders to maximize the sales price. Such a methodology relies upon bidders being assured of the confidentiality of their bids, as well as their accepting the fact that they will not be privy to the contents of competing bids.

The generally accepted method of bidding for assets of the magnitude present in this case is marked by the privileged nature of the process. This bidding process is further complicated by the fact that the Act permits an affiliate of the Company to be a bidder. As discussed in Section III, B, below, the Department has determined in this Decision that the Company must be segregated into buy and sell teams. The consultant hired to conduct the auction will be directed to withhold all bids from both the buy and the sell team of the Company until such point, if any, that the Company's affiliate is no longer a potential buyer. However, the Company's sell team is expected to cooperate fully with the auction agent. The unique demands of the process described above have caused the Department to place the responsibility of supervision and direction of the consultant in the hands of the Utility Operations and Management unit (UOMA).

The Department recognizes that the auction process is a competitively sensitive commercial transaction in which extensive amounts of oral and written information and data will be received, handled, disseminated and analyzed by the Department's auction agent, the Company's sell team, and members of UOMA. For the auction to achieve the maximum sales proceeds, the Company will be expected to provide confidential and competitively sensitive information about the assets, employees, suppliers, finances, plans, operations, strategies and other matters to the auction agent and UOMA. Further, each prospective buyer of the assets will be expected to provide extensive confidential and competitively sensitive commercial information about finances, plans, operations, strategies and other matters to the auction agent and UOMA, and such potential buyers will receive confidential Company information. For the auction to be successful, there must be an environment in which both the Company and potential buyers can expect and rely upon the confidential treatment of all information received, and that all such information will not be disclosed to third parties except to the very limited extent that certain essential information is provided in subsequent regulatory and legal proceedings for the final approval of the auction results.

The Department Chairman, in consultation with the Commissioners, intends to appoint a highly qualified staff team to UOMA for this auction sale and charge them with the task of overseeing the auction process. The team will be led by the Executive Director of the Department, and the letter of appointment will segregate this team from the Commissioners and their staff, erecting a firewall between the team and the Commissioners who must approve the final sale. The Act requires that the Department, in consultation with the OCC, appoint a consultant to conduct the auction, but it also requires

in Section 6(b)(3) that the Department approve the auction results provided certain enumerated statutory criteria are met, including adherence to a previously approved divestiture plan. To insulate the Commissioners from the day to day activities of the auction, the Department has designed a process whereby UOMA acts as its independent supervisory agent during the conduct of the auction. UOMA will ensure that the terms of this Decision and the Department's engagement with the auction agent are executed and the requirements in the Act are observed. The team will also be empowered with the discretion to voice an independent position both during the auction and upon its completion. UOMA may submit testimony, briefs, position papers and the like at its discretion at the time that a final bid(s) is submitted to the Department for approval. The role of UOMA should not be confused with that of the Department's Prosecutorial Division in a contested case context. UOMA is not presenting an alternative case or even acting as a party in this auction process. UOMA will maintain an independence of action in its supervisory role and is expected to work closely with the auction agent and the Company sell team and remain fully apprised of all auction activity.

This Decision, which incorporates evidence presented during the public hearing process, sets forth the substantive boundaries of the auction process. Consistent with this Decision, the auction will implement the mechanics of the auction. The conduct of the auction will thus proceed in accordance with normal, investment banking practices from this point forward under the supervision of UOMA until such time as a successful bid(s) is presented for final approval by the Department.

B. CODE OF CONDUCT

The Company has indicated that NU intends to remain in the electric generation business through an unregulated affiliate company and may bid on CL&P's generating assets. NU has separated employees into a "Buy Team" and a "Sell Team" and has developed a code of conduct governing the actions of each team. There is also a list of "Neutral" personnel, primarily senior management, who are available to both teams. The Department has reviewed the code of conduct and finds it inadequate. Its failings are that it allows members of one team to transfer to the other team with the permission of NU's Chief Financial Officer, permits deviations from the code with the same permission and gives both teams access to the same senior management. Divestiture Plan, p. 17 and Exhibit 7, pp. 2 and 4; Tr. 11/2/98, p. 87.

During the hearing, Mr. Keane, the Company's witness, indicated that not allowing transfers could affect employee career paths. He also stated that it might make it difficult to refill vacated positions. Regarding deviations from the code, Mr. Keane testified that he could not specify what deviations might mean, but the Company wanted the language to provide flexibility. Tr. 11/2/98, pp. 75-77 and 83.

The Department is sympathetic to the Company's need for management and staffing flexibility, but the integrity of the auction process must take precedence. Because the Department's consultant will be conducting the auction and managing the flow of information, some of the Department's concerns about the interaction of the teams are alleviated. However, with the potential for an NU affiliate to bid on another affiliate's assets,

the process must be above reproach. Therefore, the Department will require the Company to revise the code of conduct to eliminate the designation of "Neutral" personnel. The Company must assign these employees to either the "Buy Team" or the "Sell Team" or such employees must have no active role in the process. Further, the Code must be changed to disallow staff transfers between the "Buy Team" and the "Sell Team" and to disallow deviations from the Code except with prior permission from the Department.

C. LAND SALE AND USE

1. Company Proposal

CL&P's proposal for defining the physical assets to be the subject of the public auction is as follows:

1. For fossil facilities, the historical boundaries that are included in CL&P's rate base and traditionally recognized as a generation asset.
2. For the hydroelectric facilities, all of the land that is encompassed by the boundaries of the license from the Federal Energy Regulatory Commission (FERC) and the historical boundaries for hydro facilities that are not FERC-licensed.

CL&P does not propose to include other lands owned by the Company that are outside of the boundaries of the generation units so described.

2. Environmental Issues

The Connecticut Department of Environmental Protection (DEP) has expressed an interest in obtaining control of certain identified parcels for environmental purposes. Late Filed Exhibit No. 26. Generally, the DEP urges that the current recreational uses of the lands being sold be maintained as well as current practices for the support of endangered or threatened plants or species. It is in this manner that CL&P's divestiture plan would be consistent with the public policy goal of minimizing "negative environmental impact." In support of its position, DEP has submitted a November 6, 1998 letter from Governor Rowland to the Housatonic Valley Council of Elected Officials stating, in part, that ". . . only lands immediately necessary to generating facilities ought to be included in the auction of such facilities. . . ." Late Filed Exhibit No. 31.

Additionally, the Connecticut Fund for the Environment (CFE) has submitted a Petition for a Declaratory Ruling Pursuant to Conn. Gen. Stat. Section 16-50b *et seq* That Certain Public Rights Apply to the Sale of Open Space As Part of the Divestiture of CL&P Generating Assets. In the Petition, CFE requests a ruling that (1) "the notice and right of first refusal provisions of Conn. Gen. Stat. Section 16-50c and 16-50d apply to open space parcels inside the boundaries of generation assets to be sold pursuant to Public Act 98-28"; or that (2) "open space parcels that do not serve generation-related operations or functions be excluded from "generating assets" as defined pursuant to P.A. 98-28"; or (3) "that certain reasonable public rights of purchase will be made available and conservation interests be accommodated in the transfer of these properties pursuant to the legislative

directive to balance interests of the public at large.” DEP also urges that all contiguous areas of unimproved real property containing three acres or more be disposed of pursuant to the notice provisions of Section 16-50c of the Conn. Gen. Stat.

The Attorney General (AG) urged that the Department take steps to ensure that generation assets to be sold are carefully circumscribed to ensure that sales of CL&P’s undeveloped real property incorporate opportunities to preserve open space.

CL&P and DEP have been engaged in an effort to reach an agreement on the disposition of the Lover’s Leap and Clatter Valley portions of the Shepaug facility. DEP would like to add these parcels to the existing Lover’s Leap State Park. DEP is also actively pursuing an agreement with CL&P that would allow it to acquire a conservation easement at the Norwalk Harbor Station. The easement would cover a 47-acre area that consists of a wetland complex that is an important habitat for a number of birds and diamond back terrapins. Late Filed Exhibit No. 25. Lastly, the DEP and CL&P have been in discussion regarding fishways at the Taftville and Tunnel dams, neither of which are FERC licensed. On December 11, 1998, CL&P and DEP filed an MOU with respect to the land parcels under discussion and requested that the Department find the MOU to be in the public interest and formally approve it.

3. Conclusion on Land Use Issues

Critical to the consideration of the divestiture of CL&P’s nonnuclear generation assets is a clear articulation and description of the lands that will be part of the public auction. This is especially true in light of State policy as articulated in Section 2(9) of the Act:

The generation of electricity must be achieved in a manner that does not endanger the public health or safety and that minimizes negative environmental impact.

The Department must balance the public policy provisions of this section with Section 6 of the Act, which requires that all nonnuclear units be divested at public auction if the utility is to seek any stranded costs. The Department does not read these two sections as being mutually exclusive or inconsistent. There exists clear and sufficient regulatory direction within the Act to ensure the Department honors both public policies in its consideration of CL&P’s Divestiture Plan.

The Department, taking into account environmental aspects of electric industry restructuring as stated in the Act, will assign a land use limitation on certain hydroelectric units and other facilities that must be included in the public auction. There is sufficient and clear regulatory direction within the Act as to the definition of “generation assets” to be divested. The generation assets to be sold are defined in Section 6 as “electric generation facilities **and** generation-related operations and functions owned by an electric company. . . .” (emphasis added) Essential to CL&P’s Divestiture Plan is that lands owned by the Company and outside the boundaries of the units and not otherwise serving generation-related operations and functions are not part of the auction portfolio. Therefore, it is not

necessary for the Department to rule directly on the Petition as to the general applicability of Conn. Gen. Stat. Section 16-50b to the divestiture assets. In assigning certain environmental and public use limitations on facilities to be offered for sale, the Department relies on the fact that areas surrounding the units are currently maintained by CL&P with concern for the environment. It is that state of environmental use that the Department seeks to protect, without harm to the electricity generation function of these units, in its approach to the public auction of these assets.

a. FERC-licensed Hydroelectric Units

With respect to the six Connecticut hydroelectric units licensed by FERC, the Department will require that current land use obligations to ensure public use and enjoyment of the water resources be maintained. Accordingly, the units will be offered subject to the existing "land use article" within the FERC license and the purchaser will be required to maintain such land use features during the remaining term of the license. The Department notes that transfers of licenses must be approved by FERC and that the successor licensee remains bound by all of the same conditions as its predecessor. It is the renewal of the licenses that presents issues most problematic to state environmental interests. Therefore, these units will be offered at public auction with the requirement that upon license renewal, the purchaser maintains public and environmental use obligations as required by the current FERC license in addition to those uses provided on a voluntary basis at the present time. This limitation is also part of the MOU between CL&P and DEP as to the hydro units known as Bulls Bridge, Rocky River, Shepaug and Stevenson, located along the Housatonic River in Fairfield, New Haven and Litchfield Counties. The MOU provides that the affirmative public use conditions (described in Late Filed Exhibit No. 15) contained in the FERC license shall continue and shall be submitted in the relicensing petition. In addition, CL&P shall include in its relicensing application new affirmative obligations currently practiced by CL&P on a voluntary basis. This would entail maintenance of the approximately 100 acres of forest land in the area generally identified as on the east side of the canal at the Bull's Bridge hydro unit (identified in Late Filed Exhibit No. 31), which CL&P currently makes available for hunting and recreational purposes on a voluntary basis; the approximately 85 acres of land associated with the Shepaug hydro unit (identified in Late Filed Exhibit No. 8) maintained on a voluntary basis as a habitat and viewing area for the American Bald Eagle, and, at Falls Village, continuation of the written agreement with DEP regarding generation periods, limitation of generation releases during high temperature periods, boating releases during specified periods, and minimum flow.

b. Parcels Identified by DEP for Land Acquisition

i. Shepaug Facility

With respect to those parcels currently the subject of negotiations between DEP and CL&P, the Department believes there exist sufficient state and public open space policy interests so that these parcels should be offered with the intent to "minimize negative environmental impacts," pursuant to Section 2(9) of the Act. This is particularly true as to the Lover's Leap and Clatter Valley portions of the Shepaug facility, which the Director of

the DEP's Land Acquisition and Management Division, identified as parcels that the DEP would like to add to the existing Lover's Leap State Park. General Obligation Bonds provided through the Recreation and Natural Heritage Trust Program (Bonds) were identified as a funding source. Late Filed Exhibit No. 26. This portion of the facility would provide the public with recreational activities that include hiking, boat access, and picnicking. The MOU filed on December 11, 1998, contained an agreement whereby CL&P will sell the Lover's Leap and the Clatter Valley properties to the State of Connecticut for use as open or natural space by the public. That being the case, those properties will be withheld from the auction portfolio. The approximate areas subject to this limitation are as identified in Late Filed Exhibit No. 28.

ii. Norwalk Harbor Station

The unique wetlands environmental attributes on approximately 47 acres on the western side of this facility have been identified by a senior wildlife biologist with DEP. Late Filed Exhibit No. 25. DEP is currently negotiating with CL&P to obtain a conservation easement on this part of the facility. DEP envisions a no-cost easement, but alternatively, the funding source is the Bonds. Late Filed Exhibit No. 26. In the MOU filed on December 11, 1998, CL&P has agreed to convey to the State of Connecticut or to a federal agency agreeable to the DEP, a conservation easement over this portion of the Norwalk Harbor Station property. The intent of the easement will be to preserve the indicated property in its current state as a habitat for shore birds and other coastal wildlife and to provide access to DEP as well as controlled access to the area by the public for educational and conservation purposes as determined by DEP. The auction consultant will be directed to offer this asset subject to the agreed upon limitations.

iii. Fishways at Taftville and Tunnel Facilities

The DEP and CL&P have had discussions regarding fish passage over the Taftville (on the Shetucket River) and Tunnel (on the Quinebaug River) dams. Neither dam is subject to FERC licensing. Anadromous fish (spawning in fresh water, but living in the ocean) are now prevented by the Taftville and Tunnel dams from swimming upstream to gain access to good spawning habitat. DEP would like to see fishways built to provide passage, while CL&P prefers and currently uses the trap and truck method. Late Filed Exhibit No. 24. The MOU contains a provision whereby the parties agree that CL&P will continue to discuss with DEP cost-effective ways to facilitate DEP's fish restoration efforts, including the possibility of trap and truck operations, fishways, and other methods of moving the affected fish around the Taftville and Tunnel dams at the appropriate time. In addition, the auction consultant will inform prospective purchasers of the generating assets at the Tunnel and Taftville Stations of DEP's ongoing fish restoration effort in the Thames River Basin and of the provisions of Conn. Gen. Stat. § 26-136.

iv. Uplands Associated with Rocky River Plant

The Town of New Milford has expressed an interest in purchasing approximately 40 acres of land adjacent to the Town's Lynn Deming Park for open space and recreational uses. Late Filed Exhibit No. 10. The State has also expressed an interest in water based

recreation resource land adjacent to Candlewood Lake. Similar to the MOU treatment of certain parcels associated with Shepaug and Norwalk Harbor, Candlewood Lake will be offered for sale with the condition that the Town has a time-certain right to purchase the acreage next to Deming Park or to negotiate an environmental or public use easement. With respect to the lands subject to Candlewood Lake recreational resource uses, the lands and nature of their use will be identified and offered at auction subject to the time certain right of the DEP and/or affected Towns within the Housatonic Valley Council of Elected Officials to purchase or negotiate an environmental or land use easement.¹

v. Memorandum of Understanding

The Department finds the MOU between CL&P and DEP with respect to the individual parcels addressed to be in the public interest and approves the conditions with respect to these parcels. The Department will direct the auction consultant to offer the lands described within the MOU subject to the environmental and public use limitations agreed upon in the MOU. The Department notes that if the parties to the MOU need to modify any provisions, especially as to time schedules, they must request Department approval. The MOU is adopted as part of the Decision in this matter and is attached hereto as Appendix B.

D. PRIVATE POWER PROVIDER CONTRACTS

Section 8 (c) (4) of the Act states that any electric company seeking to claim stranded costs shall demonstrate that it has taken all reasonable steps to mitigate, to the maximum extent possible, the total amount of stranded costs that it seeks to claim and to minimize the cost to be recovered from customers. As it relates to private power provider (PPP) contracts, the electric company must demonstrate a good faith effort to negotiate the buyout, buydown or renegotiation of these contracts.

CL&P proposes to auction its PPP contracts and its non-nuclear generating assets simultaneously. The Company believes that auctioning these contracts at this time would result in maximum mitigation of its PPP costs. Tr. 11/3/98, p. 370.

A number of Intervenor share a common interest in the PPP contracts aspect of the Divestiture Plan. They are: The Connecticut Small Power Producers Association, American Ref-Fuel Company; Bristol Resource Recovery Facility Operating Committee; Connecticut Cogeneration Coalition; Connecticut Resources Recovery Authority; Connecticut Small Power Producers Association, and The Southeastern Connecticut Regional Resources Recovery Authority (collectively, PPPs).

In general, the PPPs oppose the auction of the PPP contracts in that the auction would: a) undermine the rights of the PPPs to have their contracts assigned to the distribution company and to negotiate a buyout, buydown, or other modification of the

¹ Time certain in this Decision shall be consistent with the deadline expressed in the MOU, i.e., March 1, 1999, for entering into a Purchase and Sale Agreement.

contracts, as required by Section 5(a)(4) and 8(c) and (f) of the Act²; b) increase the credit risks to the PPPs in that CL&P's assignee may not be able to fulfill its contractual obligations to pay for power deliveries³; c) make administering under CL&P's "agency" concept more complex and riskier for the PPPs because of the continuing need to sort out the legal rights and obligations of CL&P and the winning bidder or agent⁴; d) not be a commercially reasonable concept because there is no active market for long-term agreements with qualifying facilities⁵; and, e) is generally inconsistent with the provisions of the Act because it avoids required good faith negotiation with the PPPs. The PPPs also argue that the legislative intent was for only generating assets to be sold, since Section 6 does not mention the PPP contracts. Further, the Act has only two options concerning the PPP contracts: they can be the subject of bilateral good faith negotiations with the intent to buyout, buydown or renegotiate pricing, or are kept with the distribution company. CRRA Brief, p. 5.

In the past, CL&P has attempted to buyout, buydown or renegotiate its PPP obligations, but has had limited success. On February 8, 1993, CL&P tendered a Reverse Request for Proposal (RRFP) for consideration by the PPPs under long-term contract. This offering was issued to 24 operating and 2 planned PPPs. The purpose of the RRFP was to reduce anticipated ratepayer impact from payments to PPPs with special emphasis on the 1993-1999 period. CL&P offered to consider buy-outs of existing facilities or their Electricity Purchase Agreements (EPA), buy-downs of existing purchase rates, renegotiation of existing fuel contracts and sharing of benefits, and/or in certain cases, reduction or elimination of existing security arrangements. CL&P received six responses to its RRFP and reached settlement agreements with two hydroelectric projects. The revised pricing formula contained in the two renegotiated contracts resulted in total savings to CL&P ratepayers of \$764,000 over the initial five-year period and approximately \$2,000,000 over the life of the unamended contracts. See Decision dated May 3, 1995, in Docket No. 94-04-01, DPUC Annual Review of The Connecticut Light and Power Company and The United Illuminating Company Integrated Resource Planning, p. 9.

In addition, CL&P has successfully negotiated the buyout of two PPP contracts. The O'Brien buyout was approved in the Decision dated June 30, 1995, in Docket No. 85-12-09, Joint Petition of Connecticut Natural Gas Corporation and O'Brien Energy Systems Incorporated for Contract Approval and Declaratory Rulings Regarding the Sale of Electricity to The Connecticut Light and Power Company from the O'Brien Cogeneration Project, and resulted in ratepayer savings of approximately \$45 million over the life of the contract. The Hartford Hospital/CCF-1 buyout, approved in the Decision dated February 18, 1998, in Docket No. 86-03-35, Joint Petition of CCF-1, Inc. and The Connecticut Light and Power Company for Contract Approval and Declaratory Rulings Re: Sale of Electricity to The Connecticut Light and Power Company, is projected to save ratepayers \$30 million over its life. Despite repeated attempts and the use of every available leveraging tool, the Company has not been able to restructure the vast majority of

² Connecticut Cogeneration Coalition Petition for Designation as a Party, p. 2.

³ Id.

⁴ Petition of CRRA for Party Status, pp. 2 and 3.

⁵ CCC and CSPPA Brief, p. 3; CRRA Brief, p.13.

these agreements. Divestiture Plan, Exhibit 3. The Department notes that although the number of contracts restructured by CL&P has been small, ratepayer savings under the O'Brien and Hartford Hospital/CCF-1 buyouts have been significant.

PPP contracts are eligible for securitization under the Act. The Company acknowledges that this provides a new "dynamic to the financial analysis that goes into a buydown or buyout." Tr. 11/3/98, p. 372. In addition, Section 25 of the Act establishes portfolio standards that require all licensed suppliers to demonstrate that a certain percentage of their total electric output is provided from Class I and II renewable energy sources.⁶ Securitization and portfolio standards enhance CL&P's negotiating position with respect to PPP mitigation efforts.

The Department believes that the auctioning of the PPP contracts is consistent with the overall divestiture scheme set forth in the Act. Section 8(c) of the Act requires that CL&P undertake "all reasonable steps to mitigate to the maximum extent possible . . ." all stranded costs. This is a mandate that is both absolute and without limitation, applying to PPP contracts as well as all other stranded costs. Section 8(a)(6). Nowhere in the Act is there a prohibition against the use of the auction method as a mitigation device. The Department believes that the argument put forth by the PPP interest groups, that bilateral negotiations are the exclusive method to mitigate PPP contract costs, is far too narrow a reading of the Act.

The PPPs also point to Section 5(a)(4) of the Act, which provides for the PPP contracts to succeed, by default, to the electric distribution company. That section provides that CL&P's PPP contracts "which are not bought out" shall succeed to the electric distribution company. The PPPs argue that "bought out" exclusively refers to buyouts through bilateral contract negotiations with the current power producer. There is no such limitation in the Act and the Department cannot read language into the Act. The phrase "bought out" can refer to a buyout resulting from bilateral negotiations as well as a buyout from an auction or negotiation with a third party. Indeed, the auction of these contracts is thoroughly consistent with the overall scheme of the Act for the current vertically integrated electric company to divest itself of its generation resources. The inclusion of these contracts in an auction process advances the overall public policy of the Act. It should be noted that the current contract holders are not prohibited from participating in the auction process through offering options involving the buyout, buydown or negotiation of contract terms.

Further, the auction of the PPP contracts is not intended to abrogate any rights that the PPPs have under their agreements with CL&P. Any assignment of a contract must comply with the assignment provisions and rights contained in that contract. If a PPP withholds agreement to an assignment, then it is a matter of contract law that would prevail as to whether its refusal to the assignment was proper. If an assignment is justifiably withheld, CL&P states that the purchaser will then act as an agent for CL&P rather than as a new contracting party. CL&P Reply Brief, pp. 25 and 26. In this instance, rather than a novation of the contract having taken place, CL&P will remain the purchaser and the legally

⁶ Class 1 and Class 11 renewable energy sources are defined in the Act.

responsible party for the contract payments. In such a case, the auction transaction would merely be viewed as a reselling of this power to the new purchaser.⁷

Lastly, the Department notes that CL&P is and remains under a continuing obligation to pursue in good faith the Section 8(c) activities of negotiating the buyout, buydown or renegotiation of PPP contracts. However, the Department believes that ratepayers would be in the best position to achieve a reduction in stranded costs associated with PPP contracts if the contracts were auctioned at the same time as the generating assets. Therefore, the Department finds that the public interest would be better served by the Department's auction consultant conducting the PPP contract auction separately but in parallel with that of the generating assets. Further, the Department will require that CL&P undertake Section 8(c) activities with all of the PPPs in earnest. The Department will include all PPP contracts in the auction portfolio except those that are the subject of a joint petition that represents a bilateral agreement for the buyout, buydown or renegotiation of the particular contract submitted no later than March 15, 1999.

If any contracts remain unsold after the auction, the Company will be required to continue mitigation efforts consistent with Section 8(c).

E. COS COB FACILITY

Cos Cob is a 68 MW generating facility located in southwestern Connecticut. It consists of three combustion turbines. CL&P states that it is not currently dispatched for generation purposes; its more important function is maintaining reliability and voltage in this transmission-constrained area of the state. The Company proposes to retain this transmission-related facility to maintain control over its transmission obligations, in particular, system stability and voltage support. CL&P stated that when and whether the unit runs is more dependent on the need to mitigate transmission problems than the need for generation service. Tr. 11/2/98, p. 251. The Company also states that the transmission-related function could be mitigated if other generating units were operated to provide transmission support services or if additional transmission facilities were built. CL&P Brief, p. 43.

Transmission constraints will not be the responsibility of CL&P when it is a distribution company. That responsibility falls to the Independent System Operator (ISO). The ISO has developed procedures and incentives to handle constraints to the transmission system; therefore, the Department believes it is appropriate to include Cos Cob in the auction of generation assets. The Department shares CL&P's concern regarding reliability in this area and will instruct the consultant to consider operational requirements and restrictions on retirement or shutdown for the Cos Cob facility as conditions of its sale.

⁷ See New England Power Company, Narragansett Electric Company, AllEnergy Marketing Company and USGen New England, Inc., 82 FERC 61,179, in which the Federal Energy Regulatory Commission upheld the purchase of power from independent power producers in a transaction between NEPCO and USGenNE. In that case, Pawtucket Power argued that NEPCO was prohibited under its purchase power agreement from transferring or assigning its rights and obligation to USGenNE without Pawtucket Power's written consent.

F. CONDITIONS ON THE SALE

CL&P proposed the following conditions or preferences on the sale of its non-nuclear generation assets:

- A successful bidder must contract with NU's Affiliate for generation support services;
- A successful bidder must be subject to a callback option; and
- Preference will be given to a single bidder if it agrees to purchase all the assets.

1. Generation Support Services

CL&P proposed that a successful purchaser of its non-nuclear generation assets be required to enter into a contract with an unregulated subsidiary of NU for "generation support services." Tr. 11/2/98, p. 63; Divestiture Plan, Exhibit 2, p. 5. At first, CL&P implied that this requirement was necessary to address the impact that the divestiture will have on CL&P employees. Tr. 11/2/98, pp. 63-65. Upon further examination, the Company revealed that current employees of this unregulated entity do not work for CL&P, but for NU's unregulated affiliate. Further, in the future, employees of this NU service company may include transferees not just from CL&P and out-of-state regulated subsidiaries such as WMECO and PSNH, but other non-regulated subsidiaries as well. Tr. 11/2/98, pp. 91 and 92.

The AG recommends that the Department reject this condition. "Clearly CL&P has failed to show an intent by Connecticut's legislature to impose this type of restriction on the auction to protect out-of-state employees of NU's various unregulated subsidiaries." AG Brief, pp. 10 and 11.

The Department believes this condition could adversely affect the bid price on power plants if the cost of these services is higher than those the bidder could supply itself or purchase elsewhere. The Act made special provisions to protect electric company employees, but CL&P's proposal goes well beyond those protections by including out-of-state-employees or those of unregulated subsidiaries. Therefore, this condition is rejected. The NU affiliate can, of course, independently contract to provide these services.

2. Call Back

CL&P also proposes that a purchaser of its non-nuclear generation assets be subject to a call back option, which could require that the assets be used to supply all or part of CL&P's standard offer requirements. Divestiture Plan, p. 22.

OCC and Enron recommend that the callback option requirement be rejected. OCC Brief, p. 12; Enron Brief, p. 2. AG recommends that such a requirement should not be made by CL&P, but by the Department, after interested persons more fully examine the competitive implications of such a requirement. AG Brief, p. 11.

There does not appear to be a clear need for call backs. There is plenty of generation available from which to purchase standard offer service. Such a requirement could hurt Connecticut ratepayers rather than help them. A call back provision could influence the bids for generation assets. The presence of a call back option, particularly one with low prices, could depress a plant's sale price if the purchaser is required to sell at fixed prices, given the uncertainty of future generation costs. A lower sale price reduces funds available to offset stranded costs to existing customers. Further, call backs could impose a barrier to competition by locking up customers. CL&P admits that this requirement may deter some bidders from the auction. Tr. 11/2/98, pp. 146 and 147. Moreover, there is evidence that such a requirement has had adverse competitive consequences elsewhere. Tr. 11/3/98, pp. 340-342.

For the foregoing reasons, the Department rejects the Company's proposal to require a call back option.

3. A Single Bidder

Finally, CL&P wants a preference established for selecting winning bidders that, all other things being equal, would award CL&P non-nuclear generation assets to a single bidder even if the same overall price for the assets could be obtained from several different bidders. Tr. 11/3/98, p. 511.

There may be market power concerns with allowing a single purchaser to acquire all CL&P's non-nuclear generation assets. The existence of market power would depend on the bidders existing ownership of assets in the region and should be evaluated and considered at the time of the auction.

The Department therefore rejects CL&P's proposal to give preference to a single bidder. The Department believes this is consistent with the Act, which indicates a preference for robust competition in Connecticut's electric generation industry. See the Act, Section 2(3), (4), (5) and (7).

G. CONSULTANT'S FEES

The Company has retained the firm of Morgan Stanley Dean Witter (Morgan Stanley) "to assist it in preparing for and administering the proposed auctions." Divestiture Plan, p. 11. The fee arrangement to be paid to Morgan Stanley is based upon a percentage of the sale price of CL&P assets. Late File Exhibit No. 35. CL&P testified that the services of Morgan Stanley were essential to meet the October 1, 1998, filing deadline in the instant docket. Tr. 11/2/98, p. 46; Response to Interrogatory OCC-36. When questioned by OCC as to why the Company hired the services of Morgan Stanley on a percentage of sales rather than an hourly consulting basis, CL&P responded that, "at the time [Morgan Stanley was] engaged it wasn't clear that there was some reason to believe that their role would be a more comprehensive one." Tr. 11/16/98, pp. 754 and 755. Given that the auction will be conducted by the Department's consultant, the Department envisions that Morgan Stanley will have a limited role as a financial advisor to the Company. At the time that stranded costs are to be recovered, the Department will

recognize only the level of stranded costs commensurate with Morgan Stanley's limited role as financial advisor.

IV. CONCLUSION AND ORDER

A. CONCLUSION

Based on the evidence presented, the Department finds the Company's Divestiture Plan must be modified in certain aspects. As discussed in Section III, above, the Department sets forth appropriate changes to meet the overall public interest, which the Company must incorporate into a revised Divestiture Plan. The Department also finds the MOU filed by CL&P and DEP on December 11, 1998, to be in the public interest and hereby approves it.

B. ORDER

For the following Orders, please submit an original and 10 copies of any requested material to the Executive Secretary, identified by Docket Number, Title and Order Number.

1. No later than January 13, 1999, the Company shall file with the Department a revised Divestiture Plan incorporating the changes indicated in Section III, above.

**DOCKET NO. 98-10-08 DPUC REVIEW OF THE CONNECTICUT LIGHT AND
POWER COMPANY'S DIVESTITURE PLAN**

This Decision is adopted by the following Commissioners:

Linda Kelly Arnold

Glenn Arthur

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.

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

Date

APPENDIX A

CL&P Nonnuclear Generating Assets

Plant	Capacity (MW)
Fossil	
Middletown	837.0
Middletown ICU	19.2
Norwalk Harbor	336.0
Norwalk ICU	17.0
Montville	492.0
Montville ICU	5.5
Devon	218.0
Devon ICU	19.2
Devon ICU	163.3
South Meadow	62.5
South Meadow ICU	195.6
Branford ICU	18.8
Torrington ICU	21.8
Franklin Drive ICU	18.3
Cos Cob	68.5
Housatonic Hydro System	
Falls Village	11.0
Bulls Bridge	8.4
Rocky River	30.4
Shepaug	43.4
Stevenson	28.9
Bantam	.3
Robertsville	.6
Eastern Hydro System	
Tunnel	2.1
Tunnel ICU	20.8
Taftville	2.0
Scotland	2.2
Northfield Mountain System	
Northfield Mt	1,120.0
Cabot	53.0
Turners Falls	6.3

APPENDIX B

MEMORANDUM OF UNDERSTANDING

Between:

**The Connecticut Light and Power Company and
The Connecticut Department of Environmental Protection
regarding certain property and property interests in the State of Connecticut
December 11, 1998**

This Memorandum of Understanding (the "Memorandum") is entered into between the Connecticut Department of Environmental Protection ("DEP") and The Connecticut Light and Power Company ("CL&P") (collectively, "the Parties") regarding future disposition of specific lands forming part of the non-nuclear generating assets ("Assets") to be sold by CL&P at public auction in accordance with Public Act 98-28, An Act Concerning Electric Restructuring. On October 1, 1998, CL&P filed a Divestiture Plan with the Department of Public Utility Control ("DPUC") ("Divestiture Plan") describing its proposal to sell the Assets, which plan is currently being reviewed by the DPUC in Docket No. 98-10-08. DEP has expressed its strong interest in acquiring certain land and other interests and encumbrances in and relating to some of the Assets. To the maximum extent possible, within the strictures of the legal requirements applied to a public utility company and CL&P's obligations to its customers and shareholders, CL&P wishes to accommodate DEP's interest and to join with DEP in providing for the conservation of these lands and natural resources in furtherance of Governor Rowland's goal of increasing the State's inventory of open and natural space available to the people of Connecticut for this and

future generations. This Memorandum of Understanding is intended to memorialize the joint efforts of the Parties to that end.

PROPERTIES SUBJECT TO THIS AGREEMENT

The following lands and interests in land (“the Properties”), all of which were addressed by DEP in Docket No. 98-10-08, are the subjects of this Memorandum:

1. The Lover’s Leap/Clatter Valley portions of CL&P’s Shepaug hydroelectric generating facility, consisting of approximately 86 acres, as described in Exhibit A attached;
2. Approximately 47 acres of wetlands located along the western boundary of CL&P’s Norwalk Harbor Station, as described in Exhibit B attached;
3. Certain affirmative obligations associated with the Bulls Bridge, Rocky River, Shepaug and Stevenson hydroelectric facilities (“the Housatonic Project”) as described in Late-Filed Exhibit 15 in Docket No. 98-10-08 and as further described below; and
4. Certain interests associated with the Taftville and Tunnel hydroelectric Stations.

PROPOSED USE OR DISPOSITION OF THE PROPERTIES

1. Lover's Leap/Clatter Valley. Subject to the satisfaction of the conditions stated below, CL&P proposes to sell the Lover's Leap/Clatter Valley property and certain associated property rights, as described in Exhibit A, to the State of Connecticut for use as open or natural space by the public so that it may permanently complement or be added to Lover's Leap State Park. The DEP and CL&P mutually agree to each obtain an independent appraisal of the subject property. The parties shall then negotiate to a mutually agreeable sales price for this property.

2. Norwalk Harbor Wetlands. Subject to the satisfaction of conditions stated below, CL&P shall convey to the State of Connecticut, or to a federal agency agreeable to the DEP, a conservation easement over that portion of the Norwalk Harbor Station property, as delineated in Exhibit B. The Parties shall arrive at a mutually agreeable sales price for these property rights in the same manner as that used for the Lover's Leap\Clatter Valley property. The intent of the easement will be to preserve the indicated property in its current state as a valuable habitat for certain species of shore birds and other coastal wildlife and to provide access to DEP as well as controlled access to the area by the public for educational and conservation purposes as determined by DEP.

The conservation easement shall not apply to the 85' strip of land containing an underground cable shown in Exhibit B over which CL&P shall retain unencumbered rights and full control for the maintenance and future use of electrical facilities, including but not limited to underground cables, in that location. Included in the easement to be conveyed to the State, however, will be a right of access to cross the reserved strip so as to facilitate

the use of the easement area for purposes set out herein and to be further explained and delineated in the Deed of Conveyance of Easement by which rights to the property will be transferred. Also included within the rights to be conveyed to the state will be rights of passage to DEP and the public over the access road and the CL&P property that abuts the easement area. Such access shall require advance notice to CL&P or the subsequent owner of the property and shall not unreasonably interfere with other traffic on the access road, including but not limited to passage thereon by emergency, maintenance, and construction vehicles.

3. Housatonic Project. The Housatonic Project consists of a series of hydroelectric generating stations known as Bulls Bridge, Rocky River, Shepaug, and Stevenson, located along the Housatonic River in Fairfield, New Haven, and Litchfield Counties. These generating stations are licensed by FERC as Project No. 2576, 16 FERC ¶ 62,475. CL&P will submit an application to the FERC for the relicensing of the Housatonic Project in August 1999.

The FERC license for the Housatonic Project contains certain affirmative conditions which require that portions of the project land be made available for use by the public. The conditions are described in Late-Filed Exhibit 15 in Docket No. 98-10-08. It is the intention of the Parties that the affirmative obligations currently contained in the FERC license continue after CL&P's sale of the Housatonic Project so that the present recreational uses will remain undisturbed. To that end, the Parties agree that CL&P shall include in its relicensing petition to be submitted to the FERC all of the affirmative conditions currently contained in the license. In addition, CL&P shall include in its relicensing application proposed new affirmative obligations as follows:

(1) the continuation of the viewing facility for bald eagles at the Shepaug Station under the same or substantially similar terms, which CL&P currently maintains on a voluntary basis, (2) provision of reasonable access for hunting in the area generally identified as on the east side of the canal at Bulls Bridge, and (3) at Falls Village, continuation of the written agreement with DEP regarding generation periods, limitation of generation releases during high temperature periods, boating releases during specified periods, and minimum flow. These suggested additional affirmative conditions are subject to changes in the future at the request of DEP and the approval of the FERC.

4. Tunnel and Taftville Stations. The Tunnel Station is located on the Quinebaug River and the Taftville Station is located on the Shetucket River, both of which rivers are part of the Thames River watershed. DEP is conducting a fish restoration effort in the Thames River Basin. The Parties agree that CL&P will continue to discuss with DEP cost-effective ways to facilitate DEP's fish restoration efforts, including the possibility of "trap and truck" operations, fishways, and other methods of moving American shad and/or river herring around the Taftville and Tunnel dams at that point in time when the agreed upon trigger level of such species has passed the Greenville dam for three years in any six year period. In addition, CL&P will inform prospective purchasers of the generating assets at the Tunnel and Taftville Stations of DEP's ongoing fish restoration effort in the Thames River Basin and of the provisions of Connecticut General Statute Section 26-136..

CONDITIONS

CL&P's proposals as to the Properties are subject to the following conditions:

1. Execution by the Parties of Purchase and Sale Agreements for the Lovers Leap\Clatter Valley property and for the Norwalk Harbor conservation easement rights on mutually agreeable terms and conditions on or before March 1, 1999;
2. Approval by CL&P's Board of Directors by April 30, 1999;
3. Receipt of all necessary regulatory approvals on terms and conditions acceptable to CL&P, including the approval of this Memorandum by the DPUC as part of its consideration of CL&P's Divestiture Plan in Docket No. 98-10-08, and approval of the proposal regarding Lover's Leap\Clatter Valley and the Housatonic Project by the Federal Energy Regulatory Commission ("FERC");
4. Property and property interests conveyed pursuant to this Memorandum shall be sold "as is, where is", without covenants of title; provided, however, that DEP shall have the opportunity to examine the title to said property and property interests, and shall not be required to close unless title is marketable and/or insurable.
5. State funds being made available for the acquisition by the State Bond Commission and receipt of any other approvals required for the purchase of land or rights under State Statute, regulations, or procedures, including document approval by the Office of the Attorney General with respect to this

and all other documents related to this transaction.

6. The ability of the State to obtain a survey to A-2 standards in accordance with the standards recommended by the Board of Professional Engineers and Licensed Surveyors showing no encumbrances on the Properties not of record or evidence of prescriptive or adverse interests affecting the Properties that would materially interfere with DEP's intended use of the Properties.
7. The ability of the State to obtain title insurance.
8. DEP shall have no obligation to close unless the property interests to be conveyed are free of any encumbrances or restrictions which would materially interfere with DEP's intended uses of those properties.

IMPLEMENTATION

It is understood and agreed by DEP and CL&P that both Parties will work toward the realization of the goals set out in this Memorandum as quickly as possible. It is also understood, however, that various approvals, as mentioned above, must be obtained before some of these transactions can be completed. DEP and CL&P agree that each will work diligently to obtain all necessary approvals and will cooperate with each other in that process. If required approvals are not obtained or conditions arise or are imposed by state or federal regulators which make the transactions described herein impracticable, the Parties will attempt to agree on modifications which achieve substantially the same effect

and advantage as the transactions described herein. If, for any reason, the transaction regarding Lover's Leap\Clatter Valley is not concluded in the indicated time, it is understood that any of the property and property rights that are still in the FERC Project Area will remain the property of the owner of the FERC license.

This Memorandum is the memorialization of the mutual understanding and agreement of the Parties as to certain transactions and goals which DEP and CL&P plan to work for and hope to achieve. In working towards these goals, each Party shall be responsible for its own costs and fees. If, on that date which is three (3) years after the date of the last signature to this Memorandum, the transactions contemplated herein, or any of them, have not been concluded, the Parties shall abandon this effort and this Memorandum shall have no effect thereafter.

The issues and concerns expressed by DEP in its brief filed with the DPUC on November 25, 1998 in Docket No. 98-10-08 regarding CL&P's Divestiture Plan would be satisfied and resolved by DPUC approval of the MOU and by the subsequent execution of the terms and conditions in this Memorandum by DEP and CL&P.

This document may be executed in multiple counterparts, the combination of which shall constitute the entire Memorandum.

Signed and Agreed to this 11th day of December 1998.

For the Connecticut Department of
Environmental Protection

David K. Leff
Assistant Commissioner

For The Connecticut Light and Power Company

Dennis E. Welch
Vice President - Environmental, Safety and
Ethics

William Nadeau
Vice President - FossilHydro Engineering and
Operations

Contact People for the Parties as to the Subject Matter of this Agreement are as Follows:

For DEP:

Name:
Address:

Phone:

Fax:

With a copy to:

For Connecticut Light and Power

Name: William H. Smagula
Address:

Phone:

Fax:

With a copy to: Cynthia Brodhead
Senior Counsel