



STATE OF CONNECTICUT

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

**DOCKET NO. 10-12-05RE01 PETITION OF THE OFFICE OF CONSUMER
COUNSEL FOR A DECLARATORY RULING THAT
THE PENDING MERGER OF NORTHEAST
UTILITIES AND NSTAR REQUIRES APPROVAL BY
THE CONNECTICUT PUBLIC UTILITIES
REGULATORY AUTHORITY – REVIEW OF NEW
COMMENTS**

January 18, 2012

By the following Commissioners:

Kevin M. DelGobbo
John W. Betkoski, III
Anna M. Ficeto

DECISION

DECISION

I. INTRODUCTION

A. SUMMARY

In this Decision, the Public Utilities Regulatory Authority revises its prior declaratory ruling. The Public Utilities Regulatory Authority concludes that it must review the proposed merger between Northeast Utilities and NSTAR and that the proposed merger must receive the Public Utilities Regulatory Authority's approval pursuant to §16-47 of the General Statutes of Connecticut. Upon receipt of an application for approval of the merger, the Public Utilities Regulatory Authority will establish a docket and procedural schedule to perform that review.

B. FACTUAL BACKGROUND

Northeast Utilities (NU) is a Massachusetts business trust and parent holding company of four regulated subsidiaries, two of which, The Connecticut Light and Power Company (CL&P) and Yankee Gas Services Company (Yankee), are Connecticut public service companies as defined in the General Statutes of Connecticut (Conn. Gen. Stat.) §16-1(a)(4). NSTAR is also a Massachusetts business trust and is the parent holding company of NSTAR Electric Company and NSTAR Gas Company, which provide electric and gas service to customers in Massachusetts. NSTAR has no plant, operations or customers in Connecticut and none of its subsidiaries are Connecticut public service companies.

On October 18, 2010, NU and NSTAR announced that they were entering into a merger agreement that would combine the two companies (Merger Agreement). After completion of the merger, the current NSTAR chairperson, president and chief executive officer would become CEO of the merged company. The current chairperson, president and CEO of NU would be the "Non-executive Chairman of the Board" for the merged company. Eighteen months thereafter, the current NSTAR chairperson would become the Chairman of the merged company. The Merger Agreement designates who would be the direct reports to the CEO of the merged company, half from NSTAR and half from NU.

Under the Merger Agreement, the NU Board of Trustees would increase to 14 members, with 7 each nominated by the current NU and NSTAR. The Merger Agreement establishes the Board committees of the merged company and designates whether a NU or NSTAR Trustee would serve as chair of each Board committee. Post merger, current NU shareholders would own about 56 percent of the combined company, and current NSTAR shareholders would own about 44 percent of the post-merger NU. This is because consideration for the proposed merger would be 100 percent equity, in the form of NU common shares.

C. CONDUCT OF PROCEEDING

By petition of the Office of Consumer Counsel (OCC) filed on December 3, 2010 (Petition), pursuant to Conn. Gen. Stat. §4-176, the Public Utilities Regulatory Authority (PURA or Authority), then known as the Department of Public Utility Control, was requested to provide a declaratory ruling that Conn. Gen. Stat. §§16-11, 16-43 and 16-47 require Authority approval of the proposed NU and NSTAR merger.

On December 15, 2010, NU provided a response to the Petition. The Authority issued a December 23, 2010 Notice of Request for Written Comments. A Draft Decision was issued by the Authority on January 19, 2011, in which the PURA declined to issue the declaratory rulings requested by the OCC in its Petition. The Draft Decision presented and discussed the Authority's legal analysis of Conn. Gen. Stat. §§16-47, 16-43, 16-11 as well as PURA precedent in similar transactions. Thereafter, the Authority provided an opportunity for participants to present Written Exceptions as well as Oral Arguments on the Draft Decision. On March 25, 2011, the Authority conducted a Public Comment/Informational Hearing.

On June 1, 2011, the Authority issued a Decision in that proceeding declining to exercise its authority to review the proposed merger.

Administrative appeals were filed with the Superior Court, Judicial District of New Britain by the OCC, HHB-CV11-6011139-S, The NRG Companies, HHB-CV11-6011181-S, and the New England Power Generators Association (NEPGA), HHB-CV11-60111364-S. These appeals were consolidated. The Superior Court issued an Order on November 18, 2011, indicating that the NRG Companies had failed to exhaust administrative remedies prior to filing their administrative appeal. The court suggested that the NRG Companies seek an administrative ruling prior to pursuing an administrative appeal. On December 6, 2011, the NRG Companies filed a Motion to Stay all three proceedings pending its filing of a petition for declaratory ruling with the Authority seeking a ruling on this issues that were on appeal.

The NRG Companies then filed a petition for declaratory ruling dated December 9, 2011 (NRG Petition), with the Authority requesting a ruling providing that Conn. Gen. Stat. §§16-11, 16-43 and 16-47 require PURA approval of the proposed merger between NU and NSTAR. In response to the NRG Companies' December 9, 2011 petition, the Authority opened Docket No. 11-12-07, Petition of the NRG Companies for a Declaratory Ruling that the Pending Merger of Northeast Utilities and NSTAR Requires Approval by the Public Utilities Regulatory Authority. The Authority issued a Notice of Request for Written Comments dated December 14, 2011. NU, the OCC, the Office of the Attorney General (AG), the NRG Companies, the New England Power Generators Association, the Conservation Law Foundation and other interested persons filed written comments. The Authority has reviewed and considered these written comments.

In Docket No. 11-12-07, the Authority issued a Draft Decision dated January 4, 2012, addressing the NRG Companies petition stating:

Because the issues raised by the NRG Companies' petition herein raise the same legal issues as determined in the 10-12-05 Decision, the Authority refers the NRG Companies to that decision. To the extent a decision is required separately in this docket, the 10-12-05 Decision is incorporated herein, as though fully set forth, as the Authority's decision. By decision issued contemporaneously with this determination, and pursuant to Conn. Gen. Stat. § 16-9, the Authority reopens Docket No. 10-12-05, for the purpose of reconsidering whether it should rescind, reverse or alter its June 1, 2011 Decision. Any revision would apply in equal force in this Docket No. 11-12-07.

On its own authority pursuant to Conn. Gen. Stat. §16-9, the Authority reopened the Decision dated June 1, 2011 in Docket No. 10-12-05, Petition of the Office of Consumer Counsel for a Declaratory Ruling that the Pending Merger of Northeast Utilities and NSTAR Requires Approval by the Connecticut Department of Public Utility Control, for the purpose of reconsidering the Decision.

The Authority takes administrative Notice of the Written Comments filed prior to the date of the Draft Decision in Docket No. 11-12-07.

The Authority issued a Draft Decision dated January 4, 2012. NU, the OCC, and the AG filed Written Exceptions dated January 9, 2012. A hearing was held on January 12, 2012, for oral arguments on the Draft Decision.

II. DECLARATORY RULING

A. POSITIONS OF THE DOCKET PARTICIPANTS

1. Office of Consumer Counsel

In support of its Petition, the OCC believes that Conn. Gen. Stat. §16-47(b) and (c) require PURA approval if a holding company will, directly or indirectly, exercise or attempt to exercise authority or control over a public service company such as CL&P or Yankee. The OCC believes that this section applies if another entity is exercising or attempting to exercise control over an existing holding company, such as the presently existing NU. Petition, p. 10. The OCC also believes that the Authority, in answering this question, should look at whether the existing NU would be a new holding company that is exercising authority or control over what had been the pre-merger NU. In support of this position, the OCC states that an indicia of control is the "ability to effect a change in the composition of the board of directors." *Id.* The OCC states that the combined company, a holding company, will be exercising the power to direct the policies of CL&P and Yankee as well as those of NSTAR. *Id.*, p. 11. Simply put, the combined or new holding company will be exercising the power to direct the policies of CL&P and Yankee as well as those of NSTAR and, given the change in corporate governance, the Authority should declare that its prior approval of this transaction is required.

The OCC also states that the merger should require prior Authority approval since Conn. Gen. Stat. §16-43 mandates such approval where a public service company will “directly or indirectly (1) merge, consolidate or make common stock with any other company” Petition, p. 16. The OCC believes that after the merger, both CL&P and Yankee will be under common control with NSTAR Gas, and that, therefore, the transaction constitutes an indirect merger. It is the OCC position that the language of Conn. Gen. Stat. §16-43, which applies to indirect mergers should be read in conjunction with Conn. Gen. Stat. §16-11, which requires broad interpretation of the Authority’s powers. In doing so, the Authority would recognize that the transaction is an indirect merger of CL&P with NSTAR Electric as well as an indirect merger of Yankee with NSTAR Gas.

In its Written Comments filed in Docket No. 11-12-07, the OCC posits that the terms and conditions that NU may be required to negotiate and obtain consent of other interested persons in Massachusetts, including certain state agencies, and to obtain regulatory approval of the proposed merger from the Massachusetts Department of Public Utilities (MA DPU) raises issues with respect to whether or not any of these terms and conditions may constitute attempts to directly or indirectly interfere with or exercise or attempt to exercise authority or control over CL&P or Yankee Gas with respect to several subject matter areas that fall under the regulatory authority of the Department of Energy and Environmental Protection (DEEP), and in particular the Authority, an agency within DEEP. Docket No. 11-12-07, OCC Comments, pp. 12-17. These subjects include, but are not limited to, levels of service, emergency storm response, renewable energy, energy efficiency, transmission and distribution system best practices, etc.

In its Written Exceptions submitted January 9, 2012, the OCC took Exception to the Authority’s determination regarding the application of Conn. Gen. Stat. Section 16-43. OCC Written Exceptions, pp. 4 and 5. The OCC cautions the Authority to “avoid creating a Conn. Gen. Stat. §16-43 precedent here since it has again not fleshed out what transaction might meet the concept of an indirect merger for purposes of that statute.” The OCC asks that the PURA avoid creating a Conn. Gen. Stat. §16-43 precedent and leave the analysis of the scope of that statute to a future case.

The OCC also suggests that the Authority’s review not be subject to an April 16, 2012 deadline. OCC Written Exceptions, pp. 5-8.

2. Northeast Utilities

NU filed a response to the Petition on December 15, 2010 (Response). NU states that the statutory provisions set forth by the OCC do not apply to the circumstances of this transaction and provide no legal basis for the issuance of the requested ruling. Response, p. 2. In support of its position, NU states that Connecticut law is well-established in that Authority regulatory jurisdiction only applies to transactions that result in the change of control over Connecticut public service companies.

NU states that the factual circumstances of this proposed merger do not apply to the provision of Conn. Gen. Stat. §16-47. Simply put, Conn. Gen. Stat. §16-47 does not

contemplate Authority jurisdiction where the holding company of a Connecticut public service company merely seeks to acquire an out-of-state utility that the Authority does not regulate. Id. More specifically, NU contends that the proposed merger involving NU and NSTAR will not result in another company, or a new company, acquiring or exercising authority or control over either NU, CL&P or Yankee. NU, as prior to the merger, will continue to be the parent holding company of CL&P and Yankee. Id.

With regard to Conn. Gen. Stat. §16-43, NU states that it does not apply in the instant case because the transaction does not involve a merger of Connecticut public service companies. CL&P and Yankee will remain separate companies and will not merge with any other company as part of the transaction. Lastly, NU states that the proposed merger will not alter or change in any way the Authority's jurisdiction over CL&P and Yankee and that both companies will continue to be regulated by the Authority and that customer interests will continue to be appropriately protected following the merger as they are currently protected. Id., p. 3.

In its December 23, 2011 comments in the NRG Companies' Petition (Docket No. 11-12-07), NU addresses its objections to the procedural posture of the NRG Petition, which are not relevant in this docket. On the merits of reconsidering the June 1, 2011 Decision in Docket No. 10-12-05, NU expressed serious concerns about the uncertainty reconsideration would engender in the financial markets. NU also expressed concerns regarding the length of time any review process would take, particularly beyond the Termination Date of the Merger Agreement.

On the specific questions presented in the Notice in Docket No. 11-12-07, NU contends that the merger transaction would not affect the direction of management and policies of any Connecticut public service company or NU, and that the statutory definition of "control" set forth in Conn. Gen. Stat. §16-47(a) is not satisfied. Quoting page 5 of the June 1, 2011 Decision in Docket No. 10-12-05, NU argued that the resultant company post-merger remains NU, with NSTAR LLC as a subsidiary of NU. NU contends that any changes to the number of the NU Board would require NU shareholder approval, which was obtained in early 2011. NSTAR's ability to appoint half of the Board members of the merged company was compared to a nominating committee function of a Board, subject to approval by shareholders.

According to NU, post merger, all current NU and NSTAR shareholders will be shareholders of the merged company, and the current NU and NSTAR officers and directors will be officers and directors of the merged company. Thus no "other" entity will be controlling the merged company – rather, NSTAR will cease to exist, and only NU will remain. Again citing page 5 of the June 1, 2011 Decision in Docket No. 10-12-05, NU contends that these corporate governance changes are "matter of course" types of changes.

NU concedes that the merger transaction solicits proxies, but contends that the statute distinguishes between the "person" to whom the proxy is given and the "holding company" that is the target, whereby in this transaction, the company is soliciting its own shareholders. With respect to the 10 percent direct or indirect ownership issue, NU contends that "no single NU shareholder now owns or will own 10 percent or more of NU's outstanding shares as a result of the Transaction." NU moreover represented that

the total number of NU common shares was increased to facilitate the conversion of NSTAR shares to NU shares.

NU filed Written Exceptions to the January 4, 2012 Draft Decision stating that the reasons set forth in that Decision for reversal of the June 1, 2011 Decision are not compelling, and do not provide a sufficient showing of changed conditions to justify deviation from prior rulings. NU Written Exceptions, p. 3. NU claims that the proceedings in Massachusetts do not interfere with or control CL&P or Yankee because no terms and conditions that the MA DPU could impose as part of a merger approval that could “interfere” with or “control” CL&P and Yankee and that no aspect of the transaction will diminish the Authority’s continuing jurisdiction over CL&P or Yankee. Id., pp. 2-5. NU argues that, under the Authority’s reasoning, a regulator would potentially interfere with any affiliated public service company in the other state every time they exercised their regulatory jurisdiction. Id. NU argues that the Draft Decision ignores the fundamental principle that the Authority’s statutory authority to regulate the state’s public service companies is not affected or limited by actions in other states and would establish an unworkable precedent whereby any action by another state to regulate a company within its jurisdiction would potentially be subject to Authority “approval” if the subject company was an affiliate of a Connecticut public service company. Id.

NU also argues that the Draft Decision’s re-analysis of the merger incorrectly applies the principles of Conn. Gen. Stat. §16-47. Id., p. 5. NU argues the following. First, no person will own in excess of 10 percent of NU shares as a result of the transaction. Upon closing of the transaction the former NSTAR shareholders will in the aggregate own over 10 percent of the outstanding NU common shares, but the statutory presumption does not apply in the aggregate. Id., p. 6. Second, the proxy solicitation did not meet the statutory definition of “control.” The proxy solicitation of the NU shareholders was made by NU to its own shareholders. The resulting proxies from the NU shareholders were given to NU, and not to a third-party seeking to take control of NU. Id., p. 7. Third, the personnel changes contemplated in the Merger Agreement do not equate to a change of control of NU but constitute internal board and management changes within the corporate entity not subject to Authority review. Id., pp. 7-9.

3. Office of the Attorney General

The AG submitted written comments dated January 6, 2011, arguing that, pursuant to Conn. Gen. Stat. §§16-11, 16-43 and 16-47, the Authority has the authority and obligation to review the transaction for prior approval. The AG believes that a change in control is occurring with this transaction because NU will have a new President and CEO, new headquarters in Boston and a dilution in its shareholder ownership share of voting securities.

In written comments in response to the Notice in Docket No. 11-12-07, the AG urged the Authority to exercise jurisdiction over the NU - NSTAR merger pursuant to Conn. Gen. Stat. §§16-11, 16-19e, 16-22, 16-43 and 16-47. In addition to incorporating and adopting his prior comments in Docket No. 11-12-07, the AG took exception to the assertion on page 5 of the June 1, 2011 Decision in Docket No. 10-12-05 that the management changes contemplated were a “matter of course.” The AG asserts that

where NSTAR executives will assume the leadership as CEO, 50 percent of Board membership and 44 percent of ownership is not “ordinary changes” that happen “as a matter of course” but rather falls directly into the requirements of Conn. Gen. Stat. §16-47.

The AG also urged the PURA to reject and reverse its prior interpretation of the 10 percent direct or indirect ownership element of Conn. Gen. Stat. §16-47 as applying only to individuals. The AG notes that such a position leads to an absurd result, whereby if 10 NSTAR directors acquired 9 percent each of the merged company, effectively controlling 90 percent of the merged company, it would still not trigger the ownership presumption of control in Conn. Gen. Stat. §16-47. Finally, relying upon the December 1, 2011 Report by Witt Associates (Witt Report), the AG noted that the serious deficiencies in the NU and CL&P management response to the recent storm outages should be considered by the Authority.

In its Written Exceptions dated January 9, 2012, the AG asks the Authority to issue an order that NU and NSTAR refrain from consummating the proposed merger unless and until the PURA has issued a Final Decision authorizing the merger and at that point, only if the applicants comply with any conditions of approval that the Authority may impose. The AG, like the OCC, also disagrees with the determination regarding Conn. Gen. Stat. §16-43 and requests that the Authority not expedite the review of the proposed merger.

4. NEPGA

By way of a letter dated January 6, 2011, the NEPGA requested that the PURA designate the NEPGA as an intervenor or, in the alternative, as a participant in the instant docket and submitted written comments as well. The NEPGA is a private, non-profit entity advocating for the business interests of non-utility electric power generators in New England. In its written comments, the NEPGA did not specifically state that the Authority has the legal jurisdiction to exert prior approval over the transaction; however, that if the PURA undertakes a review of the merger, the Authority should consider the merger’s impact on competitive markets, competition, system reliability, rates and public interest. January 6, 2011 Comments, p. 6. The NEPGA also stated that the merger may have impacts on the development of competitive energy resources and transmission projects that may affect the wholesale competitive markets.

In its comments in response to the Notice in Docket No. 11-12-07, the NEPGA responded to the first two questions in the affirmative. The NEPGA proffered additional comments, urging the Authority to impose conditions on the merger that ensure the transaction would not harm competitive electricity markets in Connecticut.

5. NRG Companies

The NRG Companies concur with the OCC’s assertion that Conn. Gen. Stat. §16-47 requires PURA prior review of this transaction. January 6, 2011 Comments, p. 3. NRG states that a change in control is occurring with this transaction because NSTAR will share a headquarters with NU in Boston and Hartford, NSTAR’s

Tom May will become President and CEO of NU and NU's ownership share will be diluted. Id., p. 4.

In its comments in support of its Petition in Docket No. 11-12-07, the NRG Companies submitted that the Authority's June 1, 2011 Decision in Docket No. 10-12-05 was wrongly decided, and there were changed circumstances that support the PURA's exercise of jurisdiction over the merger transaction at this time. In response to the Notice issued in Docket No. 11-12-07, the NRG Companies submitted that the transaction provides NSTAR with the power to direct management and policies of Connecticut public service companies and NU, bestows the ability to effect a change in the composition of the Board of NU, solicits revocable proxies, and changes the direct or indirect ownership of 10 percent or more of the voting securities of NU.

B. AUTHORITY DETERMINATION

1. Introduction

The Authority rules that NU and NSTAR must seek approval of the PURA pursuant Conn. Gen. Stat. §16-47 prior to completing the merger transaction. The Authority finds grounds for revising the prior Decision. First, the Authority finds that the OCC raised new issues relevant under Conn. Gen. Stat. §§16-47(b), (d) and (g). See, the OCC Written Comments, dated December 23, 2011 in Docket No. 11-12-07, pp. 12-17. The OCC specifically raises issues about whether certain merger approval terms and conditions that may be agreed to or imposed in Massachusetts may constitute interference with or exercise of authority or control over a Connecticut public service company in violation of Conn. Gen. Stat. §16-47(b).

As discussed further below, the Authority also finds that the details of the merger proposal relating to the new holding company's corporate structure and ownership composition trigger the PURA's jurisdiction to review and approve the merger.

2. Conn. Gen. Stat. Section 16-47

Under Conn. Gen. Stat. §16-47(b) and (d), the Authority is legally obliged to review the proposed merger to ensure that after any resulting merger CL&P and Yankee will have the qualifications and ability to provide safe, adequate, reliable and reasonably-priced services for Connecticut customers. Conn. Gen. Stat. §16-47(b) provides:

(b) No gas, electric, electric distribution, water, telephone or community antenna television company, or holding company, or any official, board or commission purporting to act under any governmental authority other than that of this state or of its divisions, municipal corporations or courts, shall interfere or attempt to interfere with or, directly or indirectly, exercise or attempt to exercise authority or control over any gas, electric, electric distribution, water, telephone or community antenna television company engaged in the business of supplying service within this state, or with or

over any holding company doing the principal part of its business within this state, without first making written application to and obtaining the approval of the Department of Public Utility Control, except as the United States may properly regulate actual transactions in interstate commerce.

First, the information presented by the OCC about the terms and conditions and implementation of the Merger Agreement and potential out-of-state regulatory requirements persuades the Authority to exercise its jurisdiction to review and take appropriate regulatory action with respect to the proposed merger under Conn. Gen. Stat. §§16-47(b) and 16-47(d) and other applicable subsections of Conn. Gen. Stat. §16-47. See OCC Written Comments, dated December 23, 2011 in Docket No. 11-12-07, pp. 12-17.

During the course of regulatory review in Massachusetts, NU may decide to or be required to make commitments that post-merger may adversely impact CL&P or Yankee policies or operations, including the adequacy and reliability of services provided to or the level of costs incurred by Connecticut customers. Conn. Gen. Stat. §16-47(b) forbids NU from entering into agreements with third parties or subjecting itself to orders in other jurisdictions that shall interfere with or attempt to interfere with and/or exercise or attempt to exercise control or authority over CL&P or Yankee without approval of the Authority.

Specifically, the OCC states that:

In a filing with Mass. DPU on December 20, 2011, Mass. DOER has now sought to add the Storm response issue to the Massachusetts merger review. This filing, titled "DOER's Request for Leave to Amend its Pending Motion to Stay the Proceedings," (copy attached as "Exhibit E") seeks for DPU to consider "the Companies' responses to the August 28 and October 29 storm events." Mass. DOER opines (p. 2) that "the Companies' recent storm response actions appear to demonstrate the inadequacies of their current emergency restoration plans (ERPs), and any approval of a merger must include a finding that the Joint Petitioners have adequately reviewed and integrated their respective ERPs." However, any requirement imposed on the New NU by Mass. DOER in settlement, or by Mass. DPU in a ruling, related to the integration of ERPs could impact Connecticut and its electricity system in many ways. For example, Mass. DOER or DPU may insist that the New NU change ERPs with regard to how the company will allocate corporate resources to fix Massachusetts' outages. Such a required allocation of resources by Massachusetts may not be consistent with Connecticut's interests. To provide one additional example, Mass. DOER or DPU may insist that mutual assistance protocols in the respective ERPs take a form that

Connecticut might not agree with or that may disadvantage Connecticut.

OCC Comments in Docket No. 11-12-07, pp. 15 and 16.

The possibility that the MA DPU regulatory review might result in a different character or nature for the merger transaction was raised previously in this proceeding. See Tr. 3/25/11, pp. 157 and 158. At that time, NU and NSTAR's chief executive officers did not know what, if any, impact regulatory review might have on the transaction suggesting instead that the Merger Agreement as it then stood was sufficient to conform with Massachusetts approval requirements. *Id.* Based upon the OCC's comments, it now appears that the possibility is now present and real, thus supporting the Authority's exercise of jurisdiction over the transaction.

The OCC, therefore, presents sufficient new information regarding the terms and conditions that NU may be required to agree to or that may be imposed as part of the regulatory approval of the proposed merger by the MA DPU. This new information raises concerns regarding whether any of these terms and conditions may constitute attempts to directly or indirectly interfere with or exercise or attempt to exercise authority or control over CL&P or Yankee with respect to several subject matter areas that fall under the regulatory authority of the DEEP and the Authority. These subjects include, but are not limited to, levels of service, emergency storm response, renewable energy, energy efficiency, transmission and distribution system best practices, etc. This determination alone triggers the Authority's jurisdiction and duty to review the proposed merger. Any terms and conditions relating to these and other issues potentially affecting Connecticut public service companies, CL&P and Yankee, will be examined and assessed in a merger review proceeding in Connecticut after NU and NSTAR file an application for review of the proposed merger with the Authority.

Second, the filings made in Docket No. 11-12-07, and another review of the terms and conditions of the Merger Agreement, lead the Authority to reconsider, rescind, reverse and alter its interpretation of how the statutory definition of "control" in Conn. Gen. Stat. §16-47(a)(2) should be interpreted as applied to this transaction, as authorized by Conn. Gen. Stat. §16-9. Conn. Gen. Stat. §16-47(a)(2) provides in relevant part:

(2) "control" means the possession of the power to direct or cause the direction of the management and policies of a gas, electric, electric distribution, water, telephone or community antenna television company or a holding company, whether through the ownership of its voting securities, the ability to effect a change in the composition of its board of directors or otherwise, provided, control shall not be deemed to arise solely from a revocable proxy or consent given to a person in response to a public proxy or consent solicitation made pursuant to and in accordance with the applicable rules and regulations of the Securities Exchange Act of 1934 unless a participant in said solicitation has announced an intention to effect a merger or consolidation with, reorganization, or other

business combination or extraordinary transaction involving the gas, electric, electric distribution, water, telephone or community antenna television company or the holding company. Control shall be presumed to exist if a person directly or indirectly owns ten per cent or more of the voting securities of a gas, electric, electric distribution, water, telephone or community antenna television company or a holding company, provided the department may determine, after conducting a hearing, that said presumption of control has been rebutted by a showing that such ownership does not in fact confer control.

On page 5 of its June 1, 2011 Decision in Docket No. 10-12-05, the Authority considered specific portions of the proposed transaction to be “management changes that occur continuously as a matter of course.” Upon further reflection and review, the Authority determines that the changes proposed by the Merger Agreement are not “matter of course” changes in management. The Authority finds that the details of the merger are such that the resulting holding company can be viewed as a new one, even though it will retain the name “NU.” The Authority makes this determination based on the following information regarding the reorganization of management and ownership control that results from the terms and conditions of the merger agreement. The current NSTAR chairperson will immediately become the CEO for the merged company. Eighteen months thereafter, the current NSTAR chairperson will become the Chairman of the Board of the merged company. The Merger Agreement designates who will be the direct reports to the CEO of the merged company, one half from NSTAR and one half from NU.

Under the Merger Agreement, the NU Board of Trustees will increase to 14 members, with 7 each nominated by NU and NSTAR. The Merger Agreement establishes the Board committees of the merged company and designates whether a NU or NSTAR Trustee will serve as chair of each Board committee. Post merger, current NU shareholders would own about 56 percent of the combined company, and current NSTAR shareholders will own about 44 percent. This is because consideration for the proposed merger will be 100 percent equity, in the form of NU common shares.

The Authority hereby determines that the terms and conditions of the Merger Agreement satisfy the statutory definition of “control” in Conn. Gen. Stat. §16-47(a)(2), as well as the concerns about interference and exercise of authority set forth in Conn. Gen. Stat. §16-47(b). Specifically, current NSTAR shareholders will own approximately 44 percent of NU, well above the rebuttable presumption of 10 percent. The transaction involves a proxy solicitation for the purpose of effecting “a merger or consolidation with, reorganization or other business combination, or extraordinary transaction” involving a “holding company” (i.e., NU). The terms and conditions of the Merger Agreement clearly “effect a change in the composition of its board of directors,” as it increases the NU Board of Trustees from 11 to 14, assigns NSTAR the right to name half of them, reorganizes the Board’s committees, and determines whether a “NSTAR” or a “NU” trustee will chair a specific committee.

The Authority reviewed NU's Written Exceptions and provides the following additional analysis providing further clarification on certain issues raised. NU claims that the proceedings in Massachusetts will not interfere with or control CL&P or Yankee because no terms and conditions that the MA DPU could impose as part of a merger approval that could apply directly to "interfere" with or "control" CL&P and Yankee and that no aspect of the transaction will diminish the Authority's continuing jurisdiction over CL&P or Yankee. *Id.*, pp. 2-5. The Authority finds that a proposed merger that is being reviewed in another jurisdiction involving a holding company owner of two Connecticut public service companies is distinguishable from other state regulators simply regulating affiliated public service companies located in their states. The Authority finds that the conditions of merger approval in Massachusetts may impact future policy and resource allocation decisions of the post-merger holding company that will impact the provision of services by CL&P and Yankee. The Massachusetts proceeding contains submissions requesting that NU and NSTAR be required to commit to certain terms and conditions with respect to various issues identified above. Emergency Response Plans are a prime example of an issue over which the MA DPU could impose terms and conditions that could impact the ability of NU through CL&P and Yankee to provide reliable, safe and adequate services and first serve Connecticut's public interest generally.

As discussed in more detail above, the Authority finds that the personnel changes contemplated in Merger Agreement amount to a change of control of NU and are not merely internal board and management changes within a corporate entity not subject to Authority review. The merger is more akin to the formation of a new corporate partnership with each old company controlling about half of the stock ownership and composing equal shares of control of the upper management and board membership positions.

Finally, the Authority finds that all of these changes in management and ownership composition are changes that affect and impact the holding company corporate parent's control and authority, including who makes the decisions concerning the policies and operations of CL&P and Yankee.

Based on the foregoing, the Authority's jurisdictional duty to review the proposed merger is triggered.

3. Conn. Gen. Stat. Section 16-43

Conn. Gen. Stat. §16-43 requires Authority approval for a "public service company" to directly or indirectly merge, consolidate or make common stock with another company. The Authority finds that Conn. Gen. Stat. §16-43, by its plain language, applies only to proposed mergers of a public service company with another company. This case is not one of a merger proposed by a public service company, such as CL&P or Yankee. This docket involves a proposed merger of two holding companies, not a public service company and another company or two public service companies. Conn. Gen. Stat. §16-43, therefore, does not appear to apply on to the facts of this proposed merger. The Authority does not decide whether this proposed transaction may constitute an "indirect merger" for purposes of Conn. Gen. Stat. §16-43, and, therefore, makes no ruling is this decision regarding the meaning and application of the "indirect merger" language of Conn. Gen. Stat. §16-43.

4. Conn. Gen. Stat. Section 16-11

Conn. Gen. Stat. §16-11 states “the general purposes of this section and sections . . . 16-43 and 16-47 are to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Department of Public Utility Control and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes.” The plain language of this statute provides no express authority to the Authority to review and approve, disapprove or take any actions with respect to mergers. Conn. Gen. Stat. §16-11, in and by itself, does not authorize the review of the merger transaction – rather, Conn. Gen. Stat. §16-11 informs the Authority’s interpretation of Conn. Gen. Stat. §16-47. Conn. Gen. Stat. §16-11 directs the Authority as to the statutory purposes applicable to its interpretation of Conn. Gen. Stat. §16-47. Although the Authority holds herein that Conn. Gen. Stat. §16-47, in and by itself, provides it with specific authority to review the proposed merger transaction, the Authority further finds that the statutory purposes applicable to its interpretation of Conn. Gen. Stat. §16-47, as set forth in Conn. Gen. Stat. §16-11, are satisfied by the Authority’s exercise of jurisdiction to review this proposed merger transaction.

III. CONCLUSION AND ORDER

A. CONCLUSION

The Authority revises its prior Decision and rules it must review and approve, with necessary or appropriate terms and conditions, or disapprove the proposed merger between NU and NSTAR, pursuant to Conn. Gen. Stat. §16-47. The Authority is mindful of certain milestones relating to the completion of the proposed merger and will dedicate all necessary staff resources to achieve a complete and thorough regulatory review consistent with that time schedule. Upon receipt of an application for approval of the merger, the Authority will establish a docket and procedural schedule to perform that review. Any issues with regard to the procedural schedule will be addressed in that docket.

B. ORDER

1. NU shall not consummate the proposed merger unless and until the Authority has issued a Final Decision approving the merger.

The Authority is an affirmative action/equal opportunity employer and service provider. In conformance with the Americans with Disabilities Act (ADA), the Authority makes every effort to provide equally effective services for persons with disabilities. Individuals with disabilities who need this information in an alternative format to allow them to benefit and/or participate in the agency’s programs and services, should call 860-424-3035 or e-mail the ADA Coordinator, at DEP.aoffice@ct.gov. Persons who are hearing impaired should call the State of Connecticut relay number 711. Requests for accommodations must be made at least two weeks prior to the meeting date (Emphasis added).

**DOCKET NO. 10-12-05RE01 PETITION OF THE OFFICE OF CONSUMER
COUNSEL FOR A DECLARATORY RULING THAT
THE PENDING MERGER OF NORTHEAST
UTILITIES AND NSTAR REQUIRES APPROVAL BY
THE CONNECTICUT PUBLIC UTILITIES
REGULATORY AUTHORITY – REVIEW OF NEW
COMMENTS**

This Decision is adopted by the following Directors:

Kevin M. DeIGobbo

John W. Betkoski III

Anna M. Ficeto

CERTIFICATE OF SERVICE

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

Kimberley J. Santopietro
Executive Secretary
Department of Energy and Environmental Protection
Public Utilities Regulatory Authority

January 18, 2012
Date