

# STATE OF CONNECTICUT

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

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 -  
REOPENING

January 4, 2012

By the following Directors:

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

**DRAFT DECISION**

## DRAFT DECISION

The Office of Consumer Counsel (OCC) filed a December 3, 2010 petition for declaratory ruling pursuant to §4-176 of the General Statutes of Connecticut (Conn. Gen. Stat.), requesting that the Public Utilities Regulatory Authority (Authority)<sup>1</sup> rule that Conn. Gen. Stat. §§16-11, 16-43 and 16-47 require approval of proposed merger between Northeast Utilities (NU) and NSTAR (Merger).

On June 1, 2011, the Authority issued a Final Decision concluding that, based upon its information and analysis at the time, it lacked jurisdiction over the Merger (“June 1, 2011 Decision”).

On June 30, 2011, the OCC filed a Petition for Administrative Appeal with the Superior Court, Judicial District of New Britain, HHB-CV11-6011139-S. Administrative appeals were also filed by the NRG Companies, HHB-CV11-6011181-S, and the New England Power Generators Association (“NEPGA”), HHB-CV11-60111364-S. 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 need to seek an administrative ruling prior to be able to pursue an administrative appeal. On December 6, 2011, the NRG Companies filed a Motion to Stay all three proceedings pending its filing of this Petition and the Authority’s ruling on the same.

The NRG Companies then filed a separate petition dated December 9, 2011, pursuant to Conn. Gen. Stat. §4-176, with the Authority requesting a declaratory ruling regarding the applicability of Conn. Gen. Stat. §§16-11, 16-43 and 16-47 to the specific facts of the announced and pending merger between NU and NSTAR. See 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 NRG Companies’ petition raised the exact same legal issue as was presented in this docket.

In Docket No. 11-12-07, the Authority issued a Notice of Request for Written Comments dated December 14, 2011. NU, OCC, the Office of the AG, the NRG Companies, the New England Power Generators Association and the Conservation Law Foundation and other interested persons filed written comments. The Authority has reviewed and considered these written comments.

The General Assembly provided the Authority with a legal procedure to review, reconsider and, as appropriate, rescind, reverse, or alter its past decisions. Conn. Gen. Stat. § 16-9 provides:

All decisions, orders and authorizations of the Department of Public Utility Control shall be in writing and shall specify the reasons therefor, shall be filed and kept in the office of the department and recorded in a book kept by it for that purpose and shall be public

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<sup>1</sup> The Authority was formerly known as the Department of Public Utility Control.

records. Said department may, at any time, for cause shown, upon hearing had after notice to all parties in interest, rescind, reverse or alter any decision, order or authorization by it made. Written notice of all orders, decisions or authorizations issued by the department shall be given to the company or person affected thereby, by personal service upon such company or person or by registered or certified mail, as the department determines. [emphasis added.]

This statutory provision serves a valuable jurisprudential purpose. When an agency has the opportunity to correct its own errors, a judicial controversy may well be mooted, or at least piecemeal appeals may be avoided. *Woodford v. Ngo*, 548 U.S. 81, 89 (2006); *Parisi v. Davidson*, 405 U.S. 34, 37 (1972).

The Authority finds two grounds that provide cause for reopening the prior decision. The first ground for cause the Authority finds is that the Office of Consumer Counsel (OCC) raised new issues relevant under Conn. Gen. Stat. §§ 16-47(b), (d) and (g) in their comments submitted in Docket No. 11-12-07. See OCC Written Comments, dated December 23, 2011, at pp. 12-17. The OCC presented new information that became available subsequent to the June 1, 2011 Decision is this proceeding relating to possible merger terms and conditions that are to be considered and could result from the regulatory review in Massachusetts. The Authority finds that this information alone raises specific issues that provide cause to reopen under Section 16-9.

The second ground for cause relates to the helpful clarifications the Authority received in response to its Request for Written Comments dated December 12, 2011 in Docket No. 11-12-07. The Authority received helpful clarification with respect to several specific issues relating to the issue of the Authority's jurisdiction to review the proposed merger. For example, the Office of Attorney General offered helpful comments with respect to statutory interpretation at footnote 3 of its comments. For purposes of its decision to reopen, the Authority finds that comments provided further information and analysis that assisted the Authority in its analysis of the OCC's declaratory ruling request.

Based on the foregoing, pursuant to Conn. Gen. Stat. § 16-9 of the General Statutes of Connecticut, the Authority finds cause exists to re-open Docket No. 10-12-05 for the purpose of 1) considering the new information presented by the OCC in its December 23, 2011 Written Comments in Docket No. 11-12-07 regarding the need for the Authority to review the proposed merger's terms and conditions, including the implementation plan for said terms and conditions, for compliance with the requirements of Conn. Gen. Stat. § 16-47(b) and (d), and 2) reconsidering the prior ruling in its entirety with respect to the application of Conn. Gen. Stat. §§ 16-11, 16-43, and 16-47 to the particular facts of this proposed merger.

On its own authority pursuant to Conn. Gen. Stat. §16-9, the Authority is now reopening its Decision dated June 1, 2011 in the above-captioned docket for the purpose of reviewing the June 1, 2011 Decision in response to new issues raised in the written comments filed in Docket No. 11-12-07 and well as to consider whether its June 1, 2011 Decision was in error and should be rescinded, reversed or altered for any of these reasons. The reopened docket is hereby designated as 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 Public Utilities Regulatory Authority – Review of New Comments.

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This Decision is adopted by the following Directors:

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Kevin M. DelGobbo

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John W. Betkoski III

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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.

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

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Date