

DF 98-196

MONTAUP ELECTRIC COMPANY, INC.

**Petition to Transfer Interest in the
Seabrook Nuclear Generating Station**

Order Granting Confidential Treatment and Protective Order

O R D E R N O. 23,279

August 9, 1999

On November 5, 1998, Montaup Electric Company, Inc. (Montaup) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of the Transfer of its Interest in Seabrook Station under RSA 374:30. See, RSA 374-A. Montaup is a Massachusetts corporation wholly owned by Eastern Edison Company, which in turn is wholly owned by Eastern Utilities Associates (EUA), a Massachusetts business trust and a registered public utility holding company under the Public Utility Holding Company Act of 1935. Montaup is EUA's power supply subsidiary, and it generates or purchases virtually all of the electric power needed to serve the customers of EUA's retail distribution subsidiaries in Massachusetts and Rhode Island.

Montaup owns an undivided 2.89989% interest in Seabrook and a corresponding entitlement to 2.89989% of the power produced at the facility. Other than its ownership interest in Seabrook, Montaup owns no other utility property in New Hampshire, nor does it conduct any operations in this state as an electric utility or otherwise. Under a June 24, 1998 Asset Purchase Agreement, Montaup agreed to sell its Seabrook interest to Great Bay Power

Corporation (Great Bay). Great Bay assigned its rights under the Asset Purchase Agreement to its affiliate Little Bay Power Corporation (Little Bay) on August 28, 1998.

On February 8, 1999, representatives of North Atlantic Energy Service Corporation (NAESC) met with the Commission Staff (Staff) in the context of Staff's investigation of the transfer of Montaup's ownership share to Little Bay. Staff requested projected future operating and capital expense information for which Connecticut Light and Power (CL&P) and Public Service Company of New Hampshire (PSNH) requested protection. This information had been requested because if Little Bay was unable to meet its financial obligations in the future, it could implicate the potential exposure of other New Hampshire companies and their ratepayers for Seabrook decommissioning and operating expenses. The information requested by Staff is contained in confidential costs and projections prepared by NAESC for the joint owners of the Seabrook Station.

In the Motion CL&P and PSNH aver that the information requested is sensitive confidential commercial and financial information that would cause great harm if it were released to potential bidders on the station's output and ownership shares. If bidders had such information, CL&P and PSNH might be unable to maximize the value of station output and might harm future competitive bidding for CL&P's and PSNH's ownership shares. CL&P and PSNH also aver that the information is not readily available

to competitors. Thus, CL&P and PSNH asserted the information is exempt from disclosure under RSA 91-A:5,IV and N. H. Admin. R., Puc 204.06, because it includes competitively sensitive data.

NAESC provided the requested information in its entirety to Commission Staff and the Office of the Consumer Advocate (OCA) pursuant to Puc 204.06. All the other parties are Joint Owners and already have access to this confidential material. Montaup and Little Bay consented to the Motion and no other parties objected.

Pursuant to RSA 91-A, the Right-to-Know Law, all government meetings and records shall be open and available to the public unless they fall within a narrow set of exemptions set forth at RSA 91-A:5. See generally, Union Leader Corporation v. New Hampshire Housing Authority, 142 N.H. 540 (1997). RSA 91-A:5,IV provides that records pertaining to "confidential, commercial, or financial information" are exempt from the general provisions of the Right-to-Know Law that would otherwise subject such information to disclosure. We believe the subject cost information falls within the definition of commercial or financial information addressed by RSA 91-A:5, IV.

The New Hampshire Supreme Court has held, however, that information that falls into one of these categories is not, per se, exempt from disclosure. Union Leader Corp., 142 N.H. 540, 553. Rather, the Court has held that the negative impact of disclosure of the "commercial or financial interest must be

balanced against the public's interest in disclosure." Id.; Accord, Re Public Service Company of New Hampshire, Order No. 23,090 (December 21, 1998); Re New England Telephone Company (Auditel), 80 NHPUC 437 (1995); Re Bell Atlantic, Order No. 22,851 (February 17, 1998); Re EnergyNorth Natural Gas, Inc., Order No. 22,859 (February 24, 1998).

Applying this balancing test to the case at hand, we conclude that CL&P and PSNH have made a prima facie showing that the potential competitive harm to CL&P and PSNH outweighs the public's interest in disclosure. Thus, the motion will be granted subject to further review upon a request by the public to review the material pursuant to RSA 91-A.

Based upon the foregoing, it is hereby

ORDERED, that CL&P's and PSNH's Motion for Confidential treatment and a protective order is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary