

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2008-01

Joint Application of Newington Energy, LLC (“NEL”) and North American Energy Alliance, LLC (“NAEA”) for Approval of Transfer of Membership Interests in NEL (“Joint Application”)

Decision and Order Approving Transfer

Appearances:

Donald J. Pfundstein, Esq., Gallagher, Callahan & Gartrell for Newington Energy, LLC; Barry Needleman, Esq., McLane, Graf, Raulerson & Middleton for NAEA; and Michael J. Iacopino, Esq., Brennan, Caron, Lenehan & Iacopino for the Committee.

INTRODUCTION

In this Joint Application, Newington Energy, LLC (“NEL”) and North American Energy Alliance, LLC (“NAEA”), (Joint Applicants) seek approval from the Site Evaluation Committee (Committee) to transfer the membership interests in NEL to NAEA. NEL owns and operates a certificated 525 MW combined-cycle, dual fuel merchant electric generation facility in Newington, New Hampshire. The facility includes the following: 1) two GE 7FA combustion turbines; 2) two heat recovery steam generators with supplemental firing; 3) a steam turbine in combined-cycle configuration; 4) a water supply pipeline connecting the facility to the substation at Public Service of New Hampshire (“PSNH”) Newington Power Station; 5) a natural gas pipeline running from the Portland Natural Gas Transmission System and Maritimes Northeast interconnection point to the facility; 6) an oil transfer pipeline which transmits the alternate diesel oil fuel to the facility; 7) an above-ground diesel fuel storage tank. (“Facility”)

The Project is subject to the terms and conditions of a Certificate of Site and Facility issued by the Committee in SEC Docket No. 98-01 (Certificate). The conditions to the Certificate require Committee approval prior to a change in ownership. *See* Certificate, General Condition No. 6, Attachment A. Similarly, R.S.A. 162-H: 5, I, requires Committee approval before a transfer or assignment of a certificate to any other person or entity.

HISTORY OF NEWINGTON ENERGY, LLC

On July 2, 1998, NEL submitted an application with the Committee for approval to construct and operate the Facility. After complying with the procedural requirements of R.S.A. 162-H, including public informational and adjudicatory hearings, the

Committee issued the Certificate of Site and Facility (Certificate) on May 25, 1999. On January 24, 2001, the Committee authorized NEL to construct a 345kV overhead transmission line. This Order was subsequently revised, changing the route and alignment of said line by Order dated April 17, 2001. By Decision and Order dated June 29, 2001, the Committee authorized construction of one above ground storage tank for back-up fuel storage, where construction of two tanks was originally authorized.

Construction of the facility commenced on or about April 2000 and was substantially complete by September 25, 2002. The Project commenced commercial operation in November 2002. NEL has maintained a reasonable environmental compliance record since it commenced commercial operation. *See*, Data Response, No. 2.¹

THE PROPOSED TRANSACTION

The Joint Application proposes a transfer of the ownership interest in NEL, a wholly-owned subsidiary of CED/SCS Newington, LLC, a Delaware limited liability company. CED/SCS Newington, LLC, is a wholly-owned subsidiary of Consolidated Edison, Inc. (“Con Ed”). NAEA is a wholly-owned subsidiary of North American Energy Alliance Holdings, LLC, (NAEAH), a newly formed Delaware limited liability company. NAEA was originally owned by two investment companies, All Capital North American Energy Holdings, LLC (All Capital) who owned 37.55% and Industry Funds Management (IFM) who owned 62.45%. *See*, Original Joint Application, p. 2-4². On or about February 28, 2008, All Capital transferred its interest in NAEA to IFM. IFM currently owns 100% of NAEA and NAEA. *See*, Revised Joint Application, p. 2.

IFM is an investment management company ultimately owned by forty (40) Australian not-for-profit pension funds. IFM investments include infrastructure, private debt, private equity and specialized property. IFM maintains total investments valued in excess of \$12 billion. The division on infrastructure was established in 2004. IFM has infrastructure investment valued in excess of \$5 billion and has invested \$1.9 billion in six assets in the United States, the United Kingdom and Europe. The United States investments include minority interests in Colonial Pipeline (refined petroleum) in Alpharetta, Georgia and the Duquesne Light Holdings (supply, transmission and distribution of electricity) in Pittsburgh, Pennsylvania. *See*, Revised Joint Application, p. 3-4; Revised Joint Application, Exhibit A.

On December 10, 2007, Con Ed announced that CED and CED/SCS had entered into purchase and sale agreements to sell their ownership interests in certain entities owning power generation properties, amounting to approximately 1,706 megawatts, to

¹ At a hearing on February 11, 2008, the Committee made a number of data requests to the Joint Applicants. The Joint Applicants filed responses on February 28, 2008. The responses will be referenced as: Data Response No. _____.

² The Original Joint Application was filed on January 14, 2008. The Original Joint Application will be referenced as: Original Joint Application, p. _____. A Revised Joint Application was filed on March 12, 2008. The Revised Joint Application will be referenced as: Revised Joint Application, p. _____.

NAEA (the “Transaction”). As part of the Transaction, NAEA will purchase 100% ownership interests in these entities, including NEL, for a total purchase price of approximately \$1.4 billion. The Facility in Newington is one of a total of 29 individual generator units subject to the sale, located in 11 different sites in Massachusetts, New Hampshire, New Jersey and Maryland. *See*, Revised Joint Application, p. 2. The purchase price allocated to NEL is \$736 million plus or minus various closing adjustments. *See*, Revised Joint Application, Exhibit E, p. 12.

NAEA will finance the overall transaction with a combination of equity investment and through a non-recourse debt facility totally underwritten by Barclay’s Capital, an investment bank headquartered in the United Kingdom. Originally, NAEA was to invest \$597 million in the entire transaction and finance the remaining \$880 million. However, at the hearing on April 18, 2008, IFM representative Michael Thompson testified that NAEA’s parent companies have increased the amount of the equity investment to \$750 million. The balance of the purchase price will be financed by Barclays, resulting in an approximate ratio of debt to equity of 50/50³. Mr. Thompson also testified that the financing is structured in such a way so that the debt/equity ratio is maintained across all of the assets to be acquired by NAEA.

PROCEDURAL HISTORY

On January 14, 2008, the Joint Applicants filed an application for approval of the transfer of the ownership interests in NEL to NAEA. On February 11, 2008, the Committee held a duly noticed meeting for the purpose of reviewing the Original Joint Application and establishing a procedural schedule. Accompanying the Original Joint Application was the Pre-filed Testimony of Michael Madia⁴. On February 11, 2008, the Committee issued a procedural schedule setting a pre-hearing conference for March 13, 2008, and deadline for the filing of intervention motions for March 7, 2008. The Committee also presented a number of data requests to the Joint Applicants.

On February 25, 2008, IFM announced that it had bought out the ownership interest of All Capital in the proposed transaction. On February 28, 2008, the Joint Applicants filed written responses to the Committee’s data requests. On March 12, 2008, the Joint Applicants filed a Revised Joint Application that informed the Committee of the change in ownership of NAEA and replaced certain exhibits in the Joint Application. The Joint Applicants filed the substitute Pre-filed Testimony of Dunia Wright and Michael Thompson on March 14, 2008.

A pre-hearing conference was held on March 13, 2008. The Joint Applicants were represented. No motions to intervene have been filed.

³ The Original Joint application and the Revised Joint Application asserted that NAEA would contribute \$597 million of equity towards the purchase. However, in the interim, the cost of the debt has risen and provided incentive for NAEA to finance more of the purchase through an equity investment. This information was provided to the Committee at the hearing held on April 18, 2008.

⁴ The Pre-filed Testimony will be referenced by the last name of the witness followed by the page number. E.g., Wright Pre-filed Testimony, p. ____.

On April 1, 2008, NAEA filed Data Response, No. 8, along with a motion seeking a protective order and confidentiality. The Chairman granted the motion on April 9, 2008.

On April 18, 2008, the Committee held a hearing on the merits of the Joint Revised Application. The Joint Applicants presented the Pre-filed Testimony of Michael Madia, Vice President and Chief Operating Officer of Con Ed Development and NEL; Pre-filed Testimony of Dunia Wright, Head of United States and Europe for IFM; and, Pre-filed testimony of Michael Thompson, Executive Director of Infrastructure for IFM. John McTeer, the newly hired CEO of NAEA and Matthew Picardi, Vice President, Shell Energy North America, also testified in response to specific questions from Committee members.

STANDARD OF REVIEW

The Joint Application proposes a transfer of the ownership interests in NEL. The construction of NEL's Newington facility was complete in September, 2002 and the Facility commenced commercial operation in November, 2002. Issues concerning siting, design, and environmental impacts were addressed by the Committee in the course of granting the Certificate to NEL. For the most part such issues are not part of the calculus in determining whether a certificate or ownership interest may be transferred to a new owner. When a change in ownership is proposed, the focus for the Committee shifts to an examination of the financial, technical and managerial capabilities of the proposed new owner. The proposed owner must to be able to demonstrate by a preponderance of the evidence that it possesses adequate financial, managerial and technical capabilities to assure that the conditions of the certificate are continuously met. Ongoing environmental compliance and the safe operation of the facility are of the utmost concern to the Committee and the State of New Hampshire. Thus, the Committee's focus in this Docket is on the financial, technical and managerial capability of the proposed new owner of NEL. *See*, RSA 162-H: 16, IV (a).

ANALYSIS AND FINDINGS

Financial Capability

NEL's electric generation facility in Newington is a large scale generation plant that requires significant financial support to operate in accordance with the terms and conditions of its Certificate. The record amply demonstrates that NAEA and NAEAH through the parent company IFM have ample financial resources to appropriately fund and manage NEL and the Facility in a manner consistent with the terms and condition of the Certificate. IFM is a large international company that manages more than twelve billion dollars in assets, five billion dollars of which are invested in infrastructure projects. *See*, Revised Joint Application, Exhibit A; Wright Pre-filed Testimony, p. 4. These projects include investments in facilities that are similar to NEL. *Id.*

IFM has filed, under a protective order, extracts of audited financial reports. *See*, Data Response 8. Those reports reveal that IFM enjoys significant revenue and profits against relatively low expenses. The balance sheet numbers demonstrate substantial owner's equity in IFM. The financial records demonstrate considerable growth in revenues, profit and equity. At the hearing on April 18, 2008, Dunia Wright represented to the Committee that IFM's financial status has become even stronger since the confidential financial reports were published.

As part of the larger NAEH transaction, IFM is investing equity in the amount of \$750 million. This amount has increased from the originally planned equity investment of \$597 million. *See*, Revised Joint Application, p. 11; Revised Joint Application, Exhibit E (Purchase and Sale Agreement) p. 28; Wright Pre-filed Testimony, p. 4. In addition IFM has secured the balance of the transaction price through financing fully underwritten by Barclay's Capital in order to fund the overall transaction. *See*, Revised Joint Application, p. 12; Revised Joint Application Exhibit E (Purchase and Sale Agreement), p. 28. Wright Pre-Filed Testimony, p. 4. Barclay's is also underwriting a debt facility for working capital and operation of the NAEAH power generation facilities. *See*, Revised Joint Application, p. 12; Wright Pre-Filed testimony, p. 4; Data Response, 5 (Confidential) (Barclay's Capital commitment letter.) The working capital facility consists of a letter of credit in the amount of \$120 million and a revolving loan of \$30 million.

On April 18, 2008, Mr. Thompson provided additional information concerning the transaction to the Committee. He testified that the letter of credit will be used to secure existing contracts as required by various vendors to NAEA. Mr. Thompson does not expect NAEA to use the revolving credit line to any appreciable degree. Mr. Thompson also advised that he expected that NAEA would receive an investment grade credit rating. Mr. Thompson also advised that the Barclay's financing was likely to result in an interest rate of 350 to 400 basis points above the prime rate.

The Committee recognizes that, as is common in the industry, the financing for NAEA in this transaction is through a non-recourse vehicle. In non-recourse situations the Committee must assure that the entity that actually owns the energy facility will be financially stable and capable of operating within the limits terms and conditions of the underlying certificate of site and facility. In this case IFM is making a substantial investment of its own capital in the NAEA transaction. In addition NAEA has qualified for substantial debt financing and working capital financing by a major international investment bank. It appears that IFM has negotiated a reasonable interest rate for the financed portion of the transaction that will be carried by NAEA. IFM has also improved the debt to equity ratio for the transaction. According to Mr. Thompson, IFM has developed long term cash flow projections that justify an expectation of an investment grade credit rating for NAEA⁵. NAEA has also taken steps to protect against cost fluctuations in the fuel markets by choosing to operate the facility pursuant to tolling agreements that decrease NAEA's exposure to such fluctuations. The Committee finds

⁵ At the hearing on April 18, 2008, Mr. Thompson testified that IFM has met with various rating agencies, has presented long term cash flow and expects that NAEA will receive a credit rating of BBB- to BB.

that NAEA through its parent companies has adequate financial capability to assure the continued operation of NEL and its facility in Newington in compliance with the terms and conditions of the Certificate of Site and Facility issued in SEC Docket No. 98-01.

Managerial and Technical Capability

NAEA has also demonstrated by a preponderance of evidence that it does possess adequate managerial and technical capabilities to assure the continued operation of NEL and the Facility in compliance with the terms and conditions of the Certificate.

The General Electric Operations and Maintenance Contract

Since the Facility began commercial operation it has been operated and managed on a day to day basis by General Electric (GE) under the terms of an Operations and Maintenance Contract (O&M). *See*, Revised Joint Application, p. 6, 13; Revised Joint Application, Exhibit D (O&M contract); Madia Pre-filed Testimony, p. 6. NAEA intends to maintain the O&M with GE. *Id.* Under the terms of the O&M, GE is responsible for the day to day operation of the Facility including but not limited to the following areas of service:

- a. Maintain the work force at the facility.
- b. Provide environmental training.
- c. Provide safety training.
- d. Develop the production plan each year.
- e. Assist NEL with warranty administration.
- f. Maintain a computerized operations and maintenance management system.
- g. Periodic operational tests and checks.
- h. Maintain accurate operational records.
- i. Accept and process fuel supplied by NEL.
- j. Routine maintenance of facility including all scheduling.

See, Revised Joint Application, Exhibit D (O&M). The agreement between GE and NEL has a term of twenty (20) years. *Id.* The Joint Applicants represent that NAEA intends to maintain the O&M between GE and NEL. *See*, Revised Joint Application, p. 6, 13; Thompson Pre-filed Testimony, p. 5. GE is an extremely experienced operator of power generating facilities. There will be a continuity of operation under the agreement. The O&M with GE satisfies the Committee that the facility will continue to operate successfully on a day to day basis.

IFM's Similar Energy and Infrastructure Investments

NAEA's parent company, IFM has a very broad investment portfolio. A good deal of that portfolio is invested in infrastructure facilities including airports, public road systems, public housing and buildings, telecommunications and the distribution of public water supply. *See*, Revised Joint Application, Exhibit A. IFM is also heavily invested in

energy projects. IFM and its subsidiary companies are invested in both electricity generation and distribution. IFM's Australian affiliate, IFM Australian Infrastructure, invests approximately 42% of its assets in the generation of electricity. Revised Joint Application Exhibit A.

IFM's significant investment in energy production and distribution include a 28% ownership share of Ecogen Energy (EE). EE owns two facilities in Victoria, Australia: a 500 MW intermediate thermal plant and a 480 MW open cycle gas turbine plant. *See*, Revised Application, Exhibit A; Thompson Pre-filed Testimony, p. 3. These facilities are similar in size to the NEL facility in Newington. IFM through its subsidiaries maintains a 34 % ownership interest in Dalkia, a French company that distributes heat and steam as well as electrical generation in Poland. Dalkia has total capacity of 2,560 MW thermal and 487 MW electrical. Dalkia operates three combined heat and power plants producing heat and electricity on a co-generation basis. *See*, Revised Joint Application, Exhibit A; Thompson Pre-filed Testimony, p. 3.

IFM also owns a 100% interest in Pacific Hydro. Pacific Hydro owns 1800 MW of wind and hydroelectric facilities in Australia, Asia-Pacific and Latin America. *See*, Revised Joint Application Exhibit A; Thompson Pre-Filed Testimony, p. 3. IFM also owns shareholder interests in Colonial Pipeline and Duquesne Light. *See*, Revised Joint Application Exhibit A; Thompson Pre-Filed Testimony, p. 3.

NAEA identifies Pacific Hydro as an example of the management model that will be implemented in the operation of NEL. NAEA has undertaken a search for suitable candidates for its Board of Directors. NAEA indicates that all Board Members will be independent directors who are not employed by IFM or any of its affiliates. *See*, Revised Joint Application, p. 5. Similarly NAEA is in the process of searching for a highly qualified and capable management team. *See*, Revised Joint Application, p. 6. NAEA will also employ an asset management consultant such as Competitive Power Ventures, Inc. (CPV) to provide advice and resources to the NAEA Board and management team. *See*, Revised Joint Application, p. 6; Thompson Pre-filed Testimony, p. 4.

IFM's successful investment in assets similar to NEL and its governance plan for NAEA demonstrate substantial technical and managerial capabilities.

Additional Resources Available to NAEA

As part of the overall transaction NAEA will acquire from Consolidated Edison, a subsidiary company known as CED OpCo. CED OpCo operates and maintains three of the 29 generating units that NAEA is purchasing from Consolidated Edison. CED OpCo has thirty five (35) employees who are experienced in the day to day operation and maintenance of power plants. *See*, Revised Joint Application, p. 13; Data Response, No. 6; Thompson Pre-filed Testimony, p. 5. Similarly, as part of the larger transaction NAEA is purchasing a Consolidated Edison electric power generating facility in West Springfield, Massachusetts (CEEMI). CEEMI has thirty three (33) employees. CED OpCo and CEEMI and their employees are available to assist when necessary in the operation and management of NEL and will periodically meet with GE to discuss overall plant management issues. *See*, Revised Joint Application, p. 13 -14; Data Response, No. 6; Thompson Pre-filed Testimony, p. 6.

The ability to divert CED OpCo and CEEMI resources and employees will contribute to the ability of NAEA to manage and operate NEL on a day to day basis and in the event of emergency.

NAEA has also undertaken to recruit previous CED managers and key employees to key positions within NAEA. For instance, John McTear, formerly employed by CED, now serves as the Chief Executive Officer for NAEA. This continuity of experience and executive leadership should assure that NAEA will maintain adequate managerial and technical capability to operate NEL and the Newington facility within the terms and conditions of the Certificate.

IFM's Environmental Compliance History

Environmental compliance is an important factor in the operation and management of an electric generating facility. A poor environmental record may indicate that a company does not possess adequate technical or managerial skills to comply with terms and conditions of a Certificate. In response to a request from the Committee, NAEA has provided a summary of IFM subsidiaries' environmental compliance histories. *See, Data Response 7.*

In response to this request the Joint Applicants submitted a document summarizing the environmental record of Ecogen Energy Pty Ltd (EE) and its two facilities: Newport and Jeeralang. The Joint Applicants also provided information concerning the French company, Dalkia that produces heat, steam and electricity in Poland. The Response indicates that Dalkia has been in compliance at all times with its integrated environmental permit in Poland. *See, Data Response 7.*

The Response also indicates that EE's power stations have each had a handful of environmental incidents over the years primarily involving minor air or water permit exceedance which were reported to the local authority. *See, Data Response 7.*

Between 2002 and 2007, six minor air exceedances and 19 minor water exceedances were reported at the Newport facility. Over the same period of time there were a total of nine environmental "incidents" (all of which occurred in 2003 and 2004.) These incidents involved brief periods of smoke emission, nitrate exceedance in water (5) or noise complaints (1). *See, Data Response, 7.*

Between 2003 and 2007, no external environmental incidents were reported at the Jeeralang facility. However, the facility has been continuously dealing with PCB contaminated oil draining from bushings and has instituted a program for the mitigation of such contamination and replacement of bushings. *See, Data Response 7.*

Finally, at the hearing on April 18, 2008, Michael Thompson reported, that after researching and inquiring from Pacific Hydro management, that Pacific Hydro has continuously operated within the terms of its various existing environmental permits.

The record reveals that IFM subsidiaries reasonably addressed environmental issues at other plants. This supports NAEA's claim that it has adequate managerial and technical

capability to operate and maintain the NEL plant in reasonable compliance with the terms and conditions of the Certificate.

CONCLUSION

The Joint Applicants have established by a preponderance of evidence that NAEA has adequate financial, managerial and technical capabilities to assure the continued funding, management and operation of NEL in continuing compliance with all of the terms and conditions of the Certificate of Site and Facility issued to NEL in Docket No. 98-01. It should be noted that this Order does not change or modify any of the terms and conditions of the Certificate. The Committee maintains the authority to monitor and enforce the terms and conditions of the Certificate. RSA 162-H: 4, I. Any future changes in ownership, or attempts to transfer the Certificate itself, are subject to the approval of the Committee. RSA 162-H: 5.

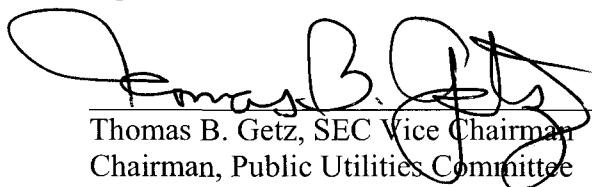
ORDER

The Joint Application is **GRANTED** and the Joint Applicants are hereby authorized to transfer all of the equity interest in NEL to NAEA. All other terms and conditions of the Certificate of Site and Facility in Docket No. 98-01, Application of Newington Energy, LLC, remain in full force and effect.

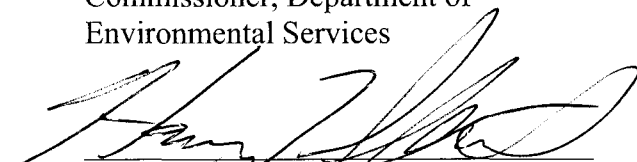
By Order of the Energy Facilities Site Evaluation Committee of New Hampshire this 18th day of April, 2008, at Concord, New Hampshire.



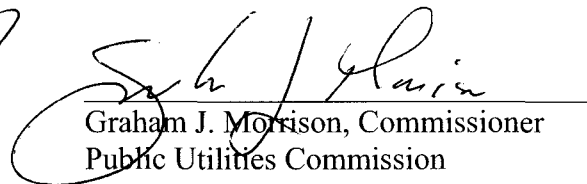
Thomas S. Burack, SEC Chairman
Commissioner, Department of
Environmental Services



Thomas B. Getz, SEC Vice Chairman
Chairman, Public Utilities Committee



Harry T. Stewart, Director
Water Division, Department of
Environmental Services



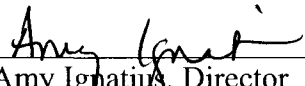
Graham J. Morrison, Commissioner
Public Utilities Commission




Robert Scott, Director
Air Resources Division
Dept. Of Environmental Services



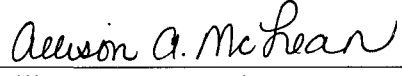
Randall Knepper, Staff Engineer
Public Utilities Commission



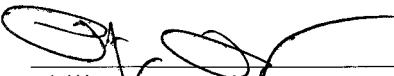
Amy Ignatius, Director
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