



# OLR RESEARCH REPORT

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2012-R-0035

## **PUBLIC UTILITIES REGULATORY AUTHORITY DECISION ON NU/NSTAR MERGER**

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You asked for a summary of the January 4, 2012 Public Utilities Regulatory Authority (PURA) decision on the proposed merger of Northeast Utilities (NU) and NSTAR. NU is a utility holding company whose subsidiaries include Connecticut Light and Power (CL&P) and Yankee Gas Services. NSTAR is the holding company for electric and gas companies in Massachusetts. The decision is available at PURA's website, [www.dpuc.state.ct.us](http://www.dpuc.state.ct.us). This report discusses the decision and the procedural history leading up to it. It uses PURA to refer to the agency throughout, which was called the Public Utilities Control Authority before 2011.

### **INITIAL DECISION**

On December 3, 2010, the Office of Consumer Counsel (OCC) filed a petition for declaratory ruling, requesting that PURA rule that the statutes (CGS §§ [16-11](#), [16-43](#), and [16-47](#)) require its approval of the proposed NU-NSTAR merger. These statutes deal with (1) PURA's responsibilities regarding the safety and utility employees in connection with utility company operations; (2) the merger, sale, and financing of utility companies; and (3) relationships between utility companies and their holding companies and the creation of new holding companies.

On June 1, 2011, PURA issued a final decision in docket 10-12-05 concluding that, based upon its information and analysis at the time, it lacked jurisdiction over the merger for the following reasons:

1. The merger will not result in a new or combined holding company. While NSTAR's Massachusetts electric and gas companies will come under NU's control, NU will continue to control its two Connecticut subsidiaries.
2. The merger will not result in any changes to the ownership, corporate structure, or subsidiary relationships of CL&P and Yankee, both of which will continue as separate corporations in their current form as wholly-owned subsidiaries of NU.
3. Neither Connecticut utility within the purview of the merger statute (CGS § [16-43](#)) is engaging in any transaction that would trigger review by PURA: neither is merging, consolidating, or making common stock with any other company.

## **COURT APPEAL**

On June 30, 2011, OCC appealed the decision. The NRG Companies (power plant owners) and the New England Power Generators Association (a trade group) appealed separately. The Superior Court issued an order on November 18, 2011 indicating that the NRG Companies had failed to exhaust their administrative remedies with PURA prior to filing the appeal and suggested that the companies seek an administrative ruling before pursuing an appeal.

On December 6, 2011, the NRG companies filed a motion to stay its court appeal, and those of OCC and the New England Power Generators Association, pending its filing a petition with PURA for a declaratory ruling on the applicability of the law to the specific facts of the merger and the PURA's ruling on the petition. The NRG companies filed this petition with PURA on December 9, 2011 (docket 11-12-07). PURA sought written comments on this petition, which were filed by the NRG companies, NU, OCC, the attorney general, the New England Power Generators Association, the Conservation Law Foundation, and other interested persons.

## **REOPENING OF INITIAL DECISION**

CGS § [16-9](#) allows PURA to rescind, reverse, or alter any of its decisions or orders for cause. In its January 4, 2012 decision, PURA found two grounds that provide cause to reopen its initial decision in

docket 10-12-05. The first was that OCC raised new relevant issues in its comments. OCC presented new information that became available subsequent to the June 1, 2011 decision relating to possible merger terms and conditions that could be imposed as a result of the regulatory review of the merger in Massachusetts. (PURA's sister agency in Massachusetts is reviewing the merger because it would result in a change of who controls NSTAR's subsidiaries.)

The second ground was the "helpful clarifications" PURA received in response to its request for comments with respect to several specific issues relating to its jurisdiction to review the proposed merger. For example, the attorney general provided insights with respect to statutory interpretation in its comments. For purposes of its decision to reopen, PURA found that the comments provided further information that helped PURA in its analysis.

Based on this analysis, PURA found that there was cause, as required by CGS § [16-9](#) to re-open docket 10-12-05 to (1) consider the new information presented by OCC in its comments regarding the need for PURA to review the proposed merger's terms and conditions, including the implementation plan for these terms and conditions, for compliance with the requirements of CGS § [16-47\(b\) and \(d\)](#), which deal with PURA approval of actions that result in change of control over utility companies and (2) reconsider the initial ruling in its entirety with respect to the application of CGS §§ [16-11](#), [16-43](#), and [16-47](#) to the particular facts of the proposed merger.

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