MEMORANDUM FROM THE LAW OFFICES OF
HALLORAN & SAGE LLP
One Goodwin Square, 225 Asylum Street
Hartford, Connecticut 06103

TO : John Clark
FROM : Peter Boucher
DATE : 12/23/02
RE : CRRA Electric Supplier License Status

CRRA filed its application ("Application") for an Electric Supplier License ("License") with the Department of Public Utility Control ("DPUC") on May 15, 2002. In the Application, CRRA advised the DPUC that in response to the Enron bankruptcy, Governor John Rowland had established an Advisory Panel to review the transactions between CRRA and Enron, and to make recommendations as to how the adverse impacts of those transactions could be mitigated. The Application referenced the report of that Advisory Panel, which specifically recommended that CRRA seek a License to sell electricity formerly sold to Enron, to the State of Connecticut. The Application further cited Public Act 02-46, entitled "An Act Concerning The Connecticut Resources Recovery Authority And Prohibiting Quasi-Public and State Agencies From Retaining Lobbyists" (the "Act"), and more specifically Section 5 of the Act, which expressly authorized CRRA to act as an electric supplier, and further authorized CRRA " . . .to enter into contracts for the purchase and sale of electricity and electric generation services, provided such contracts are solely for the purpose of ensuring the provision of safe and reliable electric service and protecting the position of . . . [CRRA] with respect to capacity and price." It was critically important to CRRA (and to the towns supporting its Mid Connecticut Project), that any net revenues which could be derived from CRRA's sale of electricity and electric generation services in its capacity as a licensed electric supplier, become available to CRRA at the earliest possible time.

Notwithstanding CRRA's stated need for early favorable action by the DPUC on the Application (and the Advisory Panel's and the legislature's expressed support for such action), the DPUC suspended its review of the Application on June 18, 2002 and did not resume those proceedings until September 30, 2002. The DPUC suspended those proceedings primarily on the basis that legal uncertainties surrounded the timing and circumstances under which CRRA would have access to electricity generated by the South Meadows Facility, as a result of the pending Enron bankruptcy.

In a Decision dated November 6, 2002 ("Decision"; attached as Exhibit 1), the DPUC expressly found that, with vendor contracts CRRA was prepared to execute to obtain technical support of its electric supplier activities, CRRA had ". . .adequate technical, managerial, and financial capabilities, as required under Conn. Gen. Stat. Section 16-245, to supply electric generation services to customers in Connecticut." However, notwithstanding its express finding that CRRA met the statutory criteria to receive a License, the DPUC nevertheless conditioned its approval thereof upon an unprecedented requirement that "CRRA must obtain [DPUC] approval if it intends to sell

power from the South Meadows Facility…." Moreover, in a footnote to the Decision (Fn. 2, p.4), the DPUC seemed to imply that it would not approve CRRA's sale of electricity from that facility. In response, CRRA requested (in a "Motion"; attached as Exhibit 2) that the DPUC reconsider the Decision and remove the aforementioned condition, on the basis that the DPUC lacks authority to regulate access to specific sources of supply by licensed electric suppliers, and that the condition on CRRA's License unconstitutionally impaired its existing contracts concerning the sale of electricity from the South Meadows Facility, which permitted the termination of those contracts under certain circumstances.

In a second Decision dated December 18, 2002, (attached as Exhibit 3), the DPUC denied CRRA's Motion. Faced with the prospect that the DPUC could potentially block any retail sale of electricity generated at the South Meadows Facility until 2012 (when the contracts for the sale of that electricity would expire by their terms),and thereby prevent CRRA from achieving the incremental revenues envisioned by the Advisory Panel and the legislature in the Act, CRRA filed a judicial appeal ("Appeal"; attached as Exhibit 4) of the Decision on December 19, 2002.

376182.1(HSFP)

Exhibit 1
DPUC Decision to Grant
Electric Supplier License

STATE OF CONNECTICUT

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

DOCKET NO. 02-05-13 APPLICATION OF THE CONNECTICUT RESOURCES RECOVERY AUTHORITY FOR AN ELECTRIC SUPPLIER LICENSE

November 6, 2002

By the following Commissioners:

John W. Betkoski, III
Donald W. Downes
Jack R. Goldberg

DECISION

DECISION

I. INTRODUCTION

A. SUMMARY

In this Decision, the Department of Public Utility Control finds, subject to certain conditions, that The Connecticut Resources Recovery Authority meets the technical, financial and managerial capability to operate as an Electric Supplier and grants it an Electric Supplier License.

B. BACKGROUND OF THE PROCEEDING

By application received on May 15, 2002 (Application) filed pursuant to §16-245 of the General Statutes of Connecticut (Conn. Gen. Stat.) and §§16-245-1 to 16-245-6, inclusive, of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.). The Connecticut Resources Recovery Authority (CRRA or Company) requested the Department of Public Utility Control's (Department) approval for a license to operate as an Electric Supplier in Connecticut.

C. CONDUCT OF THE PROCEEDING

By Notice of Hearing dated June 4, 2002, and pursuant to Conn. Gen. Stat. § 16-245, a public hearing was scheduled for June 12, 2002, at the Department's offices, Ten Franklin Square, New Britain, Connecticut 06051. The hearing was held and continued to June 20, 2002. That hearing was cancelled and rescheduled to September 30, 2002. That hearing was held and the docket was closed by notice dated October 22, 2002.

D. PARTIES AND INTERVENORS

The Department recognized The Connecticut Resources Recovery Authority, 100 Constitution Plaza, Hartford, Connecticut, 06103-7722; and the Office of Consumer Counsel (OCC), Ten Franklin Square, New Britain, Connecticut 06051, as Parties to this proceeding. The Connecticut Light and Power Company was admitted as an Intervenor.

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II. DESCRIPTION OF APPLICANT

A. COMPANY STRUCTURE

CRRA was created in 1973 by an act of the Connecticut Legislature and is a public instrumentality and political subdivision of the State of Connecticut. CRRA has 49 employees[1] and is responsible for implementing solid waste disposal, recycling and resources recovery systems, facilities and services. Application Cover Letter and Response to Interrogatory EL-3.

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[1] As of June 6, 2002. Pursuant to Conn. Gen. Stat. § 22a-265(1), CRRA may "[e]mploy a staff of not to exceed seventy personnel. . . . "

III. DEPARTMENT ANALYSIS

A. TECHNICAL CAPABILITY

CRRA proposes to offer electric generation services to a single governmental customer and/or another single customer with a large aggregated load in Connecticut. 6/10/02 Letter, Item B-1. CRRA wholly owns the South Meadow Electricity Generating Facility (South Meadow Facility). The South Meadow Facility generated power at an annual rate of 53.7 megawatts of electrical energy (net of in-plant usage) in fiscal year 2001. CRRA is exploring its ability to utilize energy from this facility together with an integrated portfolio of supply contracts. Application Cover Letter. The energy that CRRA intends to utilize from its South Meadow Facility is currently the subject of a complex transaction with Enron, with the actual energy being purchased by CL&P (Enron Power). CRRA agreed that its license be subject to any conditions regarding the supply arrangements. Tr. 6/12/02, p. 25.

The OCC recommends that the Department deny, without prejudice, CRRA's application. OCC believes that the record fails to provide adequate evidence regarding CRRA's technical and managerial capability. OCC states that the unknown supply source, unknown EDI provider and the unknown day-to-day operator of the electric supplier license has marred the course of the instant docket and the investigation into CRRA's qualifications. OCC Brief, pp. 3-4.

Department analysis of CRRA's officers work experience indicate that they have the experience and training to operate and manage trash to energy generators which is CRRA's primary business. However, on its own, CRRA does not have the necessary technical capability to operate as an electric supplier in the complex developing energy market.

The record shows that CRRA intends on utilizing qualified vendors that have the resources and expertise necessary to successfully procure and deliver power, interface with electric distribution companies and provide customer service. Currently the Company has a technical support service agreement with PLM. PLM's experience includes consulting in electric power markets and providing regulatory assistance, resource planning, load aggregation services, power supply management, and cost of service and rate analysis service to over 175 clients. PLM is to evaluate the utilization of the output of the South Meadow Facility as part of a load aggregation scenario, including supply and demand requirements. Late Filed Exhibit Nos. 6 and 7 and Letter dated July 31, 2002.

CRRA has a Letter of Intent with Connecticut Municipal Electric Energy Cooperative (CMEEC). CMEEC is the publicly directed joint action supply agency formed by Connecticut's municipal electric utilities, and is responsible for financing, acquisition and construction of generating resources, and implementation of power supply contracts for the purpose of furnishing electricity to its members. Pursuant to electric energy purchase contracts and other resources secured by CMEEC, the municipal utilities distribute power at retail to over 66,000 customers in Connecticut.

CMEEC intends on providing support services to CRRA that include the management of sources of wholesale electricity, load management, and timing of deliveries of wholesale electricity. In addition, CMEEC intends to provide support services to CRRA with respect to CRRA becoming a NEPOOL participant. Late Filed Exhibit No. 8 and Letter dated July 31, 2002.

The Department finds that PLM and CMEEC have the technical capability to operate CRRA electric supplier functions. However, the Department will require CRRA to have all vendor contracts in place before it executes its first contract for the sale of electric generation services to any Connecticut customer. Vendor contracts are to include all the necessary power supply, management services, day-to-day operations of being a Connecticut Electric Supplier, including, but not limited to, EDI, bilateral supply agreements, ISO-NE balancing, ISO-Forward Market purchases, and contingency planning and risk management.

Contingent upon utilizing the foregoing support, the Department finds that CRRA has sufficiently demonstrated its technical capability, as required under Conn. Gen. Stat. §16-245, to operate as an Electric Supplier in Connecticut.

B. FINANCIAL CAPABILITY

CRRA has provided Comprehensive Annual Financial Reports for the fiscal years Ended June 30, 2000 and 2001. Application, Exhibit C-1, C-2 and C-3. Testimony indicates that CRRA's fiscal resources are not limited to its own revenues and its bonds are backed by a special capital reserve fund. If the funds are depleted, the State of Connecticut must replenish it from its general fund. Application, Exhibit C-5. Revenues generated by CRRA operations, primarily disposal fees, energy revenues and recycling revenues, provide the support of the CRRA and its operations on a self-sustaining basis. CRRA is authorized to issue bonds and notes to finance its activities, upon approval of the State Treasurer. Application, cover letter. In addition, the Company testified that an electric supplier budget shortfall could be covered by an increase in tipping fees. Tr. 06/12/02, p. 41.

The Department has reviewed the financial information and concludes that CRRA possesses adequate financial capability, as required under Conn. Gen. Stat. §16-245, to supply electric generation services.

C. MANAGERIAL CAPABILITY

The record shows that CRRA's management has experience in the start-up, operations, maintenance, finance, contract management and negotiations, and testing of waste-to-energy and other steam and power production facilities. Additional experience includes safety and environmental compliance of power plants and systems. Application, Exhibit E-2.

The Department believes that CRRA has the managerial capability to operate its trash to energy facility and manage the supplier functions that will require outside vendors. Contracts with PLM, CMEEC and other qualified vendors will aid CRRA in managing the day-to-day operations needed of an electric supplier. Conditioned upon

CRRA's utilizing the vendor contracts as represented, the Department finds that CRRA possesses the managerial capability, as required under Conn. Gen. Stat. §16-245, to supply electric generation services in Connecticut.

D. CUSTOMER SERVICE

The Department has reviewed CRRA's Standard Service Contract and Customer Service Plan that contains the Company's termination policies and customer service procedures and finds them to be exceptional. Application, Exhibits B-2 & B-3. The Department finds CRRA's customer service information to be acceptable. Response to Interrogatories CA-1 through CA-6, Late Filed Exhibit No. 2, Application, Exhibit D-7. Based on the foregoing, the Department finds that CRRA's proposed customer service policies and procedures should ensure that high quality customer services are provided to its Connecticut customers.

E. POWER SUPPLY

The Department will require CRRA to obtain approval for any transaction that will result in CRRA having access to the Enron Power. The Department notes that CRRA has correctly asserted in its Brief (page 10) that there is no statutory requirement that an applicant for a supplier license demonstrate committed electricity supply as a condition of licensure. This is a correct reading of Conn. Gen. Stat. §16-245(c)(1). The Department has never before required such a showing. However, CRRA, not the Department, has put the issue of supply into consideration. CRRA represented, at page 2 of its May 16, 2002 application as follows: "The South Meadows Electricity Generating Facility . . . is the only generating facility which CRRA plans to utilize as a source of owned generation in CRRA's capacity as an electric supplier." However, a third party corporation (Enron) designated by CRRA is already selling this exact electricity to CL&P. The Department cannot approve an entity to act as an electric supplier that has represented in its application that it intends to market electricity to which it has no contract right. It is for this reason, to the extent CRRA intends to act as an electric supplier using this capacity, that appropriate Department approval of CRRA's right to utilize this electricity must first be obtained. [2]

IV. FINDINGS OF FACT

1. The energy that CRRA intends to utilize from its South Meadow Facility is currently the subject of a complex transaction with Enron, with the actual energy being purchased by CL&P.

2. CRRA does not have the in-house technical capability to be an electric supplier.

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[2] CRRA notes in its brief (p. 5) that CL&P presently receives all of the electrical output from South Meadows. Although the CL&P-Enron Energy Purchase Agreement may not have to be amended prospectively, the Department still must approve any transaction that may upset in any way the ratepayer expectations approved in the Buydown Agreement between CL&P and CRRA. This Agreement and the expectations thereunder were approved and discussed by the Department in its January 31, 2001 Decision in Docket No. 99-06-27RE01, 83-07-12RE02 and 85-05-13RE02, Petition of CRRA for Declaratory Rulings Pertaining to the Mid-Connecticut Project - Changes to Agreement, et al.

3. CRRA intends on utilizing vendors (PLM, CMEEC or others) that have the resources and expertise necessary to successfully procure and deliver power, interface with electric distribution companies and provide customer service.

4. Currently the Company has a technical support services agreement with PLM. PLM's experience includes consulting in electric power markets and providing regulatory assistance, resource planning, load aggregation services, power supply management, and cost of service and rate analysis service to over 175 clients.

5. CRRA has a Letter of Intent with Connecticut Municipal Electric Energy Cooperative (CMEEC). CMEEC is the publicly directed joint action supply agency formed by Connecticut's municipal electric utilities, and is responsible for financing, acquisition and construction of generating resources, and implementation of power supply contracts for the purpose of furnishing electricity to its members. CMEEC would supply electric supplier support services to CRRA.

6. CRRA's fiscal resources are not limited to its own revenues and its bonds are backed by a special capital reserve fund. If the funds are depleted, the State of Connecticut must replenish it from its general fund.

7. CRRA's management has experience in the start-up, operations, maintenance, finance, contract management and negotiations, and testing of waste-to-energy and other steam and power production facilities. Additional experience includes safety and environmental compliance of power plants and systems.

V. CONCLUSION AND ORDERS

A. CONCLUSION

Contingent upon the Company having established vendor contracts as represented, the Department concludes that CRRA has adequate technical, managerial, and financial capabilities, as required under Conn. Gen. Stat. §16-245, to supply electric generation services to customers in Connecticut. Therefore, the Department hereby grants CRRA an electric supplier license subject to CRRA complying with the Orders in this Decision and all post-licensing requirements. CRRA must obtain Department approval if it intends to sell power from the South Meadow Facility now under contract with Enron.

B. ORDERS

1. CRRA will not be allowed to operate as an electric supplier utilizing the South Meadow Facility as an electricity source until the Department has approved access to that capacity. If CRRA does not utilize the South Meadow Facility as an electricity source, it does not need any further approvals from the Department.

2. Not less than 20 days before CRRA executes its first contract for the sale of electric generation services to any Connecticut customer, CRRA will be required to contract with qualified vendors to provide all the necessary power supply,

management services, day-to-day operations of being a Connecticut Electric Supplier, including, but not limited to, EDI, bilateral supply agreements, ISO-NE balancing, ISO-Forward Market purchases, and contingency planning and risk management. If CRRA does not use PLM or CMEEC, CRRA shall submit all vendor contracts and vendor qualifications to the Department for approval.

3. Not less than 20 days before CRRA executes its first contract for the sale of electric generation services to any Connecticut customer, CRRA will be required to provide documentation demonstrating that CRRA maintains security as required pursuant to section 16-245-4 of the Regulations of Connecticut State Agencies.

4. Pursuant to Conn. Gen. Stat. § 16-245p(a), an electric supplier is required to submit quarterly reports containing information on rates and any other information deemed relevant by the Department. CRRA shall file such quarterly reports not later than 30 days following the quarterly periods ending March 31, June 30, September 30, and December 31 of every year. Each quarterly report shall contain at minimum all information enumerated in subsection (b) of Conn. Gen. Stat. § 16-245p.

5. Not less than 20 days before CRRA executes its first contract for the sale of electric generation services to an end use customer in Connecticut, CRRA shall file with the Department an affidavit concerning CRRA's capability to exchange data with the electric distribution companies in accordance with Conn. Agencies Regs. § 16-245-3(b).

6. CRRA shall provide the Department with any changes to its customer service practices, procedures or policies in writing at least 10 business days prior to the effective date of such changes.

DOCKET NO. 02-05-13 APPLICATION OF THE CONNECTICUT RESOURCES RECOVERY AUTHORITY FOR AN ELECTRIC SUPPLIER LICENSE

This Decision is adopted by the following Commissioners:

John W. Betkoski, III

Donald W. Downes

Jack R. Goldberg

CERTIFICATE OF SERVICE

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

Nov. 7, 2002

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

Date

Exhibit 2
CRRA Motion to Reconsider

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

APPLICATION OF	**:**	**DOCKET NO. 02-05-13**
CONNECTICUT RESOURCES	**:**	
RECOVERY AUTHORITY FOR AN	**:**	
ELECTRIC SUPPLIER LICENSE	**:**	**November 21, 2002**

MOTION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to Conn. Gen. Stat. § 4-181a (a)(1)(A), the Connecticut Resources Recovery Authority ("CRRA"), hereby requests that the Department of Public Utility Control (the "Department" or the "DPUC") reconsider its decision (the "Decision") in the above-captioned proceeding, on the ground that errors of law should be corrected.

II. PORTIONS OF THE DECISION REQUIRING MODIFICATION

The Decision states in its Conclusion (at p. 5), that "CRRA must obtain Department approval if it intends to sell power from the South Meadow Facility now under contract with Enron." The Decision further provides in its Order No. 1 (the "Order") that "CRRA will not be allowed to operate as an electric supplier utilizing the South Meadow Facility as an electricity source ["South Meadows Electricity"] until the Department has approved access to that capacity." Decision at 5.

CRRA respectfully requests that the quoted statement from the Conclusion and the aforesaid Order (collectively, "the Supply Approval Language") be deleted from the Decision for the reasons set forth herein.

III. THE ERRORS OF LAW

A. The Supply Approval Language Impermissibly imposes an Additional Licensure Requirement Upon CRRA.

The statutory requirements for licensure as an electric supplier are set out in Conn. Gen. Stat. § 16-245(c)(1). Those requirements are that "… the [applicant] … demonstrate to the satisfaction of the department that. . . the person has the technical, managerial and financial capability to provide electric generation services. . . ."[1] The Decision expressly concludes (at p. 5) that CRRA meets those statutory licensure requirements. The Decision further acknowledges (at p. 4), that "… there is no statutory requirement that an applicant for a supplier license demonstrate committed electric supply as a condition of licensure." This being the case, CRRA respectfully asserts that there is manifestly no statutory requirement that an applicant secure Department approval of any specific "committed electric supply" as a condition of licensure, which is what the Supply Approval Language does in the Decision.

Pertinent Connecticut judicial precedent consistently holds that courts "…are constrained to read a statute as written. . . and … may not read into clearly expressed legislation provisions which do not find expression in its words. . . ." (Citations omitted; internal quotation marks omitted). October Twenty-Four, Inc. v. Planning and Zoning Commission of Plainville, 35 Conn. App. 599; 646 A.2d 926 (1994). In fact, the Department has recently expressly so refrained from administratively adding to the legally analogous statutory requirements applicable to applications for a partial exemption from the competitive transition assessment (the "Exemption") pursuant to Conn. Gen. Stat. § 16-19hh(c). See, Decision dated May 2, 2001 in Docket No. 00-12-

1 The statute contains other requirements not relevant to this discussion.

04 - Application of Bayer Pharmaceuticals For An Exemption From The Competitive Transition Assessment Associated With The Increased Load For Its Facility (the "Bayer Decision"), and Decision dated July 25, 2001 in Docket No. 01-02-15 - Application of Pharmaceutical Discovery Corporation For An Exemption From The Competitive Transition Assessment (the "CTA Decisions"). In the CTA Decisions, the Department strictly construed the relevant statutory criteria for the Exemption, limiting its analysis to whether the applicants in those proceedings met those criteria. More specifically, in the Bayer Decision, the Department rejected a proposed insertion of a requirement of financial need into Section 16-19hh(c) as a condition of eligibility for the Exemption, stating that "[t]he consideration of this issue and the making of such a finding would require the Department to 'read into' the statute language which does not exist for the purpose of...administering an intent that was not expressed. To do so would violate well settled rules of statutory construction against administrative agencies supplying statutory language that the legislature has chosen to omit." (Footnotes omitted). Bayer Decision at p. 4.

CRRA respectfully submits that the Department's insertion into Conn. Gen. Stat. § 16-245(c)(1) of an additional, extra-statutory licensure requirement, in the form of the Supply Approval Language, similarly violates this well settled rule of statutory construction, and that the Supply Approval Language should accordingly be deleted from the Decision.

B. The Supply Approval Language Impermissibly Impairs Lawful Contracts.

Pursuant to the express terms of existing contracts (the "Electricity Purchase Agreements" or "EPAs") among Enron Power Marketing Company ("Enron"), the

Connecticut Light and Power Company ("CL&P") and CRRA, CRRA is contractually permitted access to at least 250,000 mWh (and potentially all) of the South Meadows Electricity under certain circumstances expressly specified in those EPA's. As discussed herein those circumstances may take place shortly.

The South Meadows Electricity is purchased by CL&P under the EPAs as follows. Pursuant to the EPA executed by Enron and CL&P (the "Enron EPA"), Enron sells the first 250,000 mWh of the South Meadows Electricity (which Enron purchased from CRRA) to CL&P. Pursuant to the EPA executed by CRRA and CL&P (the "CRRA EPA"), CRRA then sells the balance of the South Meadows Electricity directly to CL&P.[2] Both the Enron EPA and the CRRA EPA were reviewed and approved by the Department collectively, as the "New EPA," in its Decision dated January 31, 2001, in Docket No. 99-06-27RE01, 83-07-12RE02, & 85-05-13RE02 (the "EPA Decision").[3]

Enron declared bankruptcy in December, 2001. Pursuant to Section 13(a)(iv) of the Enron EPA, the filing of a petition in bankruptcy by a party to the Enron EPA is an "Event of Default" upon which the Enron EPA automatically terminates, pursuant to Section 13(b) thereof. Therefore, upon Enron's filing of its bankruptcy petition, the Enron EPA is deemed terminated pursuant to its terms. However, the filing of Enron's bankruptcy petition has to date stayed any action by CL&P to terminate the Enron EPA.

On October 21, 2002 CL&P submitted a motion (the "Motion") to the Enron bankruptcy court (the "Bankruptcy Court"), requesting an order by the Bankruptcy Court

2 The "Enron EPA" and the "CRRA EPA" are sometimes collectively referred to herein as "the EPA's").

3 The EPA's were submitted to the Department in that proceeding as LFE-1 on January 23, 2001. For purpose of acting on this motion, CRRA requests that the Department take administrative notice herein of LFE-1.

compelling the Enron trustee to either assume or reject the Enron EPA.[4] Motion at 1. In the alternative, the Motion requests an order by the Bankruptcy Court modifying the automatic stay so as to allow CL&P to issue notice of termination of the Enron EPA to Enron. Motion at 1-2. The granting of either request by the Bankruptcy Court would result in the termination of the Enron EPA by CL&P.

Such termination of the Enron EPA by CL&P permits CRRA, pursuant to the express terms of the CRRA EPA, to determine whether to assume Enron's obligations under the Enron EPA. Section 11(c) of the CRRA EPA states that "[i]f CL&P elects to terminate the Enron EPA pursuant to Section 13 thereof, CRRA shall have the right to assume the obligations of [Enron] under the Enron EPA immediately prior to such termination and upon such assumption the Enron EPA shall continue in full force and effect. . . ".

However, if CRRA elects not to assume Enron's obligations under the Enron EPA; i.e., if CRRA declines to continue selling the first 250,000 mWh of the South Meadows Electricity to CL&P pursuant to the Enron EPA, CRRA is thereby contractually at liberty to sell, at a minimum, that portion of the South Meadows Electricity to any willing purchaser (at wholesale or retail).

Additionally, in the event that CRRA so elects not to assume Enron's obligations under the Enron EPA, the CRRA EPA permits CL&P to terminate the CRRA EPA. Section 11(c) of the CRRA EPA states that '[I]f CRRA does not assume the rights and

4 See, Motion of the Connecticut Light and Power Company for Entry of an Order Compelling Debtors to Assume or Reject a Certain Electricity Purchase Agreement Immediately or, in the Alternative, for Relief From the Automatic Stay to Issue Notice to Terminate the Agreement, In re: Enron Corp., et al., Debtors, Case No. 01-16034 (AJG). United States Bankruptcy Court Southern District of New York. A copy is attached as Appendix A.

obligations of [Enron] pursuant to the terms of this Section. . . and the Enron EPA is terminated, CL&P may also terminate this CRRA EPA." If CL&P so elects to terminate the CRRA EPA, then CRRA will no longer be under any contract obligation to sell any portion of the South Meadows Electricity to CL&P. Under those circumstances, CRRA is contractually at liberty to sell the entire output of the South Meadows Electricity to any willing purchaser.

As noted supra, the above sequence of events possibly leading to CRRA's access to, and sale of, the South Meadows Electricity is expressly authorized by the terms of the EPAs previously approved by the Department. CRRA notes that it executed the CRRA EPA in good faith reliance on the Department approvals thereof contained in the EPA Decision. The Supply Approval Language facially impairs CRRA's rights under those DPUC approved EPAs and to that extent constitutes an unconstitutional impairment of these contracts. See, e.g., Joseph Cece v. Felix Industries, Inc. 248 Conn. 457, 728 A.2d 505 (1999) at 248 Conn. 459, note 2 (citing U.S. CONST. Art. I, § 10, cl. 1, providing in relevant part: "No State shall. . . pass any . . . Law impairing the Obligation of Contracts. . . ").

CRRA notes that the Superior Court of Connecticut (the "Superior Court") has previously determined that an agency decision may not so impair a pre-existing contract. In City of Norwich v. Freedom of Information Commission, 1995 Conn. Super. LEXIS 56, the plaintiff-appellants ("Appellants") argued that a decision of the State Freedom of Information Commission (the "FOIC") requiring the Appellants to release certain records (the "Records"), violated the Appellants' constitutional and contract rights in a contract they had previously executed, requiring that the Records be kept

under seal for a period of fifty years.[5] 1995 Conn. Super. LEXIS 56, 5. The Superior Court agreed with the Appellants and overruled the FOIC.

In its analysis in City of Norwich, the Superior Court applied the three-part test enunciated by the United States Supreme Court (the "Supreme Court")in Energy Reserves Group, Inc., v. Kansas Power and Light Co., 459 U.S. 400 (1983), to determine whether the FOIC had impaired the Appellants' contract rights. That analysis requires an inquiry first, as to whether the state law at issue (or in this case, the agency decision), operates as a substantial impairment of a contractual relationship. If the state regulation constitutes a substantial impairment, the state must next identify a significant and legitimate public purpose behind the regulation. Once a legitimate public purpose has been identified, the final inquiry is whether the state's adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. 1995 Conn. Super LEXIS 56, 10, 11, citing 459 U.S. 400, 411-413. (Internal citations and quotation marks omitted). The Superior Court weighed the facts pursuant to the Supreme Court test and determined in that case that the FOIC decision was an unconstitutional infringement of the Appellants' contract rights. 1995 Conn. Super LEXIS 56, 12.

Here, the Supply Approval Language likewise fails the foregoing Supreme Court impairment test. Requiring CRRA to obtain prior Department approval of the exercise of CRRA's unqualified rights under a pre-existing contract (the CRRA EPA) facially

5 That case was an administrative appeal pursuant to Conn. Gen. Stat. § 4-183, which provides in pertinent part that a court shall affirm an agency decision unless the court finds, inter alia, that the substantial rights of the appellant have been prejudiced because the agency decision is "[i]n violation of constitutional or statutory provisions."

constitutes a "substantial impairment" of CRRA's contractual relations. While CRRA agrees that there maybe a "significant and legitimate public purpose" justifying the Department's efforts to oversee the implementation of the terms of the CRRA EPA, that public purpose has already been lawfully satisfied by the Department's *prior review and approval of those terms of the EPA's in the EPA Decision*. For that reason, the Supply Approval Language fails the third prong of the Supreme Court's impairment test. Because the Department has already reviewed and approved CRRA's contract rights in issue in its EPA Decision, requiring CRRA effectively to secure DPUC approval of the exercise of those same DPUC approved contract rights is a palpably "unreasonable condition" constituting an unlawful infringement of CRRA's contract rights.[6]

IV. CONCLUSION

For the reasons stated herein, CRRA respectfully requests that the Department grant this Motion for Reconsideration and to modify the Decision as requested herein.

6 CRRA notes that it previously agreed in this proceeding to the issuance of its electric supplier license, subject to a condition that it demonstrate to the Department's satisfaction that its supply arrangements *are* in place, including the South Meadows Electricity. See, Written Exceptions of CRRA, October 31, 2002, at pp 5-6.

Respectfully submitted,

CONNECTICUT RESOURCES RECOVERY AUTHORITY

By _____

Peter G. Boucher
Alan P. Curto
Halloran & Sage, LLP
225 Asylum Street
Hartford, CT 06103
Tel: (860) 522-6103
Its Attorneys

CERTIFICATION

This is to certify that on this 21st day of November, 2002, a copy of the foregoing was either mailed postpaid or hand-delivered, to each admitted party and intervenor of record in this proceeding as of the date hereof.

_____

Peter G. Boucher

366056.2(HSFP)

Exhibit 3
DPUC Denial of CRRA Motion to Reconsider

STATE OF CONNECTICUT

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

DOCKET NO. 02-05-13 APPLICATION OF CONNECTICUT RESOURCES RECOVERY AUTHORITY FOR AN ELECTRIC SUPPLIER LICENSE - MOTION FOR RECONSIDERATION

December 18, 2002

By the following Commissioners:

John W. Betkoski, III
Donald W. Downes
Jack R. Goldberg

DECISION

On November 21, 2002, the Connecticut Resources Recovery Authority (CRRA) filed a Motion for Reconsideration of the November 6, 2002 Decision in this Docket. The Motion asks that the Department reconsider the Decision's Conclusion that "CRRA must obtain Department approval if it intends to sell power from the South Meadow Facility now under contract with Enron" and Order No. 1, which restricts CRRA's ability to engage in activities as an electric supplier utilizing the South Meadow Facility as an electricity source until the Department has approved access to that capacity. The Motion was filed pursuant to Conn. Gen. Stat. §4-181a(a)(1)(A), which provides for an agency to reconsider a decision on the ground that an error of fact or law should be corrected.

In support of the Motion, CRRA states that an error of law has occurred in that the conditional supply approval language impermissibly imposes an additional licensure requirement upon CRRA that the law (Conn. Gen. Stat. §16-245(c)(1)) does not require. CRRA also alleges that, factually, the conditional supply language is incorrect in that the express terms of the existing contracts among Enron, CL&P and CRRA, under certain circumstances, could allow CRRA access to electricity produced at South Meadows.

The Department has reviewed the claims raised in the CRRA motion and declines to reconsider the Decision. CRRA previously raised the issue of lack of statutory requirement for a supplier to demonstrate committed electricity supply as a condition of licensure. The Department addressed this issue at page 4 of the Decision. There, the Department conceded that a correct reading of the supplier statute does not require a supplier to show to the Department where or how it intends to secure its supply to serve and that the Department (prior to the instant application) never had required such a showing. However, the Department never had an applicant represent to the Department that it intended to act as a supplier by selling electricity to which it has no contractual right. To the extent that CRRA intends to resell electricity that is presently under contract to CL&P, it must demonstrate to the Department in what manner it has come to possess the authority to do so.

Last, although as a matter of fact, CRRA may have access to electricity now under contract to CL&P upon the occurrence of certain events, nevertheless, the Department will require CRRA to demonstrate that legal claim prior to selling that electricity. The Department, by its January 12, 2000 Decision in Docket Nos. 83-07-12RE01 and 85-15-13, Petition of CRRA for Declaratory Ruling Pertaining to the Mid-Connecticut Project-Buyout, et al, approved a CRRA-CL&P joint request whereby the arrangement between CRRA and CL&P was restructured. Under that restructuring, the Department approved an energy buydown agreement with prepayment compensation to CRRA of $290 million. CRRA's instant Motion for Reconsideration attaches, as Appendix A, a motion of CL&P in Bankruptcy Court regarding Enron Corp. In the motion, at page 4, paragraph 10, it is stated: "Pursuant to the Termination Agreement, among other transactions, *at the direction of CRRA*, CL&P paid EPMI $220 million as consideration for restructuring CL&P's obligations . . .." (Emphasis added) As the motion correctly points out, CL&P was directed by CRRA to participate in these various contract agreements with Enron. Important to the Department at this juncture is the fact that it was not CL&P that sought out Enron as a contracting partner, yet it was CL&P ratepayers that paid the money that went to Enron. The Department cannot allow CRRA to unjustly benefit from this soured contract that CL&P entered into at the direction of CRRA. The Department intends to protect the regulatory expectations of CL&P and its ratepayers at the time that the arrangement between CL&P and CRRA was restructured. The license condition requirement for CRRA to demonstrate its access to this CL&P power prior to reselling it is consistent with that purpose.

For the foregoing reasons, the Motion to Reconsider is denied.

DOCKET NO. 02-05-13 APPLICATION OF CONNECTICUT RESOURCES RECOVERY AUTHORITY FOR AN ELECTRIC SUPPLIER LICENSE - MOTION FOR RECONSIDERATION

This Decision is adopted by the following Commissioners:

John W. Betkoski, III

Donald W. Downes

Jack R. Goldberg

CERTIFICATE OF SERVICE

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

Dec 20, 2002

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

Date

Exhibit 4
CRRA Administrative Appeal

RETURN DATE: JANUARY 21, 2003	:	
CONNECTICUT RESOURCES RECOVERY AUTHORITY, Plaintiff/Appellant	:	SUPERIOR COURT
V.	:	JUDICIAL DISTRICT OF NEW NEW BRITAIN AT NEW BRITAIN
CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL, THE OFFICE OF THE CONSUMER COUNSEL AND THE CONNECTICUT LIGHT AND POWER COMPANY, Defendants/Appellees.	:	DECEMBER 19, 2002

SUMMONS AND CITATION

To Any Proper Officer:

By authority of the State of Connecticut you are hereby commanded to summon the Connecticut Department of Public Utility Control, The Office of Consumer Counsel and the Connecticut Light and Power Company to appear before the Superior Court for the Judicial District of New Britain on or before the second day following January 21, 2003, said appearance to be made by the attorneys for the Connecticut Department of Public Utility Control by filing a written statement of appearance with the clerk of the court whose address is 20 Franklin Square, New Britain, Connecticut, 06051, then and there

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN & SAGE LLP

Phone (860) 522-6103
Fax (860) 548-0006
Juris No. 26105

to answer unto the foregoing Petition for Administrative Appeal by the Connecticut Resources Recovery Authority (which appeal relates to a Connecticut Department of Public Utility Control Decision dated November 6, 2002 in a proceeding designated as Docket No. 02-05-13), by serving on said appellees a true and attested copy of the foregoing Petition for Administrative Appeal and this Summons and Citation in the manner prescribed by Section 4-183(c) of the Connecticut General Statutes.

Hereof fail not, but of this writ with your doings thereon make due service and return.

Dated at Hartford, Connecticut, December 19, 2002.

CONNECTICUT RESOURCES
RECOVERY AUTHORITY

By _____

Peter G. Boucher
Alan P. Curto, of
HALLORAN & SAGE LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103
Juris No. 26105
Its Attorneys

TRUE COPY
ATTEST:
ROBERT J. TASILLO
STATE MARSHAL, HARTFORD COUNTY
AN INDIFFERENT PERSON

374593.1(HS-FP)

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN & SAGE LLP

Phone (860) 522-6103
Fax (860) 548-0006
Juris No. 26105

RETURN DATE: JANUARY 21, 2003

CONNECTICUT RESOURCES RECOVERY AUTHORITY,	:	SUPERIOR COURT
Plaintiff/Appellant	:	JUDICIAL DISTRICT OF NEW NEW BRITAIN AT
V.	:	NEW BRITAIN
CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL, THE OFFICE OF THE CONSUMER COUNSEL AND THE CONNECTICUT LIGHT AND POWER COMPANY,	:	
Defendants/Appellees.	:	DECEMBER 19, 2002

PETITION FOR ADMINISTRATIVE APPEAL

To the Superior Court for the Judicial District of New Britain, this 19th day of December, 2002, comes the Connecticut Resources Recovery Authority, 100 Constitution Plaza, Hartford, Connecticut, 06103-7722, appealing pursuant to § § 16-35 and 4-183 of the Connecticut General Statutes from a final decision of the Connecticut Department of Public Utility Control in its Docket No. 02-05-13, Application of the Connecticut Resources Recovery Authority for an Electric Supplier License dated November 6, 2002 and mailed on November 7, 2002.

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN & SAGE LLP

Phone (860) 522-6103
Fax (860) 548-0006
Juris No. 26105

I. THE PARTIES

1. This is an appeal by the Connecticut Resources Recovery Authority ("CRRA") from a final decision ("Decision") of the Connecticut Department of Public Utility Control (the "Department") in its Docket No. 02-05-13, Application of the Connecticut Resources Recovery Authority for an Electric Supplier License ("Docket No. 02-05-13") dated November 6, 2002 and mailed on November 7, 2002.

2. The appellant, CRRA, is a body politic and corporate created in 1973 by an act of the Connecticut legislature, and is a public instrumentality and political subdivision of the State of Connecticut.

3. The appellee, the Department, is an agency of the State of Connecticut, charged by statute with the regulation and supervision of public service companies and the establishment of their level and structure of rates.

4. The appellee, Connecticut Light and Power Company ("CL&P"), is a public service company having its principal place of business in Berlin, Connecticut. CL&P was an intervenor to Docket No. 02-05-13.

5. The appellee, The Office of Consumer Counsel ("OCC"), is the statutory advocate for Connecticut rate payers in utility matters pursuant to Conn. Gen. Stat. § 16-2a. The OCC was a party to Docket No. 02-05-13.

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN & SAGE LLP

Phone (860) 522-6103
Fax (860) 548-0006
Juris No. 26105

6. On May 15, 2002, CRRA filed an Application ("Application") with the Department pursuant to Conn. Gen. Stat. § 16-245 and § § 16-245-1 to 16-245-6, inclusive, of the Regulations of Connecticut State Agencies, for a license to operate as an electric supplier in Connecticut.

7. The DPUC conducted hearings on the Application in Docket 02-05-13 on June 12, 2002 and September 30, 2002. On November 6, 2002, the Department issued the Decision and on November 7, 2002, the Department mailed the Decision to the parties and the intervenor of record. In the Decision, the Department concluded that CRRA "has adequate technical, managerial, and financial capabilities, as required under Conn. Gen. Stat. § 16-245, to supply electric generation services to customers in Connecticut. . ." and granted CRRA an electric supplier license, subject to CRRA complying with certain orders in the Decision.

8. However, as a condition of its approval of the issuance of an electric supplier license to CRRA, the Department ordered that "CRRA will not be allowed to operate as an electric supplier utilizing the South Meadows Facility as an electricity source until the Department has approved access to that capacity. . ." (the "Order").

9. On November 21, 2002, CRRA filed a petition for reconsideration of the Department's inclusion of the Order in the Decision, pursuant to Conn. Gen. Stat. § 4-

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN
& SAGE LLP

Phone (860) 522-6103
Fax (860) 548-0006
Juris No. 26105

181a. On December 17, 2002, the Department denied the petition for reconsideration.

10. CRRA is aggrieved by the Decision. Specifically, CRRA is aggrieved because the Department's Order impermissibly imposes an additional license requirement upon CRRA, which requirement is not authorized under Conn. Gen. Stat. §16-245 or § § 16-245-1 to 16-245-6, inclusive, of the Regulations of Connecticut State Agencies. The Order furthermore impermissibly impairs CRRA's rights pursuant to lawful contracts among Enron Power Marketing Company ("Enron"), CL&P and CRRA.

11. CRRA has exhausted all administrative remedies.

II. ERRORS COMPLAINED OF

A. The Order Impermissibly Imposes an Unlawful Licensure Requirement Upon CRRA

12. The statutory requirements for licensure as an electric supplier are set out in Conn. Gen. Stat. § 16-245(c)(1). Those requirements are that "... the [applicant] ... demonstrate to the satisfaction of the department that. . . the person has the technical, managerial and financial capability to provide electric generation services. . . ." The Decision expressly concludes (at page 5) that CRRA meets those statutory licensure requirements. The Decision further acknowledges (at page 4), that "... there is no

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN & SAGE LLP

Phone (860) 522-6103
Fax (860) 548-0006
Juris No. 26105

statutory requirement that an applicant for a supplier license demonstrate committed electric supply as a condition of licensure." This being the case, there is manifestly no statutory requirement that an applicant secure Department approval of any specific "committed electric supply" as a condition of licensure, which the Order unlawfully imposes.

B. The Order Impermissibly Impairs Lawful Contracts.

13. Pursuant to the terms of existing contracts ("EPAs") among Enron, CL&P and CRRA, CRRA is contractually permitted access (for sale or any other purpose) to at least 250,000 mWh (and potentially all) of the electricity generated at the South Meadows Facility under certain circumstances expressly specified in the EPAs. The EPAs were reviewed and approved by the Department collectively, as the "New EPA," in its Decision dated January 31, 2001, in Docket No. 99-06-27RE01, 83-07-12RE02, & 85-05-13RE02. The EPA's were submitted to the Department in that proceeding as LFE-1 on January 23, 2001.

14. The Order facially impairs CRRA's rights under the Department-approved EPAs and to that extent constitutes an unconstitutional impairment of those contracts, in violation of U.S. CONST. Art. I, § 10, cl. 1.

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN & SAGE LLP

Phone (860) 522-6103
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Juris No. 26105

III. PRAYER FOR RELIEF

15. For all the foregoing reasons, the Decision contains errors of fact or law that operate to prejudice the substantial rights of CRRA. The Department's Order in the Decision is: (1) in violation of constitutional and statutory provisions; (2) in excess of the Department's statutory authority; (3) affected by other errors of law; (4) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; and (5) arbitrary or capricious or characterized by an abuse or discretion or clearly unwarranted exercise of discretion.

WHEREFORE, the appellant requests that the court:

(1) sustain this appeal;

(2) vacate and set aside the Order contained in the Decision; and

(3) grant such other relief in law or equity as is required or appropriate.

Dated at Hartford, Connecticut, this 19th day of December, 2002.

One Goodwin Square
225 Asylum Street
Hartford, CT 06103

HALLORAN & SAGE LLP

Phone (860) 522-6103
Fax (860) 548-0006
Juris No. 26105

Respectfully submitted,

CONNECTICUT RESOURCES RECOVERY AUTHORITY

By_____

Peter G. Boucher
Alan P. Curto, of
HALLORAN & SAGE LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103
Juris No. 26105
Its Attorneys

374438.1(HS-FP)

A TRUE COPY
ATTEST,
ROBERT J. TASILLO
STATE MARSHAL, HARTFORD COUNTY
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