Date: July 16, 1999

Case No.: 1998-ERA-30

File No.: 01-0280-98-020 & 805

In the Matter of:

The Estate of Kenneth Ricketts
Complainant

v.

Northeast Utilities Corporation

and

Connecticut Yankee Atomic Power Plant
Respondents

RECOMMENDED DECISION AND ORDER
APPROVING CONFIDENTIAL SETTLEMENT AGREEMENT

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. §5851, and its implementing regulations found at 29 C.F.R. Part 24. By document filed July 12, 1999, the undersigned is presently in receipt of a Confidential Settlement Agreement, executed by all parties on June 14, 1999, June 21, 1999, and July 7, 1999. The Agreement was signed by Settlement Judge Michael P. Lesniak and forwarded to this Office on July 9, 1999.

The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which Rules are controlling in the absence of a specific provision at Part 24.

Part 18.9 allows the parties in a proceeding before an administrative law judge to reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c). The parties must "[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action." 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then

issue a decision within thirty (30) days if satisfied with the agreement's form and substance. 29 C.F.R. Part 18.9(d).

This Judge must review the Settlement Agreement to determine whether its terms are a fair, adequate and reasonable settlement of the complaint. **Bonanno v. Stone & Webster Engineering Corp.**, 97-ERA-33 (ARB 6/27/97) (citation omitted).

Upon careful review, this Judge has reached the determination that the Release and Settlement Agreement fully comports with precedent established by the Secretary and/or Administrative Review Board.

The parties have included language in the agreement to the effect that neither party believes it acted unlawfully and that nothing in the agreement should be construed as an admission of liability. This recommended decision and order shall not be construed as indicating my view on the merits of this entire matter.

Paragraph 3 of the settlement provide that the parties shall keep the terms of the settlement confidential, with some delineated exceptions. I note, however, the parties' effort to bring this confidentiality provision into compliance with applicable case law, such as **McGlynn v. Pulsair Inc.**, 93-CAA-2 (Sec'y 6/28/93), by specifically providing the confidentiality provision does not restrict disclosure where required by law.

In accordance with **Biddy v. Pipeline Service Co.**, 95-TSC-7 (12/3/96), the parties have certified that no other settlement agreements were entered into between the parties.

This Judge notes the parties have designated the Settlement Agreement and Release as confidential commercial information, as defined at 29 C.F.R. Part 70.26, and thereby attempt to preclude disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552. In this regard, **see** para. 3.

FOIA, however, requires agencies to disclose requested documents unless they are exempt from disclosure. See **Bonanno**, supra, at p. 2.; **Klock v. Tennessee Valley Auth.**, 95-ERA-20 (ARB 5/30/96), at p. 2; **Darr v. Precise Hard Chrome**, 95-CAA-6 (Sec'y 5/9/95), at p. 2; **Webb v. Consolidated Edison Co.**, 93-CAA-5 (Sec'y 11/3/93) at p. 2. Since no FOIA request has been made, "it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such

questions in this proceeding." **Darr**, supra, at pp. 2-3. See Also **DeBose v. Carolina Power and Light Co.**, 92-ERA-14 (Sec'y 2/7/94), at p. 3. Nevertheless, the Release and Settlement Agreement shall be placed in a portion of the file clearly designated as confidential commercial information which must be handled in accordance with the appropriate procedure for a FOIA request, which procedure is found at 29 C.F.R. Part 70.26. **See Generally Bonanno**, supra, at n. 1.

Accordingly, it is hereby **RECOMMENDED** that the Release and Settlement Agreement between Complainant Sharon Ricketts, as Administratrix of the Estate of Kenneth Ricketts and Respondents Connecticut Yankee Atomic Power Company and Northeast Utilities be **APPROVED** and that the matter be **DISMISSED WITH PREJUDICE**. It is **FURTHER RECOMMENDED** that the Release and Settlement Agreement be designated as confidential commercial information and be handled in accordance with 29 C.F.R. Part 70.26.

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DAVID W. DI NARDI
Administrative Law Judge

Boston, Massachusetts
DWD:pte

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue, N.W., Washington D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).