

DE 01-227

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Petition Regarding Proposed Sale of  
Vermont Yankee Nuclear Station**

**Order Following Pre-Hearing Conference**

**O R D E R    N O.    23,963**

**May 3, 2002**

**APPEARANCES:** Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Gallagher, Callahan & Gartrell, P.A. by Seth M. Shortlidge, Esq. for New England Power Co.; Backus, Meyer, Solomon, Rood & Branch by Robert A. Backus, Esq. for the Campaign for Ratepayers' Rights; Office of Consumer Advocate by Michael W. Holmes, Esq. on behalf of residential ratepayers; and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

**I.    BACKGROUND AND PROCEDURAL HISTORY**

On November 19, 2001, Public Service Company of New Hampshire (PSNH) filed a petition with the New Hampshire Public Utilities Commission (Commission) with respect to the Vermont Yankee Nuclear Power Station. The Vernon, Vermont nuclear generation facility is the property of the Vermont Yankee Nuclear Power Corporation (Vermont Yankee), of which PSNH is a four-percent owner and the power output of which PSNH holds a four-percent entitlement.

The November 19 petition included a copy of two agreements whereby the facility would be sold to Entergy Nuclear Vermont Yankee (Entergy). The petition noted that the sale of PSNH's share of Vermont Yankee is contemplated by the

Agreement to Settle PSNH Restructuring (Restructuring Agreement) approved by the Commission in Docket No. DE 99-099. The petition sought a determination by the Commission that the transaction set forth in the petition is consistent, both as to procedure and substance, with the requirements of the Restructuring Agreement.

The Commission advised PSNH by secretarial letter on January 24, 2002 that the Company's filing was inadequate to permit the Commission to rule as requested. PSNH was specifically directed to submit (1) pre-filed direct testimony setting forth the Company's position on the extent to which the bid solicitation and negotiation process maximized the benefits of the transfer to PSNH ratepayers and whether the proposed transaction appropriately minimizes the exposure of PSNH ratepayers to decommissioning liability and (2) copies of certain documents submitted to the Vermont Public Service Board in connection with that agency's review of the proposed sale. The Commission noted that it expected little controversy with regard to the sale methodology but, rather, anticipated that the proceeding would involve a substantive review as contemplated by the Restructuring Agreement. See Restructuring Agreement (Revised and Conformed Version of September 22, 2000) at lines 1411-12 ("The terms of any such

sale will be set forth in a definitive agreement that provides for a closing that is subject to receipt of all required regulatory approvals, including that of the PUC") and 1428-29 ("The PUC shall administer the process and approve any resulting transaction prior to the closing").

PSNH made the requested filing on February 11, 2002. In the interim, on February 8, 2002, New England Power Company (NEP), an affiliate of Granite State Electric Company and also a part owner of Vermont Yankee, submitted a petition to intervene. The Commission issued an Order of Notice on April 4, 2002, scheduling a Pre-Hearing Conference for April 24, 2002 and establishing April 19, 2002 as the intervention deadline.

On April 4, 2002, Staff counsel filed a copy of a letter sent to the General Counsel of the Vermont Public Service Board, confirming certain understandings reached with that agency with respect to Commission monitoring of the ongoing proceedings in Vermont relative to the sale. One of the issues left unresolved by the letter concerned Staff access to confidential documents submitted by Vermont Yankee to the Vermont regulators. Accordingly, on April 12, 2002, Staff counsel submitted a copy of a letter he had written to PSNH, confirming certain understandings reached with PSNH and

Vermont Yankee in which PSNH agreed to furnish Staff with certain confidential materials related to the proposed sale.

The Office of Consumer Advocate (OCA) advised the Commission on April 18, 2002 of its intent to participate in the docket on behalf of residential ratepayers. The Pre-Hearing Conference took place as scheduled on April 24, with the parties and Staff meeting thereafter for a technical session and PSNH providing Staff with certain documents, pursuant to Staff's April 12 letter, accompanied by a motion for protective treatment. The parties agreed upon a proposed procedural schedule, which PSNH requested to revise further by motion, assented to by OCA and Staff, on April 26, 2002.

## **II. PETITIONS TO INTERVENE**

There was no objection to the petition to intervene submitted by NEP. Accordingly, the petition was granted at the Pre-Hearing Conference. The Campaign for Ratepayers' Rights appeared at the Pre-Hearing Conference but, when queried, indicated that it was not seeking intervenor status at this time.

## **III. POSITIONS OF THE PARTIES AND STAFF**

### **A. Public Service Company of New Hampshire**

PSNH stressed its view that the Commission's jurisdiction over the proposed Vermont Yankee transaction

arises out of the Restructuring Settlement Agreement. It noted that, at the time the Settlement Agreement was signed, the Vermont Yankee owners had entered into an agreement to sell the facility to AmerGen, but that subsequently this plan was abandoned in favor of an auction process that led to the proposed sale to Entergy. PSNH stated that the proposed sale to Entergy exposes ratepayers to little risk of incurring additional decommissioning expenses, noting a "slight risk" of an upward adjustment that would cost PSNH ratepayers approximately \$200,000. PSNH noted that the agreement provides for PSNH and the other current joint Vermont Yankee owners to buy back the plant's output from Entergy, with a price adjustment mechanism designed to protect ratepayers should the market price of electricity in New England fall significantly below the agreed-upon price of Vermont Yankee power.

PSNH noted that the sale agreement with Entergy expires on July 31, 2002 and, thus, that the joint owners would like to consummate the transaction well before that date.

**B. New England Power Company**

NEP indicated that (1) it is the owner of a 23.89 percent share of Vermont Yankee, and (2) it was participating

in the docket solely to advance its view that the Commission does not have direct jurisdiction over the sale beyond any authority granted to the Commission under the PSNH Restructuring Agreement with regard to PSNH's share. NEP indicated that it would be filing a motion to that effect.

**C. Office of Consumer Advocate**

OCA indicated that it was likely to support approval of the sale by the Commission, but had some questions it would need answered first. Specifically, OCA indicated it wished to explore the propriety of the "buy-back" provisions of the sale agreement and the extent to which ratepayers are exposed to additional possible liability for decommissioning expenses.

**D. Staff**

Staff indicated that it agreed with NEP that the Commission lacks plenary jurisdiction over the sale, and that the Commission's review should be limited to the authority referenced in the PSNH Restructuring Settlement Agreement. Staff noted that it shared OCA's concerns, that it was withholding judgment on the substance of the sale prior to the review of confidential documents being provided by PSNH, but that Staff was mindful of the limited role that New Hampshire has in affecting the terms of the sale, given the small size of PSNH's share and the unlikelihood of improved terms, from a

ratepayer perspective, were the PSNH share to be sold separately.

#### **IV. COMMISSION ANALYSIS**

RSA 374:30 provides that no utility shall transfer or lease any part of its "franchise works or system" without Commission approval to the extent that such franchise, works or system are "located in this state." Further, 2001 Laws 29:15, II provides that the Commission must "[e]xpeditiously initiate and complete, in a manner consistent with RSA 374:30, the sale of nuclear generation assets located in New Hampshire required by the [PSNH Restructuring Settlement Agreement] in a manner that benefits all New Hampshire customers with stranded cost recovery obligations associated with such assets."

Pursuant to these provisions, the Commission has recently designated certain members of its Staff to oversee the auction of a majority interest, including the interest owned by PSNH's affiliate North Atlantic Energy Corporation, in the Seabrook nuclear generation facility. The resulting proposed transaction is now before the Commission for approval in Docket No. DE 02-075. In contrast, Vermont Yankee is not located in New Hampshire and, thus, neither of the above-referenced statutory provisions vest the Commission with jurisdiction over the sale itself. *See Appeal of Public*

*Service Co. of N.H.*, 122 N.H. 1062, 1066 (1982) (noting that the Commission "is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute").

Accordingly, we agree with NEP that the Commission lacks jurisdiction over the proposed sale of Vermont Yankee to Entergy - at least insofar as joint owners other than PSNH are concerned.

The same is true of PSNH - with one significant exception that PSNH itself has acknowledged. The PSNH Restructuring Agreement includes PSNH's consent to have the Commission review the sale of its Vermont Yankee interest. The relevant provisions are included in the portion of the Restructuring Agreement that concern the general divestiture of PSNH's generation assets as part of electric industry restructuring. According to the Agreement, the objectives of any asset auctions, including the auction of PSNH's Vermont Yankee sale, are "to maximize the net proceeds realized from the sale in order to mitigate Stranded Costs, to provide a market-based determination of Stranded Costs, and to help establish a competitive energy market." Restructuring Agreement at lines 1154-1156. The achievement of these objectives through oversight of such transactions as the



Vermont Yankee sale is fairly derived from the statutes explicitly referenced in the Restructuring Agreement: the Electric Utility Restructuring Act, RSA 374-F, as well as statutes reflecting the Legislature's specific approval of the PSNH Restructuring Agreement, 1999 Laws Ch. 289 and 2000 Laws 249. Accordingly, we conclude that we have the jurisdiction and responsibility to review the proposed sale of PSNH's Vermont Yankee interest to assure compliance with the relevant objectives set forth in the PSNH Restructuring Agreement.

To facilitate the review, the Parties and Staff have proposed the following procedural schedule:

Data Requests to PSNH	May 3, 2002
Responses by PSNH	May 9, 2002
Settlement Conference	May 21, 2002, 10:30 a.m.
Staff/Intervenor Testimony	May 24, 2002
Merits Hearing	May 31, 2002, 10:00 a.m.

According to PSNH, a condition to the closing of the proposed Vermont Yankee sale is the release of the First Mortgage secured by the assets of the facility, and the terms of the First Mortgage Indenture require notice of redemption to be served on the trustee of the First Mortgage and the holders of the First Mortgage bonds at least 45 days prior to the

redemption. Thus, according to PSNH, all regulatory approvals must be in hand by June 14, 2002 to permit the requisite notice to the First Mortgage trustee and the bondholders. The above-referenced procedural schedule is designed to permit this to take place, with the sale closing on or before the expiration of the sale agreement itself on July 31, 2002.

In these circumstances, we will approve the proposed procedural schedule as consistent with the public interest. The schedule is adequate to permit PSNH to meet the referenced deadlines, but does not make such compliance inevitable. The ability of PSNH to obtain the required approval of the Commission on or before June 14, 2002 is largely a function of the extent to which it cooperates with Staff's efforts to obtain the necessary information to review the transaction thoroughly. Settlement of any outstanding issues also significantly increases the likelihood of the completion of our review well in advance of the June 14 deadline. We therefore encourage the parties to work cooperatively with Staff in order to permit a meaningful and thorough review of PSNH's petition.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the procedural schedule outlined above is hereby approved as governing the proceedings in the

remainder of this docket.

By order of the Public Utilities Commission of New  
Hampshire this third day of May, 2002.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary