

DE 01-227

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition Regarding Proposed Sale of Vermont Yankee Nuclear
Power Plant

Order Approving Petition

O R D E R N O. 23,994

June 14, 2002

APPEARANCES: Gerald M. Eaton, Esq., for Public Service Company of New Hampshire; Michael W. Holmes, Esq., for the Office of Consumer Advocate, on behalf of Residential Ratepayers; and Gary Epler, Esq., on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

This proceeding concerns the proposed sale of the Vermont Yankee Nuclear Power Station in Vernon, Vermont to Entergy Nuclear Vermont Yankee (ENVY). The facility is currently the property of the Vermont Yankee Nuclear Power Corporation (Vermont Yankee or VYNPC), of which Public Service Company of New Hampshire (PSNH) is a four-percent owner. PSNH is currently entitled to four percent of the facility's output. Central Vermont Public Service Corporation and Green Mountain Power Corporation, both of which sell electricity at retail in Vermont and are subject to the jurisdiction of the Vermont Public Service Board (VPSB), own (between them) 55 percent of the shares of VYNPC.

The proposed ENVY purchase of Vermont Yankee is comprised of two principal parts, a Purchase and Sale Agreement governing the terms of the transfer of the nuclear facility's ownership, and a Power Purchase Agreement, which commits Vermont Yankee's current owners to purchase the facility's expected power output through March 21, 2012, the remainder of Vermont Yankee's current NRC license. Under the Purchase and Sale Agreement, ENVY is to pay a total of \$180 million in cash for Vermont Yankee.

The proposed transaction includes a two-stage obligation for VYNPC to continue to purchase 100 percent of the Vermont Yankee generating facility's anticipated electricity output through the term of its existing license. The first stage extends from the transactions' closing date to the earlier of the completion of Refueling Outage #25 or November 1, 2005, and is a commitment to take Vermont Yankee's output of up to 510 net megawatts, at prices specified in the Purchase Power Agreement. The second stage is a commitment running from November 1, 2005, through March 21, 2012. During this period, VYNPC will purchase power at either the lower of specified annual prices or market prices (plus a premium), through the Low Market Adjuster.

On November 19, 2001, PSNH filed a petition with the

New Hampshire Public Utilities Commission (Commission) concerning the proposed sale of the facility. The petition did not seek the Commission's approval of the sale transaction per se, but, rather, requested that the Commission rule that the sale is consistent, both as to procedure and substance, with the Agreement to Settle PSNH Restructuring (Restructuring Agreement) approved by the Commission in Docket No. DE 99-099.

By secretarial letter dated January 24, 2002, the Commission advised PSNH that its filing was inadequate to permit the Commission to rule as requested. PSNH was specifically directed to submit pre-filed direct testimony setting forth the Company's position on (1) the extent to which the bid solicitation and negotiation processes that were utilized maximized the benefits of the transfer to PSNH ratepayers and (2) the extent to which the proposed transaction appropriately minimizes the exposure of PSNH ratepayers to decommissioning liability. The Commission further directed PSNH to furnish copies of certain documents submitted to the Vermont Public Service Board in connection with that agency's review of the proposed sale.

The Restructuring Agreement provides that the terms of any sale of the Vermont Yankee nuclear facility must 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 [Commission]." The Restructuring Agreement further provides that the Commission "shall administer the process and approve any resulting transaction prior to the closing." Restructuring Agreement (revised and conformed version of September 22, 2000) at lines 1411-12 and 1428-29.

PSNH made the requested filing on February 11, 2002. Previously, on February 8, 2002, New England Power Company (NEP) submitted a petition to intervene. NEP is an affiliate of Granite State Power Company and also a part owner of Vermont Yankee. By Order of Notice issued on April 4, 2002, the Commission scheduled a Pre-Hearing Conference for April 24, 2002 and established April 19, 2002 as the deadline for submitting intervention petitions.

On April 4, 2002 Staff counsel filed a copy of a letter sent to the General Counsel of the VPSB confirming certain understandings reached with that agency with regard to Commission monitoring of the proceedings on the request for the Vermont Public Service Board's approval of the proposed sale. Additionally, on April 12, 2002, Staff counsel submitted a copy of a letter he had written to PSNH, confirming certain understandings reached with PSNH relative

to the Commission's access to certain confidential materials related to the proposed sale.

The Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers on April 18, 2002. The Pre-Hearing Conference took place as scheduled on April 24, 2002, with the parties and Staff conducting a technical session thereafter. PSNH provided Staff with a set of confidential documents at the Pre-Hearing Conference, accompanied by a motion for protective treatment. The parties agreed upon a proposed procedural schedule, which PSNH thereafter sought to revise further by motion, assented to by OCA and Staff, on April 26, 2002. At the Pre-Hearing Conference, the Commission approved NEP's intervention petition without objection. Although the Campaign for Ratepayers Rights appeared at the Pre-Hearing Conference, it did not request intervenor status.

The Commission approved the proposed procedural schedule in Order No. 23,963 (May 3, 2002). Order No. 23,963 further noted that (1) pursuant to RSA 374:30, the Commission must approve the transfer of any part of a utility's franchise, works or system to the extent that it is "located in this state" and, (2) pursuant to 2001 Laws 29:15, II, 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 Agreement] in a manner that benefits all New Hampshire customers with stranded cost recovery obligations associated with such assets." The Commission noted that, in contrast to the proposed sale of Seabrook Station, at issue in Docket No. DE 02-075, these provisions do not cover the sale of NEP's interest in Vermont Yankee's facility because it is not located in New Hampshire. Order No. 23,963, slip op. at 7. The Commission further noted that the same is true of PSNH, except insofar as the Restructuring Agreement provides otherwise. *Id.* at 8.

Its sole concern having been addressed, NEP took no further part in the proceedings. Discovery took place as contemplated by the procedural schedule, the remaining parties conducted a technical session on April 24, 2002 and on May 21, 2002 there was a Settlement Conference. PSNH, OCA and the Commission Staff entered into a Stipulation that would, if adopted, resolve all outstanding issues in the proceeding and provide for the Commission granting its approval of the transaction to the extent required. The Stipulation was filed on May 31, 2002, the date on which the Commission conducted a merits hearing. At that hearing, PSNH, OCA and Staff all provided witnesses testifying in support of the Stipulation.

II. SUMMARY OF THE PROPOSED STIPULATION

The Stipulation entered into by PSNH, OCA and Staff requests that the Commission make the following specific determinations:

1. The Commission's jurisdiction over the sale arises exclusively out of the Restructuring Settlement Agreement, which includes PSNH's commitment to obtain the Commission's approval of this transaction prior to closing. PSNH has thereby agreed not to contest the Commission's authority to review the sale of PSNH's interest in Vermont Yankee notwithstanding the fact that Vermont Yankee is not located in New Hampshire.

2. The Restructuring Settlement Agreement recites that the Commission shall administer the sale of PSNH's interest in Vermont Yankee in the event that a private sale of the facility, contemplated at the time of execution of the Restructuring Settlement Agreement, was not consummated. The private sale did not take place and, thereafter, the Commission did not exercise administrative oversight with respect to the proposed sale to ENVY. Nevertheless, the proposed transaction is consistent with the Restructuring Settlement Agreement because the sale to ENVY is a substantially better outcome than the previous private sale contemplated under the Restructuring Settlement Agreement. The private sale would have required PSNH to make a payment to buy out of its power purchase obligation. The currently proposed

sale to ENVY is the result of a public auction conducted by JPMorgan Securities Inc., the same investment firm that has recently conducted the sale of 88% of Seabrook Station. After paying off outstanding debt of VYNPC, the proceeds of the sale will return capital to the equity owners/sponsors.

3. The Amendatory Agreement requires PSNH and other joint owners/sponsors to continue to purchase their respective shares of the output from Vermont Yankee at established base prices for the ten-year remaining term of Vermont Yankee's operating license. Beginning after the scheduled refueling outage in 2005, there are market adjusters which provide for reductions to the base prices if the market price falls below a certain percentage of the purchase prices contained in the Amendatory Agreement. Pursuant to the Restructuring Settlement Agreement this entitlement can be sold into the marketplace through spot market sales and/or bilateral contracts, or it can be used to serve PSNH's load as long as PSNH has load responsibility for Transition Service or Default Service. Any ongoing costs properly allocated to PSNH under the Amendatory Agreement shall be recovered initially through Part 3 of the Stranded Cost Recovery Charge. Once Part 3 costs are fully amortized, ongoing costs shall thereafter be recovered through Part 2 of the Stranded Cost Recovery Charge. Those ongoing costs are projected to be significantly lower than those that would have been incurred had VYNPC continued to own and operate Vermont Yankee, resulting in a more rapid amortization of Part 3 Stranded Costs.

4. On March 4, 2002, certain parties in the Vermont proceeding executed a Memorandum of Understanding (MOU) with the Vermont Department of Public Service. The MOU could have three positive impacts on PSNH and its customers. First, if the plant's license is extended or if there is an uprate of the plant, VYNPC will have the opportunity to negotiate with ENVY for the purchase of additional power prior to ENVY offering that power for sale to a third party.

To the extent that VYNPC is able to negotiate favorable terms for the purchase of such power, PSNH would be entitled to its proportionate share of such power at the negotiated price. Second, if completion of decommissioning is extended beyond March 31, 2022 and there are any excess decommissioning funds available at that time, such excess will be shared between ENVY and VYNPC. PSNH would be entitled to its proportionate share of any such excess.

Finally, if the operation of the plant is extended beyond the term of the current license, ENVY will share with VYNPC any excess revenue, as defined in the MOU, resulting from the continued production and sale of power. PSNH would be entitled to its proportionate share of any such excess revenue. 100% of any such benefits to PSNH resulting from the MOU will be credited to customers.

5. PSNH will be required to pay its proportionate share of a decommissioning top off payment at the time of closing. That payment should be no more than

approximately 4% of \$6.4 million. Following the closing PSNH and its customers will no longer be liable for decommissioning expenses related to Vermont Yankee.

6. The sale of Vermont Yankee to ENVY is subject to the approval authority of other federal and state regulatory agencies, some of which may not have ruled on the proposed transaction as of the date of the Stipulation. Should any federal or state regulatory agency impose conditions on the sale that would, if applied to PSNH or the PSNH share of Vermont Yankee, affect the terms of the sale in a manner that is favorable to PSNH's customers under the Stranded Cost Recovery Charge mechanisms described in the Restructuring Settlement Agreement or any other obligation of PSNH under New Hampshire law, PSNH's customers shall receive the full benefit of such changes.

III. COMMISSION ANALYSIS

Our review here is part and parcel of the commitments made by PSNH in connection with the Restructuring Settlement Agreement, which provided the Company with the opportunity to recover certain stranded costs and accorded PSNH certain other restructuring-related benefits. Thus, our focus is on the extent to which PSNH has kept faith with its Restructuring Agreement bargain by maximizing the benefits to ratepayers through the sale of its Vermont Yankee share.

At the same time, we are aware that, because PSNH

owns only a four percent share of the facility, both its interest in the sale transaction and its ability to affect the outcome of the transaction are more limited than they are in connection with the proposed sale of Seabrook Station. As a practical matter, requiring PSNH to sell its four-percent share of Vermont Yankee separately from the interests of the other joint owners would be a difficult proposition. It is also unlikely that such action would have produced results more favorable than those achieved by the instant transaction.

Staff has examined the proposed sale to ENVY thoroughly and recommends that it be approved as consistent with the Restructuring Agreement. Staff also testified that, in its opinion and based on its review of the record in Vermont, the auction procedures and protocols employed in this transaction were commensurate to those that would have been required by this Commission had we directly administered it. We concur in Staff's analysis. In particular, we believe that the public auction conducted by JPMorgan reasonably led to a sale price allowing for an appropriate reduction in PSNH's recoverable stranded costs.

The impact of the sale on stranded costs was quantified by PSNH in response to data request Q-TECH-002, entered into the record as Exhibit No. 3. This analysis shows

that PSNH's ongoing costs associated with the sale will be lower than the ongoing costs of continued ownership and, therefore, there will be a more rapid amortization of Part 3 stranded costs, accelerating the day when the Stranded Cost Recovery Charge may be reduced.

Although the proposal calls for PSNH to retain a long-term power purchase obligation, an appropriate mechanism is in place to limit PSNH's exposure in the event of either higher or lower-than-expected market prices that might otherwise make the purchases uneconomical.

As noted in the Stipulation, the Memorandum of Understanding entered into among the Vermont Department of Public Service and certain other parties provides for additional ratepayer protections that would benefit PSNH customers. Decommissioning liability would terminate at the time the transaction closes.

Finally, the Stipulation explicitly provides that PSNH ratepayers will receive the benefits of any additional conditions imposed by other regulatory agencies in connection with approving the transaction. This provision is particularly important in light of the VPSB's issuance yesterday, June 13, 2002, of its order in its Docket No. 6545, conditionally approving the sale of Vermont Yankee to ENVY.

We note that the VPSB has required several modifications to the proposed sale, including: (a) a requirement that 100 percent of any excess decommissioning funds be returned to ratepayers; and (b) that if VYNPC receives Nuclear Electric Insurance Limited disbursements, access to funds in the Spent Fuel Disposal Trust, or claims related to Department of Energy default under the DOE Standard Contract under Section 2.2(i) of the Sale Agreement, the Vermont utilities must submit a plan for using their share of those funds to benefit ratepayers. If these modifications are accepted, then under the Stipulation in this proceeding, PSNH would be required to provide the same benefit to its ratepayers.

In these circumstances, we find that the proposed sale of PSNH's Vermont Yankee share is consistent with the requirements of the Restructuring Agreement and otherwise in the public interest insofar as our approval is required, and the requested determinations contained in the proposed Stipulation are adopted as submitted.

Based upon the foregoing, it is hereby

ORDERED, that the Petition of Public Service Company of New Hampshire for approval of the sale of its interest in the Vermont Yankee Nuclear Power Station is approved as

consistent with the Agreement to Settle PSNH Restructuring,
revised and conformed edition of September 22, 2000; and it is

FURTHER ORDERED, that the Stipulation is hereby
APPROVED.

By order of the Public Utilities Commission of New
Hampshire this fourteenth day of June, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary