

DE 01-227

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition Regarding Proposed Sale of
Vermont Yankee Nuclear Power Plant

Order Approving Amended Stipulation

O R D E R N O. 24,017

July 26, 2002

APPEARANCES: Robert A. Bersak, 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

By Order No. 23,994 (June 14, 2002), the New Hampshire Public Utilities Commission (Commission) approved the sale of PSNH's ownership interests relating to the Vermont Yankee Nuclear Power Station (Station). The Order granted approval of a Stipulation, dated May 31, 2002, entered into by the Staff of the Public Utilities Commission (Staff), the Office of Consumer Advocate (OCA), and Public Service Company of New Hampshire (PSNH) (hereinafter collectively referred to as the "Parties and Staff"). Among other things, the Order and Stipulation both required that PSNH would be entitled to share in any future excess decommissioning funding amounts that may remain following the final decommissioning of the Station. Further, the Order and Stipulation both required

that PSNH customers receive the benefit of any conditions placed on the transaction by any other regulatory agency with approval authority over the transaction.

On June 13, 2002, the Vermont Public Service Board (VPSB) issued its "Order Approving Sale of Vermont Yankee Nuclear Power Station" in its Docket No. 6545. That order included a condition rejecting the sharing of any excess decommissioning funds and, instead, required that all such potential excess funds be returned by the purchaser, Entergy Nuclear Vermont Yankee (ENVY) to Vermont Yankee Nuclear Power Corporation (VYNPC).¹ By operation of the Commission's Order and the underlying approved Stipulation, the VPSB condition became a condition of sale affecting PSNH's ability to proceed with the transaction.

By letter dated July 17, 2002, ENVY notified VYNPC that the excess decommissioning fund condition imposed by the VPSB was not satisfactory and that ENVY was unwilling to close the transaction except in a manner consistent with the terms agreed to between ENVY and VYNPC. The sponsors of VYNPC (including PSNH), however, continued to desire to consummate

¹ This condition was further clarified and affirmed by the VPSB in its "Order re Motions to Alter or Amend, and to Unseal Exhibit" issued on July 11, 2002, and its "Order of Clarification" issued on July 15, 2002.

the sale because of the favorable economic benefits that the transaction would produce for their companies and their customers.

In order to meet the requirements of the terms agreed to between ENVY and VYNPC, the sponsors of VYNPC have reached agreements (the Liquidation Agreements) regarding the disposition of possible future decommissioning funds. Pursuant to these agreements, PSNH would receive from the Vermont sponsors of VYNPC a near-term payment of approximately \$133,000 in exchange for an assignment of its right to receive any future decommissioning funds in excess of the actual cost of decommissioning the Station. This payment was calculated based on a formula that considered the value of a possible future excess decommissioning fund, the date at which the fund could be determined to be in excess of decommissioning requirements, an appropriate discount rate, and the relative ownership percentages of each VYNPC sponsor. To effectuate the changes necessary for PSNH to enter into the Liquidation Agreements, the Parties and Staff have entered into an "Amendment" to the Stipulation which accepts the near-term payment in exchange for the right to receive potential future decommissioning funds, and modifies several applicable provisions accordingly.

On July 23, 2002, PSNH filed a Motion to Modify Order No. 23,994. The Staff and OCA both concurred with the motion. Attached to the motion was an amendment to the Stipulation, signed by all Parties and Staff, copies of the Liquidation Agreements, and copies of other supportive correspondence previously filed with the VPSB. PSNH's motion requested that the Commission rule on an expedited basis, in order to allow the transaction to close on or about July 31, 2002. PSNH also sought waiver of any relevant procedural rules.

Subsequent to the filing of the motion, on July 23, 2002, the Executive Director issued a secretarial letter setting a hearing on the motion and amended Stipulation for July 25, 2002. The duly noticed hearing was held at the Commission on that date at 1:30 p.m.

II. POSITION OF THE PARTIES

PSNH, the OCA and Staff agree that the agreements between the sponsors relating to the near-term liquidation of potential excess decommissioning funds would provide additional economic benefit to PSNH's customers, and they recommend that the Commission approve the amended Stipulation and modify Order No. 23,994 accordingly.

As recited by PSNH in its motion and in its presentation during the hearing, and concurred to by OCA and Staff, these additional benefits include: (a) the elimination of the uncertainty concerning whether there will be any excess decommissioning funds upon the completion of the decommissioning of the Station; (b) the elimination of uncertainty as to when any such excess funds might become available and the loss of value of those funds due to the passage of time; and, (c) the elimination of inter-generational equity issues caused by the fact that present-day customers have contributed to the decommissioning fund, yet customers 20 to 40 or more years from now would receive any potential benefits of such excess decommissioning fund refunds.

Further, the payments made to PSNH and the other non-Vermont sponsors of VYNPC by the Vermont sponsors (Green Mountain Power Corporation and Central Vermont Public Service Corporation) will be accounted for below the line, to ensure that the benefits of the Station's sale are not lost to those regulated entities that purchase from the Vermont sponsors, to the extent that the Station is a component of such purchases.

III. COMMISSION ANALYSIS

Pursuant to RSA 365:28, and upon notice and hearing, the Commission may modify any order made by it. The Commission has previously determined, in Order No. 23,994, that the consummation of the sale of the Station was "consistent with the requirements of the Restructuring Agreement and otherwise in the public interest." Slip Op. at 13. We note that the value of the sale to PSNH flows directly to the benefit of PSNH's customers pursuant to the terms of the Restructuring Settlement Agreement in Docket No. DE 99-099.

The evidence submitted at the hearing on PSNH's motion amply demonstrates that the underlying Liquidation Agreements between the sponsors of VYNPC, the benefits of which are incorporated into the proposed amendment to the Stipulation, provide additional value to PSNH and, thereby, to PSNH's customers. For example, PSNH's witness, John Keane, testified that at the time the original stipulation was signed, PSNH placed a value of zero on its right to receive future decommissioning funds.

In this instance, we find that the liquidation of the sharing of potential excess decommissioning funds is not only in the public interest but is also consistent with the

restructuring policy principle of providing near-term rate relief as set forth in RSA 374-F:3, XI. Moreover, we find that approving the amendment to the Stipulation will preserve the underlying benefits of the transaction, which would otherwise be lost. Finally, pursuant to Puc 201.05, we grant PSNH's request to waive all relevant procedural rules. Accordingly, we will grant the relief sought by PSNH in its Motion.

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, as modified by the Amended Stipulation filed by the Parties and Staff on July 23, 2002, is approved as consistent with the Agreement to Settle PSNH Restructuring in Docket DE 99-099, revised and conformed edition of September 22, 2000; and it is

FURTHER ORDERED, that the Amended Stipulation is hereby APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary