DE 01-227

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition Regarding Proposed Sale of Vermont Yankee Nuclear Station

Order Denying Rehearing

O R D E R N O. 24,019

July 30, 2002

I. BACKGROUND

On June 14, 2002, the Commission issued Order No. 23,994 approving the Petition of Public Service Company of New Hampshire for the sale of its interest in the Vermont Yankee Nuclear 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

On June 13, 2002, the Vermont Public Service Board 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 those funds be returned by

the purchaser, Entergy Nuclear Vermont Yankee (ENVY) to Vermont Yankee Nuclear Power Corporation (VYNPC). Subsequent to this order, Staff and Parties entered into an agreement to amend the Stipulation, and PSNH filed a Motion to Modify Order No. 23,994 with the Commission requesting that the Order be modified to reflect the agreed-upon changes to the Stipulation. The Commission held a duly noticed hearing on the Motion on July 25, 2002, and issued Order No. 24,017 on July 26, 2002, modifying Order No. 23,994 and approving the amended Stipulation.

Under the Order and Amended Stipulation, 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.

On July 29, 2002, the Campaign for Ratepayers' Rights (CRR), New Hampshire Public Interest Group (NHPIRG), the Seacoast Anti-Pollution League (SAPL) and the Conservation

Law Foundation (CLF) (collectively referred to as “Joint Petitioners”) filed a Motion for Rehearing of the PSNH Motion to Modify Order No. 23,994 pursuant to RSA 541:3.

Joint Petitioners acknowledge that none of them were parties to the original proceeding involving the Petition Regarding Proposed Sale of Vermont Yankee Nuclear Power Plant by PSNH. They claim, however, a “direct interest” in Order No. 24,017. They allege that this interest derives from the possibility that insufficient funds will be available for the decommissioning of the Station (resulting in “less than optimum clean up of residual radioactivity” and potential health and safety issues to New Hampshire citizens), and that the $133,000 payable to PSNH on behalf of ratepayers may not fully account for actual decommissioning costs.

Joint Petitioners allege that Order No. 24,017 undermines the decision of the Vermont Public Service Board (VPSB). They allege that the VPSB fashioned its June 13, 2002 decision in Docket No. 6545, ordering the return of excess decommissioning funds to ratepayers, to assure that ENVY appropriately funded decommissioning of the Station. Joint Petitioners allege that New Hampshire residents have a health and safety interest in assuring the optimal decommissioning of the Station because of its adjacency to the Connecticut River,

and thus New Hampshire.

Joint Petitioners further object to Order No. 24,017 because, they allege, New Hampshire ratepayers have “traded off” their right to 100% of the return of the excess decommissioning funds for $133,000 while Vermont residents will continue to be entitled for 100% of such excess. Finally, Joint Petitioners allege that the Commission did not have sufficient time to determine whether $133,000 was appropriate payment for excess decommissioning funds. Joint Petitioners believe that a rehearing would afford the Commission with the opportunity to receive additional information related to the adequacy of the proposed payment.

On July 30, 2002, PSNH filed an Objection to the Motion for Rehearing filed by Joint Petitioners. PSNH argues that the Joint Petitioners have filed an untimely motion with respect to their arguments about the adequacy of decommissioning funds because the Commission approved the sharing of excess decommissioning funds in its June 14, 2002 Order No. 23,994. PSNH argues that Joint Petitioners had 30 days from the date of Order No. 23,994 to request a rehearing on the “safety and health” concerns, and thus their Motion for Rehearing should be denied.

PSNH further argues that even if the Commission does not deny the Motion for being filed outside the deadline set by statute, the VPSB, in its order of July 26, 2002 in Docket No. 6545, considered and addressed the issue of decommissioning the Station. PSNH states that the VPSB retained inspection rights and the opportunity to seek relief with respect to the adequacy of decommissioning of the Station.[1] PSNH further states that the VPSB order awarded excess decommissioning funds to ratepayers to assure that ENVY would not have a financial incentive to minimize its decommissioning efforts, thus addressing the "safety and health" concerns raised by Joint Petitioners.

PSNH next argues that the Commission had sufficient information with which to approve the adequacy of the $133,000 payment to PSNH in exchange of any future right to refund of potential excess decommissioning funds. PSNH states that at the July 25, 2002 hearing, Mr. John B. Keane, PSNH's witness, provided a "detailed explanation" of how the amount of the payment was derived. PSNH states that Mr. Keane was subject to cross-examination by Staff and the OCA, and responded to questions posed directly by the presiding Commissioners. PSNH argues that the Commission had full and complete information

[1] PSNH attached to its Objection a copy of the VPSB order of July 26, 2002

upon which to judge the adequacy of the payment.

PSNH also states that the Joint Petitioners failed to evaluate the full value of the transaction to PSNH customers. PSNH states that PSNH customers would receive approximately $22 million over ten years in benefits from the sale of the Station. PSNH argues that the sale of the Station is in the benefit of New Hampshire ratepayers, and that the benefit of the sale should not be judged solely on the amount of payment in lieu of a share of excess decommissioning funds. Finally, PSNH states that under the purchase and sale agreement, the sale of the Station must close on or before July 31, 2002, and urged the Commission's prompt action on the Motion for Rehearing.

II. COMMISSION ANALYSIS

RSA 541:3, and our rules promulgated thereunder, determine the procedure for a motion for rehearing before the Commission. RSA 541:3 provides in pertinent part that

> [w]ithin 30 days after any order...has been made...any party...may apply for a rehearing...*specifying in the motion all grounds for rehearing*, and the commission may grant such rehearing *if in its opinion good reason for the rehearing is stated in the motion.* (Emphasis supplied).

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relative to their Docket No. 6545.

New Hampshire Code of Admin. Rule Puc 203.04(d)(1) provides that all motions shall clearly and concisely state "the facts and law which support the motion...." Upon consideration of the claims alleged in the Joint Petitioners' Motion, the Objection of PSNH to that Motion, and the record in this case, we deny the motion for rehearing.

With respect to the Joint Petitioners' first claim that allowing the assignment of PSNH's right to retain any excess decommissioning funds undercuts the decision of the VPSB not to provide any incentive to short-cut decommissioning, or that it creates a risk of less than optimal decommissioning which may threaten the health and safety of citizens of New Hampshire, we find that it is untimely, unsupported by any facts, and has no merit.

First, and as PSNH points out in their Objection, in Order No. 23,994 we approved a 50/50 sharing between ENVY and the selling sponsors of any decommissioning funds. The Amended Stipulation and underlying Liquidated Agreements among the VYNPC sponsors would result in ENVY receiving only 45 percent of the excess decommissioning funds, slightly less than what was originally approved. No motion for rehearing of this order was filed within 30 days of its issuance, and,

therefore, the Joint Petitioners' claim of safety and health concerns raised by this sharing arrangement is untimely.

In this regard, the "most-favored nation" provision in the original Stipulation, which provided that ratepayers will receive the benefits of any additional conditions imposed by other regulatory agencies in connection with approving the transaction, was intended as protective of the rate-related interests of PSNH customers. It did not require that New Hampshire consumers be protected by exactly the same mechanism as any other state might use, only that PSNH's ratepayers receive the same *rate* benefit as ratepayers in other jurisdictions. As we discuss below, those interests are protected by the Amended Stipulation.

Second, the VPSB, in its decision issued on July 26, 2002, specifically recognized that "other states are free to make their own determination" on this issue:

> [T]he state utility commissions with jurisdiction over the non-Vermont sponsors are able to review the Additional Transactions, have been asked to do so in some cases, and are actually doing so in at least one instance. *VPSB Order, Docket No. 6545, July 26, 2002, Slip Op*. at 8.

Moreover, the VPSB approved the agreement at issue here:

> The present arrangement in which excess decommissioning funds are distributed to the non-Vermont Sponsors for allocation as their regulatory authorities may require, is consistent with the terms of our Order. *Id.*

The VPSB's July 26 Order also directly addressed the contention that the sharing of excess decommissioning funds by ENVY would give ENVY an adverse financial incentive and create a potential safety and health concern, and found offsetting factors that resolved these concerns:

> The Nuclear Regulatory Commission, which has direct regulatory authority over decommissioning, has detailed regulations designed to ensure complete cleanup. In addition, the Board retains jurisdiction to directly influence ENVY, notwithstanding federal preemption. ENVY's Certificate of Public Good will remain in effect. Failure to comply with that Certificate of Public Good and Board Orders could result in financial or other penalties to ENVY. In this regard, we note that in the MOU, ENVY has agreed to "greenfielding" of the Vermont Yankee site, which goes beyond NRC decommissioning requirements — the Board can enforce this provision of the MOU directly.
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> Moreover, the Inspection MOU between ENVY and the Department provides the Department with substantial ability to influence decommissioning. As the Department points out:
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> > The inspection MOU will give the Department access to the site, to monitor ENVY's decommissioning activities, and to important meetings and information. This access will give the Department the opportunity to seek relief at the NRC or the Board if it observes that ENVY is cutting corners in decommissioning the site.
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> The inspection MOU also provides that the Department will have a representative on the Safety Committee for Vermont Yankee, which will allow for active participation.
>
> We also note that our concern over the appropriate decommissioning incentives only addressed the potential

> situation in which ENVY had an excess in the decommissioning fund. If the fund proves to be insufficient, ENVY may need to make additional contributions to the fund. In this situation, ENVY would have the same financial incentives to minimize costs that we referred to previously. The evidence did not suggest, however, that NRC and Board requirements, coupled with the Department's rights under the Inspection MOU, would create adverse incentives in this situation. Thus, we find now that reliance on these regulatory requirements should help to address our previous concerns. *Id* at 9.

We find that the regulatory requirements cited by the VPSB are sufficient to allay any concerns here in New Hampshire that the sharing of excess decommissioning funds with ENVY may provide an inappropriate incentive for full and complete decommissioning of the site. The Joint Petitioners have alleged no facts that dispute this analysis, or support their allegation that the sharing of excess decommissioning funds will implicate safety and health concerns in the future.

Joint Petitioners' remaining claims, that the trade of the right to 100 percent of excess decommissioning funds in exchange for an up-front payment is inequitable, and that the calculation of the up-front payment was without adequate support or accepted without sufficient time for an informed examination, is also without merit. Joint Petitioners allege no facts that suggest that the calculation was unsupported, incorrectly done, or rested on faulty assumptions.

Moreover, Joint Petitioners' implication that the Commission could not have had adequate time to review the calculation is inaccurate, contrary to the record and without merit. The Commission was made aware that the transaction was under certain time constraints, and, as our July 14 Order recognized the benefits that would be realized by PSNH's ratepayers through this sale, we sought to act quickly on the request to consider the Amended Stipulation and thereby preserve those benefits.

Testimony describing the methodology the parties employed in making the calculation of the up-front payment was provided by PSNH witness John Keane during the July 25 hearing. This testimony indicated that the assumptions used in this calculation were conservative, and entirely consistent with the estimates of the range of possible excess decommissioning provided to the VPSB. Additionally, representatives of the OCA and the Staff both stated on the record that they or their assistants had reviewed the calculation and the underlying assumptions and agreed with the representations of PSNH. Accordingly, the hearing held on July 25, 2002 provided the Commission more than sufficient evidence on which to base its decision, and adequate time too consider the issue.

Joint Petitioners' concerns with respect to the size of the up-front payment apparently fail to take into account that the distribution of excess decommissioning funds is only a possible occurrence, and is an event that will occur, if at all, in the far future. Thus, the value today of such possible funds, when discounted, is quite small relative to the projections of their future size. Evidence on this issue, and on the conservative discount rate of 7.5 percent used in the calculation, was provided on the record by PSNH's witness Keane.

Finally, we note that both our original and amended orders in this matter were not contingent on a sharing of possible future decommissioning amounts, only that PSNH's ratepayers be treated similarly to the ratepayers of selling sponsors in other jurisdictions. We have determined that the Amended Stipulation accomplishes this. The uncertainties with respect to whether such excess decommissioning amounts may be realized in the future are too speculative, and an inadequate measure for us to base our evaluation of this transaction upon, especially when considered in light of the benefits this sale brings to PSNH's ratepayers.

Based upon the foregoing, it is hereby

ORDERED, that the Joint Petitioners' Motion for Rehearing of the PSNH Motion to Modify Order No. 23,994 is DENIED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 2002.

Thomas B. Getz
Chairman

Attested by:

Debra A. Howland
Executive Director & Secretary

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 2002.

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 2002.

Susan S. Geiger
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary