

103 FERC ¶ 61, 268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

Yankee Atomic Electric Company

Docket No. ER03-704-
000

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED
REVISIONS TO WHOLESALE POWER CONTRACT

(Issued June 3, 2003)

1. This order accepts for filing and suspends Yankee Atomic Electric Company's (Yankee) revised Rate Schedule No. 3 (Power Contract), which would resume collections to recover the costs for completing the decommissioning of Yankee's retired nuclear generating plant (Plant). This order also sets the filing for hearing, but holds the hearing in abeyance pending further negotiations.

Background

2. On September 24, 1954, certain New England utilities formed Yankee, to construct and operate the Plant to serve their needs for power and to demonstrate the feasibility of nuclear power technology. Power from the Plant, located in Rowe, Massachusetts, was sold at wholesale to the ten New England utilities (Purchasers) that also own Yankee. On February 26, 1992, Yankee's Board of Directors decided to cease power production and to commence decommissioning.

3. On December 30, 1999, in Docket No. ER00-983-000, in accordance with a Commission-approved settlement in Docket No. ER95-835-000 (1996 Settlement), Yankee filed a revised decommissioning funding schedule. In that filing, the updated decommissioning cost study projected a total cost to complete decommissioning, including prior expenditures, of \$453.1 million in 1999 dollars. Of this amount, \$246.0 million (in 1999 dollars) represented the cost of the remaining decommissioning expenditures as of January 1, 1999. Based on this estimate, fund earning assumptions,

and projections to the year 2020, Yankee's last decommissioning collection was made in June 2000, to coincide with the end of the Plant's operating license.

Filing

4. On April 4, 2003, Yankee filed the proposed revised Power Contract. Yankee proposes to collect additional funds from its Purchasers through January 1, 2011, for the purpose of completing decommissioning of the Plant, based on a 2003 decommissioning cost estimate of \$290.7 million in remaining costs for the period 2003 through 2022.¹ Yankee proposes charges to the Purchasers of \$32.5 million for the balance of 2003, \$55.6 million during 2004 and 2005, and \$17.2 million per year for the years 2006 through 2010, for total collections of approximately \$230 million.

5. Yankee explains that a number of significant events have affected the cost of decommissioning the Plant since 1999. According to Yankee, the most significant factor is the continued alleged default by the United States Department of Energy (DOE) in its obligation to perform under its contract with Yankee to remove from the site the spent fuel and greater-than Class C nuclear wastes, which has required on site storage of high-level nuclear waste and delayed the completion of decommissioning to the year 2022.² Yankee also advises that additional costs will also be ongoing due to the September 11, 2001 terrorist attacks, which have increased the costs of maintaining security at the Plant site and insurance costs. Yankee also advises that the declining financial markets have had a negative impact on the decommissioning fund earnings as compared to those that were assumed in 1999. In addition, Yankee advises that increased volumes of material have been identified that need to be removed from the Plant site to satisfy environmental requirements.

6. Yankee requests that the Commission permit the proposed schedule of revised decommissioning collections to go into effect with no more than a nominal suspension.

¹Yankee projects an increase of approximately \$188.3 million in the total cost to complete decommissioning.

²Yankee states that the 2003 estimate of decommissioning costs takes into account the uncertainty over DOE performance of its contractual obligation to remove high-level nuclear waste from the site. Yankee advises that litigation to force DOE to pay damages is pending before the U.S. Court of Federal Claims. Yankee advises that, recognizing the outcome of this litigation remains uncertain, the 2003 decommissioning cost estimate includes the costs associated with constructing and operating an independent spent fuel storage facility (ISFSI) so that final decommissioning work can proceed.

Yankee explains that its requested funding level should ensure that sufficient funds will be available to support the ongoing decommissioning work and that any more than a nominal suspension will delay decommissioning activities at the Plant and will lead to an increase in total decommissioning costs.

Notice of Filing, Interventions and Comments

7. Notice of Yankee's filing was published in the Federal Register, 68 Fed. Reg. 18,611 (2003), with comments, protests, and motions to intervene due on or before April 25, 2003.
8. Motions to intervene were filed by the Vermont Department of Public Service (VDPS), Central Maine Power Company (CMP), the New England Conference of Public Utilities Commissioners (NECPUC); they raised no substantive issues. On April 25, 2003, Northeast Utilities Service Company (NUSCO), on behalf of the NU Operating Companies, filed comments in support of Yankee's filing.
9. On April 18, 2003, the Maine Public Utilities Commission (MPUC) filed a notice of intervention and protest. Citing a recent Commission approved settlement with Maine Yankee Atomic Power Company,³ MPUC questions whether amounts collected to pay for costs incurred for the storage of spent fuel and greater-than Class C waste should be put into and paid out of Yankee's external decommissioning trust fund or collected as ongoing operating costs under the Power Contract. In addition, MPUC questions whether costs that will be incurred for 20 years or longer should be front-end loaded (*i.e.*, with the greater portion collected in 2003, 2004 and 2005) and then collected in total over eight years.
10. On May 5, 2003, the Connecticut Department of Public Utility Control (CDPUC) filed a motion to intervene out of time and protest. CDPUC advises that it is still "formulating its position" and reserves the right to take a position later.
11. On May 6, 2003, Yankee filed an answer to MPUC's protest. Yankee notes that its settlements in Docket Nos. ER92-592-000 and ER95-853-000 define recoverable decommissioning costs as "including ... the direct and indirect costs of operating and maintaining or dismantling the spent fuel storage facilities...." Yankee submits that whether these costs are recovered as decommissioning expenses or through a separate

³Maine Yankee Atomic Power Company, 87 FERC ¶ 61,972 (1999).

charge, is not an issue that requires resolution through trial-type evidentiary hearing procedures.

12. Yankee also claims that its proposal to collect higher levels of decommissioning costs during the first two and a half years is reasonable under the circumstances and is consistent with its approved formula rates and Commission precedent. Yankee explains that higher collections are necessary to meet projected levels of decommissioning spending, while meeting the minimum funding assurance requirements of the NRC and the Environmental Protection Agency.⁴ Yankee also advises that a Commission Administrative Law Judge has recognized that front-end loading the collection of decommissioning costs is appropriate where, as here, the decommissioning funds will be spent as the funds are being collected.⁵ And, Yankee contends that the timing of collections does not require resolution through trial-type evidentiary hearing procedures.

Discussion

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the notice of intervention and timely, unopposed motions to intervene of MPUC, CMP, NECPUC, NUSCO and VDPS serve to make them parties to this proceeding. Due to the early stage of this proceeding, its interests, and the absence of undue prejudice or delay, we will grant CDPUC party status.

14. Our preliminary analysis of the proposed revised Power Contract indicates that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed revised Power Contract for filing, suspend it and make it effective subject to refund, and set it for hearing. In West Texas Utilities Company, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in West Texas, we would generally impose a one-day suspension. Here, our examination suggests that the rates may not yield substantially excessive revenues. Therefore, we will suspend the proposed Power Contract revisions for one day, to be effective June 5, 2003, subject to refund.

15. In addition, in order to allow the parties an opportunity to resolve this matter amicably without an evidentiary hearing, we will hold the hearing in abeyance and direct

⁴Citing Exhibit YA-4, Testimony of Kathleen J. Jewell-Kelleher, at 15-16.

⁵Connecticut Yankee Atomic Power Co., 84 FERC ¶ 63,009 at 65,137 (1998).

settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose.⁷ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a trial type evidentiary hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed revised Power Contract is hereby accepted for filing and suspended for one day, to become effective June 5, 2003, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Reorganization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revised Power Contract, as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle, as provided in paragraphs (C)-(D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2002), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(D) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement

⁶18 C.F.R § 385.603 (2002).

⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

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discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.