

113 FERC ¶ 61,057  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Connecticut Yankee Atomic Power Company                      Docket Nos. ER04-981-001  
Connecticut Department of Public Utility                      EL04-109-001  
Counsel and Connecticut Office of  
Consumer Counsel

ORDER DENYING REHEARING

(Issued October 20, 2005)

1. On August 30, 2004, the Commission issued an order in the above captioned proceedings accepting and suspending revised rate schedules that were filed by the Connecticut Yankee Atomic Power Company (CY) and denying a petition for declaratory order by the Connecticut Department of Public Utility Counsel and the Connecticut Office of Consumer Counsel (collectively Connecticut Parties).<sup>1</sup> The Connecticut Parties and one private party, Bechtel Power Corporation (Bechtel), filed request for rehearing or clarification. The Commission denies rehearing.

**Background**

2. The August 30 Order addressed two recent filings concerning decommissioning expenses to be incurred by CY. The first is a rate proceeding filed on July 1, 2004, in Docket No. ER04-981-000, that involves revised rate schedules<sup>2</sup> filed by CY proposing to increase annual collections for decommissioning by \$76.3 million, from \$16.7 million annually to \$93 million annually, beginning January 2005 through December 2010. CY states that this increase is necessary to complete the decommissioning of its retired nuclear generating plant located in Haddam Neck, Connecticut (Plant), and for storage costs for spent nuclear fuel through 2023. CY also proposes additional collections of \$6.4 million from January 2005 through June 2007 in order to supplement the funding of its employee pensions and post retirement benefits other than pensions.

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<sup>1</sup> 108 FERC ¶ 61,212 (2004) (August 30 Order).

<sup>2</sup> The proposed rate schedules are designated as Rate Schedule FERC No. 10 (Original Sheet Nos. 1-21) and Rate Schedule FERC No. 11 (Original Sheet Nos. 1-16) (Superseding Rate Schedule FERC No. 1, as supplemented) (Power Contracts).

3. The second filing was a petition for declaratory order filed in Docket No. EL04-109-000 by the Connecticut Parties that asked the Commission to determine that: (1) certain Commission-approved Power Contracts and a related Settlement Agreement<sup>3</sup> provide that CY may charge its wholesale purchasers (Owner/Purchasers)<sup>4</sup> for all decommissioning costs associated with the Plant, including those determined by the Commission to result from imprudence; and (2) those wholesale purchasers may only pass on to retail customers those costs that are prudently incurred.

4. The Commission accepted and suspended the proposed revised rate schedules for five months, to become effective February 1, 2005, subject to refund, and established hearing procedures. The Commission also denied the petition for declaratory order, because it asked the Commission to take actions that would be contrary to our statutory duty under the Federal Power Act (FPA) and precedent. In effect, the petition requested that the Commission: (1) disregard its statutory duty to ensure that wholesale rates are just and reasonable and (2) determine what costs wholesale purchasers may charge retail customers through retail rates when the Commission's ratemaking authority is limited to power sale rates at wholesale and does not reach power sales rates at retail.

### **Rehearing Requests and Answers**

5. Connecticut Parties request that the Commission grant rehearing to ensure both that CY completes decommissioning and that retail ratepayers are not burdened with unjust and unreasonable rates. As to its first concern, the Connecticut Parties maintain that, unless the Commission allows CY to charge the Owner/Purchasers for both prudently incurred and imprudently incurred costs, the Commission risks leaving CY with no significant assets or source of funds to complete decommissioning. As to their second concern, Connecticut Parties essentially argue that, unless the

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<sup>3</sup> See *Connecticut Yankee Atomic Power Co.*, 92 FERC ¶ 61,055 (2000).

<sup>4</sup> The Owner/Purchasers, who are both purchasers and owners, and their respective percent purchase/ownership shares are as follows: Connecticut Light and Power Company (34.5 percent); New England Power Company, for itself and as successor in interest to Montaup Electric Company (19.5 percent); Boston Edison Company, United Illuminating Company, and Western Massachusetts Electric Company (each 9.5 percent); Central Maine Power Company (6 percent); Public Service Company of New Hampshire (5 percent); Cambridge Electric Light Company (4.5 percent); and Central Vermont Public Service Corporation (2 percent).

Commission finds that wholesale ratepayers, *i.e.*, the Owner/Purchasers, can pass through to retail ratepayers only prudently incurred costs, the result will be to impose unjust and unreasonable rates on retail ratepayers.<sup>5</sup>

6. Bechtel, in its request for rehearing, requests that the Commission expressly clarify that it has not addressed any liability that the Owner/Purchasers may have in their role *as owners* of CY for CY's imprudently incurred decommissioning expenses. In this regard, Bechtel explains that it has asserted in its pre-judgment remedy proceeding that, as a matter of state law, the Owners/Purchasers are liable as CY's owners to pay decommissioning costs if necessary to complete decommissioning. Bechtel maintains that CY's filing with that court, in contrast, erroneously suggests that the Owner/Purchasers are not liable. Bechtel explains that it believes that the power contracts demonstrate that the Owners/Purchasers, in their dual roles as both owners and purchasers, explicitly agreed to be liable for all decommissioning costs. It asserts, and asks the Commission to confirm, that the Commission did not address the liability of CY's Owners/Purchasers, as owners, for decommissioning costs.

7. Answers to the rehearing requests were filed by Owner/Purchasers and by CY.

### **Discussion**

8. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2005), prohibits an answer to a request for rehearing. Accordingly, we will reject Purchasers' and CY's answers.

9. The thrust of Connecticut Parties' argument is that the Owner/Purchasers, whether as owners or purchasers, are responsible for all costs of decommissioning, whether prudent or imprudent, but that only prudently incurred costs may be passed through by the Owner/Purchasers to retail ratepayers. Imprudently incurred costs would thus be the responsibility of the Owners/Purchasers' shareholders. Bechtel, on the other hand, asks the Commission to agree that it has not addressed the liability of the Owner/Purchasers – in their capacity as owners – for any CY costs imprudently incurred. In the alternative, Bechtel asks the Commission to find that the Owner/Purchasers are liable for costs imprudently incurred.

10. The Commission will deny rehearing. The Commission's prior order addressed the Owner/Purchasers obligations as purchasers, but did not rule on their obligations as owners.<sup>6</sup> As purchasers, *i.e.*, ratepayers, which is the focus of the

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<sup>5</sup> Connecticut Parties, in its request for rehearing, does not distinguish between the Owners/Purchasers in their role as purchasers and the Owner/Purchasers as owners.

<sup>6</sup> August 30 Order at P 44.

Connecticut Parties' concerns, the Owner/Purchasers are responsible for only and need pay only rates that reflect costs prudently incurred.<sup>7</sup> In the hearing the Commission ordered in this proceeding the parties may litigate the reasonableness of the rates that CY proposes to charge its Owner/Purchasers in their capacity as purchasers, *i.e.*, ratepayers – including the prudence of the costs that underlie those rates. As to the Owner/Purchasers' obligations and responsibilities as owners, that was not and is not an issue in this proceeding, which only involves the reasonableness of the rates that CY charges the Owner/Purchasers in their capacity as purchasers, *i.e.*, ratepayers.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>7</sup> *Id.*