

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Vermont Yankee Nuclear Power Corp.

Docket No. ER07-896-000

ORDER ACCEPTING FILING AND GRANTING WAIVERS

(Issued July 13, 2007)

1. In this order, the Commission accepts Vermont Yankee Nuclear Power Corporation's (Vermont Yankee) application to reduce a single aspect of Vermont Yankee's rates – the accrual for post-retirement benefits other than pensions (PBOPs) for Vermont Yankee's employees. This order also conditionally grants waiver of the filing requirement for section 205 filings prior to changing the PBOP accrual.

**A. Background**

2. Prior to 2002, Vermont Yankee was a public utility with a single productive asset, a nuclear generating station whose output was shared on a percentage basis under a Power Contract with eight New England utilities that were Purchasers.<sup>1</sup> In 2002, Vermont Yankee sold the nuclear unit to Entergy Nuclear Vermont Yankee (Entergy Yankee), but agreed to buy back the entire output of the unit under a currently effective power purchase agreement (PPA). The Power Contract contains a formula rate that provides for the recovery of Vermont Yankee's costs of obtaining electricity under the PPA with Entergy Vermont. Under the Power Contract, each of the Purchasers buys a percentage of the output of the plant and pays a like percentage of Vermont Yankee's costs, which include Vermont Yankee's costs of obtaining electricity and Vermont Yankee's ongoing administrative expenses.

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<sup>1</sup> The Purchasers are Central Vermont Public Service Corporation, Green Mountain Power Corporation, New England Power Company, The Connecticut Light and Power Company, Central Maine Power Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company, and Cambridge Electric Light Company.

3. In 1992, the Commission issued a Statement of Policy advising utility companies of its intent to permit the recovery of prudently incurred PBOP costs included in jurisdictional cost-based rates, provided that the following conditions were met: (1) the company must agree to make cash deposits to an irrevocable external trust fund; and (2) the company must maximize the use of income tax deductions for contributions to the trust fund.<sup>2</sup> Consistent with the PBOP Policy Statement, Vermont Yankee filed an accrual for its PBOP expense to be included in Vermont Yankee's formula rate under its Power Contract in Docket No. ER94-1370-000.<sup>3</sup> Consistent with the Commission's direction in that proceeding, Vermont Yankee must timely file any changes in its PBOP accrual for the Power Contract together with appropriate cost support with the Commission under section 205 of the Federal Power Act and Part 35 of the Commission's Regulations.<sup>4</sup>

#### **B. PBOP Filing**

4. On May 14, 2007, Vermont Yankee filed to request that the Commission accept a \$29,363 annual reduction in its PBOP accrual from the current amount of \$83,818 to \$54,455. In addition, for its 2007 PBOP accrual, Vermont Yankee requests that the Commission accept an additional reduction of \$13,560 from the requested annual amount of \$54,455 to \$40,895. Vermont Yankee explains that this additional reduction for 2007 takes into account the differences between actual PBOP accruals for the years 2003 through 2006 and the PBOP accrual recovered through Vermont Yankee's rates under the Power Contract during that period.<sup>5</sup> Vermont Yankee supports the PBOP accrual with a revised actuarial analysis, which it included as Attachment A to its filing.

5. For the years subsequent to 2007, Vermont Yankee requests that the Commission permit it to automatically reduce its PBOP accrual from \$54,455 to match the actual PBOP expense for each year without having to seek Commission acceptance of the reduction. Vermont Yankee explains that it currently has only one active employee and

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<sup>2</sup> *Post-Employment Benefits Other Than Pensions*, 61 FERC ¶ 61,330 (1992), *reh'g denied and partial clarification granted*, 65 FERC ¶ 61,035 (1993) (*PBOP Policy Statement*).

<sup>3</sup> *Vermont Yankee Nuclear Corp.*, 68 FERC ¶ 61,284, *clarification granted*, 69 FERC ¶ 61,211 (1994).

<sup>4</sup> *Id.*

<sup>5</sup> Vermont Yankee's current PBOP accrual was accepted in Docket No. ER03-1139-000 by a delegated letter order issued on September 9, 2003.

one retiree for PBOP calculations, and has no plans to hire additional personnel. Vermont Yankee explains that it expects its PBOP expense will decrease in future years. According to Vermont Yankee, the Commission granting waiver for the PBOP filing requirements will allow it to pass future reductions automatically through to its ratepayers without the administrative burden and costs associated with PBOP accrual filings. Vermont Yankee further explains that the proposed automatic adjustment will apply only to reductions in Vermont Yankee's PBOP accruals. Vermont Yankee agrees, in the unlikely event that Vermont Yankee needs to increase its to increase its PBOP accrual in the future, to promptly file and seek Commission approval before passing on any increase in PBOP accrual to its customers.

6. Finally, Vermont Yankee requests waiver of the Commission's notice requirements and an effective date of May 15, 2007 for this filing. Vermont Yankee states that good cause exists for granting waiver because it will enable its customers to realize the benefit of the lower PBOP accruals immediately. Further, Vermont Yankee notes that the Commission generally grants waiver of the notice requirement for rate reductions, such as this filing proposes.<sup>6</sup>

### **C. Notice and Comments**

7. Notice of Vermont Yankee's filing was published in the *Federal Register*, 72 Fed. Reg. 29149 (2007), with interventions, comments and protests due on or before June 4, 2007. None was filed.

### **D. Discussion**

8. The Commission requires companies to file changes in their PBOP expense prior to passing through jurisdictional wholesale rates.<sup>7</sup> The reason for this filing requirement is because of the subjective nature of the actuarial assumptions, including the inflation rates used for estimates of future medical costs and the assumed rates of return used for earnings on the funds of the external trust. However, we note that in the instant case, Vermont Yankee's number of employees and dollar value of PBOP accrual substantially declined after the sale of its nuclear unit and Vermont Yankee does not plan to hire any

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<sup>6</sup> *Montaup Electric Company and Newport Electric Corp.*, 67 FERC ¶ 61,235 (1994); *Northern States Power Co. (Minnesota)*, 63 FERC ¶ 61,115 (1993).

<sup>7</sup> *See, e.g., Maine Yankee Atomic Power Co.*, 68 FERC ¶ 61,190, at 61,958 (1994).

more employees who would cause it to incur increased PBOP expense. Further, we note that Vermont Yankee will place any amounts of PBOP expense that it collects into an external trust. Vermont Yankee also agrees to file with the Commission any increases in PBOP expense. As required by the *PBOP Policy Statement*, Vermont Yankee must file with the Commission a refund plan in the event that funds in the external trust are not to be paid to Vermont Yankee's only employee or retirees.<sup>8</sup> Under these circumstances, we agree with Vermont Yankee that it is reasonable to waive our filing requirements and allow Vermont Yankee to reduce charges for PBOP expense without filing with the Commission.

9. In addition, we agree with Vermont Yankee that we generally grant waiver of our notice requirements when there is a rate decrease.<sup>9</sup> Accordingly, we will grant waiver of our notice requirement and allow the proposed reduction in PBOP expense to become effective on May 15, 2007.

The Commission orders:

A) Vermont Yankee's proposed changes to its PBOP accrual are accepted for filing to become effective on May 15, 2007, as requested.

B) Vermont Yankee's request for waiver of our filing requirement for decreases in PBOP expense is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> *PBOP Policy Statement*, 61 FERC at 62,203.

<sup>9</sup> See, e.g. *Mojave Pipeline Company*, 118 FERC ¶ 61,252 (2007); see also, *Niagara Mohawk Power Corporation*, 99 FERC ¶ 61,150, at P 17 (2002).