

133 FERC ¶ 61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Yankee Atomic Electric Company

Docket No. ER11-109-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued December 30, 2010)

1. This order accepts Yankee Atomic Electric Company's (Yankee Atomic) filing as completing its obligations under a Commission-approved settlement agreement of May 1, 2006 to provide its decommissioning cost estimate and schedule for decommissioning charges.¹ This order also accepts Yankee Atomic's modification to the Annual Nuclear Decommissioning Trust (NDT) True-Up mechanism (NDT Tracker) to remove the annual rate change requirement. Additionally, this order accepts Yankee Atomic's baseline rate schedules pursuant to Order No. 714.² The Commission also grants Yankee Atomic's requested effective date of January 1, 2011.

Background

2. In 1954, several New England utilities formed Yankee Atomic to construct and operate the Yankee Atomic Nuclear Power Station (Plant) in Rowe, Massachusetts, in order to serve their common needs for power and to demonstrate the feasibility of nuclear technology. The Plant commenced commercial operation in 1961. Power from the Plant was sold at wholesale to the New England utilities that own Yankee Atomic

¹ Settlement Agreement, filed May 1, 2006 in docket No. ER06-249-000, approved by the Commission in *Yankee Atomic Electric Co.*, 116 FERC ¶ 61,100 (2006) (2006 Settlement). The Connecticut Department of Public Utility Control (Connecticut DPUC), the Vermont Department of Public Service, The Massachusetts Attorney General, and Yankee Atomic were the signatories.

² *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

(Purchasers)³ under its wholesale power contract (Power Contract).⁴ Under the Power Contract, each of the Purchasers agreed to buy a percentage of the capacity and output of the Plant and to pay a percentage of Yankee Atomic's costs and expenses.

3. The Power Contract explicitly requires Purchasers to fund Yankee Atomic's decommissioning and associated costs according to their respective ownership shares. The Power Contract provides that Purchasers "will pay Yankee [Atomic] an amount equal to the Customer's power percentage of the total cost of service." The "total cost of service" is defined to include Yankee Atomic's "operating expenses," which, in turn, are defined to include "costs incurred in connection with decommissioning the plant," including "the direct and indirect costs of operating, maintaining, or dismantling the spent fuel storage facilities and other plant facilities" and "the accruals to any reserve established by Yankee [Atomic]'s board of directors to provide for physical decommissioning of the plant."⁵ Yankee Atomic holds collected amounts of decommissioning charges in the NDT and invests those funds not needed for current expenses.

4. On February 26, 1992, Yankee Atomic's board of directors voted to permanently cease power operations at the Plant and commence the process of decommissioning. Decontamination and dismantlement activities were undertaken beginning in 1993, and were completed in 2007. Construction of the Independent Spent Fuel Storage Installation (ISFSI) – a reinforced concrete storage pad and concrete and steel storage canisters that will hold the Plant's spent fuel until the Department of Energy (DOE) removes it – was completed in 1998. Transfer of spent fuel and Greater-Than-Class C (GTCC) high-level waste to the storage canisters was completed in June 2003. On August 10, 2007, the Nuclear Regulatory Commission issued Yankee Atomic a fuel storage-only operating license for the Plant. Yankee Atomic states that it has safely and securely stored the spent fuel and GTCC waste from the Plant in the ISFSI since that time.

5. On July 31, 2006, the Commission approved the 2006 Settlement, which changed Yankee Atomic's estimates of its decommissioning charges and costs. The 2006 Settlement established how to apply any net proceeds from a lawsuit filed against DOE for its alleged delay in removing nuclear materials from the Plant to Yankee Atomic's

³ At present, these Purchasers are: New England Power Company, the Connecticut Light and Power Company, NSTAR Electric & Gas Corporation, Central Maine Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and Central Vermont Public Service Corporation.

⁴ Yankee Atomic Electric Co., Rate Schedule FERC No. 3.

⁵ Yankee Atomic Electric Co., Rate Schedule FERC No. 3, section 6.

costs⁶ and implemented an investment earnings reconciliation mechanism (i.e. the NDT Tracker).⁷ Consequently, Yankee Atomic's principal remaining rate component is the charge funding the NDT.⁸ Section 2.6 of the Settlement also required Yankee Atomic to apply any compensation it receives as a result of the lawsuit against the DOE to offset any litigation expense or increases in decommissioning expenses, while section 2.8 required any remaining amount to be credited back to the Purchasers.⁹

6. In this filing, Yankee Atomic includes its decommissioning cost estimate and schedule of decommissioning charges including materials and analyses explaining the returns earned on Yankee Atomic's NDT investments, pursuant to the terms of the 2006 Settlement¹⁰ and a December 2007 informational filing.¹¹ Yankee Atomic's filing also discusses the future NDT investment strategy, in fulfillment of commitments that Yankee Atomic made in connection with a waiver request approved by the Commission in 2009.¹² Yankee Atomic states that it did not propose to increase any of its wholesale rates including its decommissioning charges or its Post Retirement Benefits Other Than Pensions because the current charges are reasonable and there is not a reason to change the current rates. Yankee Atomic also proposes to modify the NDT Tracker mechanism to remove the requirement to adjust its rate annually to reconcile divergences between assumed and actual NDT investment earnings. Yankee Atomic states that experience has shown such adjustment is neither necessary nor beneficial. For the period 2011-2014, Yankee Atomic's rates will include charges for NDT collections at the annual rate of \$11.75 million. Yankee Atomic also filed the necessary rate schedule information as required by Order No. 714.¹³

⁶ 2006 Settlement, section 2.6.

⁷ *Id.*, section 2.4

⁸ Yankee Atomic Filing at 4.

⁹ The Purchasers are referred to as "owners" in the 2006 Settlement.

¹⁰ Yankee Atomic Electric Co., Settlement Agreement, Docket No. ER06-249-000 (filed May 1, 2006) (approved by the Commission in the 2006 Settlement).

¹¹ Yankee Atomic Electric Co., Informational Filing, Docket No. ER06-249-001 (filed Dec. 7, 2007).

¹² *Yankee Atomic Electric Co.*, Docket No. ER09-1035-000 (May 28, 2009) (unpublished letter order).

¹³ Electronic Tariff Filings, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

Notices of Filing, Interventions and Comments

7. Notice of Yankee Atomic's filing was published in the *Federal Register*, 75 Fed. Reg. 65,315 (2010), with interventions and protests due on or before November 3, 2010. The Northeast Utilities Service Company and the Massachusetts Attorney General filed timely motions to intervene without comments, while the Connecticut DPUC filed a timely notice of intervention and comments. On November 9, 2010, Yankee Atomic filed an answer to the Connecticut DPUC's comments.

8. The Connecticut DPUC requests that the Commission make one clarification. The Connecticut DPUC states that section 2.6 of the 2006 Settlement addresses the application of the proceeds from Yankee Atomic's lawsuit against the DOE, but only refers to *Yankee Atomic v. United States*, Docket No. 98-126C (Ct. Fed. Cl.). Specifically, the Connecticut DPUC states that, as a result of DOE's breach of contract, it is apparent that in order to recover all the damages incurred, Yankee Atomic needs to file additional lawsuits that will cover damages subsequent to this case. Thus, the Connecticut DPUC argues, the Commission should clarify that section 2.6 applies to all proceeds Yankee Atomic recovers from the DOE, including all later lawsuits regarding DOE's alleged delay in taking possession of Yankee Atomic's spent nuclear fuel and GTCC waste. Additionally, the Connecticut DPUC states that Yankee Atomic's counsel agrees that this clarification represents the intent of section 2.6.

9. The Connecticut DPUC also states that the Commission should accept Yankee Atomic's proposal to modify the NDT Tracker because the tracker fulfills two goals: (1) to ensure that Yankee Atomic has sufficient funds to operate, while charging ratepayers only those charges that are necessary; and (2) Yankee Atomic has agreed to provide yearly analyses of the NDT's performance, including filing updated decommissioning cost estimates every four years with the Commission. The Connecticut DPUC also states that the updated decommissioning cost estimates capture the difference between projected and actual earnings in the NDT Tracker which ensures that ratepayers pay only those charges that are necessary and Yankee Atomic has sufficient funds to complete decommissioning of the Plant.

10. In its answer, Yankee Atomic notes that it has no objection to the Commission issuing the clarification requested by the Connecticut DPUC. Yankee Atomic states that it agrees with the Connecticut DPUC's interpretation of the intended scope of section 2.6 of the 2006 Settlement.

Discussion

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to

intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We are not persuaded to accept Yankee Atomic's answer, and will, therefore, reject it.

Analysis

12. We will accept Yankee Atomic's filing, including the proposed modification to the NDT Tracker to remove the annual rate change requirement and its baseline rate schedules, to be effective January 1, 2011, as requested.

13. The issue raised by the Connecticut DPUC goes to the proper interpretation of section 2.6 of the 2006 Settlement. This provision states: "Any damages Yankee [Atomic] recovers in connection with its claim brought in *Yankee Atomic v. United States*, Docket No. 98-126C (Ct. Fed. Cl.) will be applied as follows: a) First, Yankee [Atomic] will apply the proceeds against any costs of the litigation that have not already been recovered and to pay any tax liabilities associated with the damage award. b) Second, Yankee [Atomic] will use any additional amounts to cover unanticipated decommissioning costs and spent fuel storage costs that would otherwise be charged to the Purchasers. c) Third, Yankee [Atomic] will immediately credit to the Purchasers under the Power Contracts any amounts remaining after these items are covered, in order to reduce charges under Attachment A on a level basis over the remaining recovery period. d) Fourth, in the event charges under Attachment A have already been collected or there are any remaining DOE Litigation Proceeds after the credit under paragraph 2.6(c), Yankee [Atomic] shall credit any remaining amounts to the Purchasers under the Power Contracts."

14. The Connecticut DPUC sees section 2.6 as applying to all proceeds that Yankee Atomic is able to recover from the DOE, including all later lawsuits related to the DOE's alleged breach of contract. The Connecticut DPUC also states that Yankee Atomic's counsel concurs in this interpretation of section 2.6.

15. When interpreting a contract, the Commission's analysis must begin with whether or not it can determine the parties' intent from the four corners of the document without resort to parole evidence or extrinsic circumstances.¹⁴ If so, then the Commission will not permit parole and extrinsic evidence.¹⁵ In this case, the

¹⁴ *Florida Power & Light Co.*, 60 FERC ¶ 61,001, at 61,004 (1992) (citing *Niagara Mohawk Power Corp.*, 46 FERC ¶ 61,016, at 61,099 (1989)).

¹⁵ *Id.*

2006 Settlement neither mentions, nor appears to apply to, any new or additional lawsuits regarding the DOE's alleged delay in taking possession of Yankee Atomic's spent nuclear fuel and GTCC waste. Rather, it specifically mentions only a single lawsuit, specifying that lawsuit's docket number. Also, we do not find it necessary to consider possible future lawsuits in our understanding of section 2.6. We find, instead, that section 2.6 of the Settlement expressly applies only to the application of the proceeds that Yankee Atomic recovers from the one specific lawsuit mentioned in the 2006 Settlement. Accordingly, we deny the Connecticut DPUC's request. If the parties to the 2006 Settlement wish to amend its terms to incorporate language regarding additional lawsuits, which the Connecticut DPUC contends was their original intent notwithstanding the express language of section 2.6, they may separately file to revise section 2.6.

The Commission orders:

Yankee Atomic's filing, including its proposed revisions to the NDT Tracker to remove the annual rate change requirement and its baseline rate schedules filed pursuant to Order No. 714, are hereby accepted, effective January 1, 2011, as discussed in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.