

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Maine Yankee Atomic Power Company

Docket No. ER04-55-000

ORDER ACCEPTING FOR FILING AND SUSPENDING REVISED RATE
SCHEDULE, SUBJECT TO REFUND, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued December 19, 2003)

1. In this order, we accept for filing a revised formula rate schedule¹ filed by Maine Yankee Atomic Power Company (Maine Yankee) that proposes to increase rates to complete the decommissioning of the Maine Yankee nuclear-powered generating facility, suspend it for a nominal period, to become effective January 1, 2004, subject to refund, and establish hearing and settlement judge procedures.
2. This order benefits customers because it provides the parties a forum in which to resolve the issues raised in this proceeding.

Background

3. Maine Yankee was organized in 1966 for the purpose of constructing, owning, and operating a nuclear-powered generating facility. In 1997, Maine Yankee permanently ceased operations, and commenced decommissioning of the facility. Maine Yankee has completed approximately 81 percent of the decontamination and dismantlement work at the site. Maine Yankee states that as part of the decommissioning, it has constructed and will maintain an interim spent fuel storage installation (ISFSI) to store its spent fuel and high level nuclear waste until the Department of Energy (DOE) takes delivery of the storage casks.

¹ The rate schedule is designated First Revised Rate Schedule FERC No. 1, pursuant to the Commission's Order No. 614.

4. Pursuant to a 1998 Settlement Agreement (1998 Settlement), Maine Yankee agreed, among other things, to make a rate filing to include updated cost assumptions and payment methodologies in connection with the ISFSI, any necessary rate adjustments, and the methodology for replenishment of the Spent Fuel Disposal Trust Fund that under the Settlement Agreement had been utilized for certain ISFSI-related costs. The instant filing is made in compliance with that agreement.

Description of Filing

5. Maine Yankee explains that a principal purpose of its filing is to submit a revised decommissioning cost estimate and collection schedule to assure that adequate funds are available to safely and promptly decommission the plant and operate and manage the long-term storage of spent fuel and high level waste on site. To this end, Maine Yankee seeks approval of an annual increase in current decommissioning collections of \$3.77 million per year, to \$29.35 million. Maine Yankee also requests approval of changes in its billing formula and a \$1.45 million increase in the level of collection for post retirement benefits other than pensions. Maine Yankee requests an effective date of January 1, 2004, consistent with a settlement agreement in Docket No. ER98-570-000.

Decommissioning and Spent Fuel Storage Expense

6. Maine Yankee proposes to collect \$29.35 million annually from January 1, 2004 to October 31, 2008, for the decommissioning and spent fuel management expense, exclusive of any income tax liability. Maine Yankee explains that this is an annual net increase of \$3.77 million from current total decommissioning collection levels. It further explains that the increase reflects an increase in the total cost estimate, inclusive of interim spent fuel storage expenses, from \$530,251,618 (mid-1998 dollars) to approximately \$576,717,849 (mid-1998 dollars). Maine Yankee states that the proposed annual decommissioning collections are based on the revised estimate.

7. Maine Yankee also proposes to defer collections until November 1, 2008 of amounts to replenish the Spent Fuel Trust Fund (established under Maine law to hold in trust funds collected from ratepayers for the express purpose of meeting Maine Yankee's pre-1983 spent fuel disposal obligations to the DOE). Maine Yankee states that pursuant to the 1998 Settlement, it withdrew funds from this trust to pay for certain costs associated with constructing and moving fuel to the ISFSI. Maine Yankee advises that its ISFSI costs have amounted to \$63 million through June 2003 and investments in the Fuel Fund have lost about \$7 million; thus, the Fuel Fund is currently about \$70 million underfunded.² Maine Yankee estimates a current Fuel Fund balance (as of October 31, 2003)

² Exhibit MY-1 at 9.

of approximately \$95 million.³ Comparatively, the DOE obligation is expected to reach \$184 million on October 31, 2008, and Maine Yankee estimates an under-funded liability of about \$89 million at that time.

8. Starting on November 1, 2008, Maine Yankee proposes to collect the under-funded amounts relating to its Fuel Trust Fund over a two-year period. The monthly billings will be based on the difference between the actual DOE liability and the actual Fuel Fund market value balance, as of the prior month end, divided by the remaining months through October 31, 2010. Maine Yankee explains that deferral of such collections will provide the rate moderation that parties to the 1998 Settlement sought and will provide additional time to determine any DOE litigation awards, which may reduce the amount of collections for the Fuel Fund to be replenished. A final true up will be calculated and billed when the DOE obligation for pre-1983 fuel disposal has been met. Maine Yankee requests that the Commission approve its proposed methodology for recovering sufficient amounts to replenish the Fuel Fund beginning November 1, 2008.

Post Retirement Benefits Other than Pensions

9. Maine Yankee proposes to increase its collection for post retirement benefits other than pensions (PBOP) from a level of zero⁴ to approximately \$1.45 million per year from January 1, 2004 to October 31, 2008. It maintains that this proposed increase is supported by the report of Maine Yankee's independent actuaries, which, according to Maine Yankee, indicates that the PBOP fund is under funded at this time.

Formula Rate Revisions

10. Maine Yankee also proposes a number of non-substantive changes to the formula rate to recognize its status as a shutdown facility whose remaining function is to safely decommission the Plant. Specifically, several operating expense accounts that were no longer used were deleted and one regulatory liability account was added to accumulate net earnings on the Fuel Fund (see below). Maine Yankee explains that the return component of the formula now reflects the return on equity component, instead of a return on net plant investment, authorized by the 1998 Settlement. Maine Yankee also proposes to retain the 6.5 percent return on equity that was approved in the Settlement.

11. With respect to the Fuel Fund, Maine Yankee explains that the interest expense (*i.e.*, rates based on 13-week Treasury bills) on its obligation to DOE for disposal of pre-1983 spent nuclear fuel is netted with investment earnings on the Fuel Fund. It states

³ Exhibit MY-7 at 8.

⁴ Previously, Maine Yankee estimated that its PBOP liability was fully funded and therefore included zero as a PBOP expense in its rates.

that, historically, this has been a net expense (i.e., including the above noted \$7 million loss) and has been included in billings to customers. Maine Yankee advises that more recently investment earnings have exceeded the DOE obligation interest expense and this has resulted in a net credit on customer bills. Maine Yankee proposes to defer these net credits by recording them in a regulatory liability account. Maine Yankee explains that its deferral proposal removes Fuel Fund income and expenses from customer bills and allows any excess investment earnings over interest expense to remain in the Fuel Fund to pay for future interest on the DOE obligation.

Order No. 614

12. Finally, pursuant to Order No. 614, and after consultation with Commission Staff, Maine Yankee submits a composite conformed rate schedule that contains only the operative provisions of the various contracts and amendments that govern Maine Yankee's rates, terms and conditions of service. Maine Yankee states that the only changes to existing rates occasioned by this filing are reflected in Section IV of the Rate Schedule (commencing on Sheet No. 25), which shows the proposed billing methodology based on Maine Yankee's formula rate.

Notice, Interventions, and Protests

13. Notice of Maine Yankee's filing was published in the Federal Register, 68 Fed. Reg. 62,061 (2003), with protests and interventions due on or before November 10, 2003. NSTAR Electric & Gas Corporation (NSTAR), on behalf of its affiliate Cambridge Electric Light Company, filed a motion to intervene. Northeast Utilities Service Company filed a motion to intervene and comments in support of Maine Yankee's filing. The Vermont Department of Public Service filed a motion to intervene. The Maine Public Advocate (MPA) filed a motion to intervene with comments. The Maine Public Utilities Commission (Maine Commission) filed a notice of intervention and comments.

14. The Maine Public Advocate explains that its sole interest is the impact on consumers of higher prices. The Maine Public Advocate states that the requested increase in decommissioning expense, if approved, would increase costs for all customers of Maine Yankee, wholesale and retail, in the six-state New England region.

15. The Maine Commission asserts that Maine Yankee has not submitted sufficient information to determine what decommissioning expenses and management decisions since the 1998 Settlement were prudent. The Maine Commission argues that until such information becomes available, it cannot adopt a position as to the prudence of the costs associated with those events. The Maine Commission adds that Maine Yankee's revised rates should be suspended, made effective subject to refund, and set for hearing. As part of the hearing process or a preliminary settlement process, the Maine Commission asserts that the parties should be able to raise issues concerning the prudence of Maine Yankee's

management decisions and decommissioning expenditures since the time of the 1998 Settlement.

16. The Maine Commission notes that since the 1998 Settlement, Maine Yankee has completed more than 50 percent of the decommissioning project, has terminated two of its major contractors, and has been in litigation regarding those terminations. The Maine Commission also points out that since the 1998 Settlement, Maine Yankee has been involved in litigation concerning decommissioning with Stone & Webster Engineering Corporation, Federal Insurance Company, and NAC International. It explains that Maine Yankee received settlement payments of \$44 million from Federal Insurance Company and \$10.4 million from NAC International, and that Maine Yankee remains in litigation in Bankruptcy court for its claims against Stone & Webster. It maintains that those and other decommissioning decisions and actions are not addressed sufficiently in Maine Yankee's filing to permit an evaluation of Maine Yankee's prudence, and that they warrant further scrutiny before the proposed rates can be determined to be just and reasonable.

17. NUSCO filed comments in support of Maine Yankee's proposed revisions.⁵ NUSCO states that the proposed revisions in this filing are fair and equitable and will accurately collect the necessary funds to sufficiently complete Maine Yankee's decommissioning process.

18. On November 20, 2003, Maine Yankee filed an answer to the comments. Maine Yankee maintains that there is sufficient information in its filing to determine the prudence of its decommissioning expenses and that its rate schedule revisions should be accepted without suspension or hearing. If the Commission decides to suspend Maine Yankee's revised rate schedule, Maine Yankee requests that the Commission assign a settlement judge.

Discussion

Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notice 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. § 384.213(a)(2) (2003) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Maine Yankee's answer because it has provided information that has assisted us in our decision-making process.

⁵ NUSCO states that the NU Operating Companies have a twenty percent ownership of Maine Yankee and are responsible for twenty percent of its costs.

20. Our preliminary analysis indicates that Maine Yankee's proposal 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 formula rate schedule for filing, suspend it for a nominal period, to become effective January 1, 2004, subject to refund, and set it for hearing.

21. In order to provide the parties an opportunity to resolve this proceeding among themselves, we will hold the hearing in abeyance and direct 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 the settlement judge in the proceeding; otherwise the Chief 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 hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Maine Yankee's proposed revised formula rate schedule is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2004, subject to refund, as discussed in the body of this order.

(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 Organization Act and by 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 Maine Yankee's revised rate schedule, as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a

⁶ 18 C.F.R. § 385.603 (2003).

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 list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

settlement judge in this proceeding within fifteen (15) days of the date of this order. Such designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable. If the parties decide to request a specific judge, they must make the request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (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 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 every 60 days thereafter, apprising the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (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.