

143 FERC ¶ 61,289
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Maine Yankee Atomic Power Company	Docket Nos. ER13-1395-000
Yankee Atomic Electric Power Company	ER13-1397-000
Connecticut Atomic Electric Power Company	ER13-1399-000

**ORDER GRANTING APPLICATIONS TO REDUCE RATES UNDER WHOLESALE
POWER CONTRACTS**

(Issued June 27, 2013)

1. On May 1, 2013, Maine Yankee Atomic Power Company (Maine Yankee), Yankee Atomic Electric Company (Yankee Atomic), and Connecticut Yankee Atomic Power Company (Conn Yankee) (collectively, Yankee Companies), filed applications pursuant to section 205 of the Federal Power Act (FPA)¹ to reduce rates in their wholesale power contracts. In this order, we grant the proposed rate reductions and changes to the terms of the wholesale power contracts to become effective on July 1, 2013.²

I. Background

2. Pursuant to section 205 of the FPA, the Yankee Companies submitted proposed reductions in wholesale rates under Yankee Companies' wholesale power contracts. The rate reductions reflect the identical combined effect of: 1) the companies' receipt of damage awards in litigation with the U.S. Department of Energy (DOE); and 2) projected increases in decommissioning costs primarily due to the extension of time during which each company must store spent nuclear fuel and high-level waste on-site as a result of DOE's continued obligation to remove that material. Each company also proposes to add a periodic review mechanism, Review of Funding Adequacy – Application of DOE

¹ 16 U.S.C. § 824d (2006).

² While each applicant filed their request separately, the issues and requested relief are identical in nature, thus, for administrative efficiency the Commission is issuing a single order to address these matters.

Recoveries, to each Power Contract³ to permit the prompt flow-through to customers of additional damage awards that they may receive in further litigation phases with DOE that are in excess of funding requirements for the projected decommissioning costs.

A. The Yankee Companies' History

3. Certain New England utilities formed the Yankee Companies to construct and operate three (3) nuclear units to serve their common needs for power and to demonstrate the feasibility of nuclear power technologies.⁴ Power from the plants was sold at wholesale to the New England utilities that owned the Yankee Companies under the Power Contracts. Each of the Power Contracts explicitly requires the Purchasers (customers) to fund the Yankee Companies' decommissioning and associated costs according to their respective ownership/power entitlement shares. Additionally, the Power Contracts require the Yankee Companies to hold the collected amounts of estimated decommissioning costs along with pre-1983 spent fuel obligations to DOE in external trusts and invest those funds not needed for current expenses.
4. Each of the plants operated for approximately 30 years. In 1992, Yankee Atomic ceased power operations at its plant and commenced the process of decommissioning,⁵ followed by Conn Yankee in 1996⁶ and Maine Yankee in 1997.⁷ Most of the legal and regulatory issues associated with decontamination and dismantlement of the plants have

³ Designated as Yankee Atomic Electric Company, Second Revised Rate Schedule FERC No. 3, Appendix D; Connecticut Yankee Power Company, Second Revised Rate Schedule FERC No. 10 and Second Revised Rate Schedule FERC No. 11, Appendix E ; and Maine Yankee Atomic Power Company, Fourth Revised Rate Schedule FERC No. 1, Appendix B.

⁴ The group of New England utilities that own various percentages of each Yankee Company are The Connecticut Light and Power Company, New England Power Company (including interest as successor to Montauk Electric Company), NSTAR Electric & Gas Corporation (including interest as successor to Boston Edison Company and Cambridge Electric Light Company), The United Illuminating Company, Western Massachusetts Electric Company, Central Maine Power Company, Public Service Company of New Hampshire, and Green Mountain Power Corporation.

⁵ Yankee Atomic Transmittal Letter at 3.

⁶ Conn Yankee Transmittal Letter at 4.

⁷ Maine Yankee Transmittal Letter at 4.

been resolved by past Commission proceedings and settlement negotiations.⁸ Decontamination and decommissioning of the plants have also occurred and the spent nuclear fuel and greater-than-Class C wastes have been moved to independent spent fuel storage facilities constructed at each plant site (Fuel Storage Facilities), where the spent nuclear fuel waits for DOE pickup and removal.

B. DOE Litigation Damages

5. Approximately 15 years ago, the Yankee Companies brought causes of action against the United States government seeking compensatory damages for the costs of storing spent nuclear fuel beyond the time that the government, through the DOE, promised by contract under the Nuclear Waste Policy Act of 1982 to remove and begin storing that waste in a permanent and secure repository. On May 18, 2012, the United States Court of Appeals for the Federal Circuit issued an opinion on appeal from the United States Court of Federal Claims in the Yankee Companies' actions against DOE.⁹ The May 18, 2012 ruling held that the Court of Federal Claims correctly calculated damages for dry cast storage construction costs, deferred costs of loading waste to the DOE, and fuel reracking costs. Yankee Atomic received an award of \$38,268,655, Conn Yankee received an award of \$39,667,243, and Maine Yankee received an award of \$81,690,866 covering damages for the period up to December 31, 2002 (Phase 1).¹⁰

6. Each of the Yankee Companies' prior settlements addressed how the formula rates would flow through the amounts received from the DOE litigation to the benefit of the Purchasers. Essentially all amounts remaining after payment of the costs of litigation, taxes and unfunded decommissioning and spent fuel storage costs, are to be refunded to customers.

⁸ Yankee Atomic Transmittal Letter at 4-5; Conn Yankee Transmittal Letter at 4-5; and Maine Yankee Transmittal Letter at 4-5.

⁹ Citing *Yankee Atomic Electric Company v. United States*, 679 F.3d 1354 (Fed. Cir. 2012) (May 18 Ruling).

¹⁰ Yankee Companies note that the court held that if the breach of an entire contract is only partial, the plaintiff can recover only such damages as he or she has sustained, leaving prospective damages to a later suit in the event of further breach. Citing *Yankee Atomic Electric Company v. United States*, 536 F.3d 1268 (Fed. Cir. 2008). As a result, the Yankee Companies must file lawsuits against the DOE every several years to recover damages from the DOE for ongoing costs of storing spent nuclear fuel. Currently, the Yankee Companies have a second (Phase II) action pending with the court covering the years 2003 through 2008. They plan to file another action later this year to recover damages for storage costs incurred from 2009 to 2012, with the prospect of additional actions to follow.

C. The Yankee Companies' Filings

7. In the present filings, the Yankee Companies address factors that will affect its need for decommissioning charges, as well as its obligations under their prior settlements. These factors are: (1) the Yankee Companies' receipt of damage awards in the first phase of Yankee's litigation with DOE, and the need to address the possible recovery of additional damages in the future phases of the litigation; and (2) a projected increase in decommissioning costs due primarily to the extension of the period during which Yankee must store spent nuclear fuel and high-level waste, as well as other revised cost estimates.

8. The Yankee Companies explain that while the receipt of the Phase I damage awards will reduce the decommissioning funding required from customers, the same factor that underlies the award – the DOE's failure to remove the spent nuclear fuel from the sites- tend to increase the Yankee Companies' decommissioning costs because their Fuel Storage Facilities must remain in operation until DOE has performed. The Yankee Companies explain that the current estimates are based on the premise that DOE would complete removal of the spent nuclear fuel and high-level waste by 2021, permitting the decommissioning of Fuel Storage Facilities by the year 2023. However, the Yankee Companies believe that this assumption is no longer tenable. They now opine that DOE will not be able to perform its duties as anticipated and that they will not be able to decommission the Fuel Storage Facilities and wind up their corporate affairs until 2033. Accordingly, the Yankee Companies have each updated their cost estimates for completing their decommissioning.

9. To determine the impact of the receipt of the Phase I Damage Award from the DOE and updated decommissioning cost estimate on the Yankee Companies' need to collect additional funds from the Purchasers for deposit in the Nuclear Decommissioning Trusts (NDT), Yankee undertook analyses using two different approaches.¹¹ The first "full funding" approach assumes the collection of funds to cover all estimated decommissioning expenses and the one-time fee associated with pre-1983 spent fuel through the end of the companies' operations, now projected to occur in 2033. The second approach, the "fifteen-year funding approach" assumes that the Yankee Companies would only collect enough from the Purchasers to maintain funding in the NDT for fifteen years of operations, rather than the full twenty-year period until they are projected to cease operations. An integral component of the fifteen-year funding approach is the implementation of a revised periodic review mechanism as part of Yankee's formula rate. This mechanism will employ amounts that Yankee may recover

¹¹ See the testimony of Carla Pizzella, Attachment E of each Yankee Companies' Transmittal Letter; the testimony of Mr. Wayne Norton concerning the companies' history and current status (Attachment D of each Yankee Companies' Transmittal Letter) and Todd Smith concerning the current estimate of decommissioning costs (Attachment F of each Yankee Companies' Transmittal Letter).

in its ongoing litigation with the DOE to maintain funding in the NDT for fifteen years of operations (and Yankee's other obligations) on a rolling basis, until the DOE starts to perform. The Yankee Companies are proposing to base their rates on the second of these funding approaches. They note that the "fifteen year approach" will enable the Yankee Companies to either eliminate or reduce their decommissioning charges after the proposed July 1, 2013 effective date of their rate revisions, and provide credits to their Purchasers.

10. As stated above, the Yankee Companies maintain that integral to the fifteen-year funding approach is the adoption of the periodic review mechanism. As part of the periodic review process, the Yankee Companies will present their analysis of the need to apply any future recovery to maintain financial adequacy to stakeholders and provide an opportunity for their questions and comment. The Yankee Companies will also file with the Commission the financial adequacy analysis as an informational filing. If, however, at any time it becomes necessary for the Yankee Companies to resume decommissioning charges to their customers, they will submit a proposal under section 205 of the FPA. The proposed review mechanism also provides that, if five years passes without Yankee Companies receiving litigation proceeds, they will submit an informational filing with analyses of their continued adequacy of the NDT to meet their financial obligations. Finally, the periodic review mechanism provides a "sunset" provision that within ten years of the effective date of this rate application, the Yankee Companies will submit a filing to the Commission to initiate a review of the financial assurance mechanism.

11. The Yankee Companies assert that the rates under the fifteen year funding approach provide an efficient process to address future damage awards and will expedite the customers' receipt of credits to the extent that the proceeds are not needed to fund decommissioning obligations. Further, they maintain that the proposed periodic review mechanism will reduce the uncertainty of going through future formal rate proceedings each time the companies receive damage awards.

12. Accordingly, Yankee Atomic proposes to revise its rates to reduce its decommissioning charges by \$13,079,250 for the period from July 1, 2013 through December 2014, when the charges are scheduled to terminate.¹² The rate reduction reflects the effect of, *inter alia*, the DOE damage award and the revised total decommissioning cost of \$225.4 million.

13. Maine Yankee proposes to provide credits to purchasers of \$74,265,445 over 3 years (2013-2015)¹³ presuming, *inter alia*, that it will use approximately \$28.3 million from the Spent Fuel Trust which is not currently needed to meet the projected payment

¹² Yankee Atomic's Transmittal Letter at 12.

¹³ Maine Yankee's Transmittal Letter at 2.

obligation to DOE.¹⁴ The rate reduction reflects the effect of, *inter alia*, the DOE damage award and Maine Yankee's updated decommissioning estimate that projects a total decommissioning cost of approximately \$280,377,720.

14. Conn Yankee indicates that it proposes to eliminate the decommissioning charges as of July 1, 2013 and to reduce decommissioning charges to its customers by a total of approximately \$144.8 million over the period from July 1, 2013 through 2015.¹⁵ The rate reduction reflects the effects of, *inter alia*, the DOE damage award and a revised projected total decommissioning cost \$334.8 million.

15. The Yankee Companies also provided stipulations and agreements entered into with the Connecticut Public Utilities Regulatory Authority, Connecticut Office of Consumer Counsel, Maine Public Utilities Commission, Maine Office of Public Utilities Commission, Maine Office of Public Advocate, Massachusetts Department of Public Utilities, and the Attorney General of Massachusetts. The stipulations and agreements reflect the aforementioned entities' resolution of the issues associated with the damage award that the Yankee Companies received in litigation with DOE and the related decommissioning charges and other charges collected by the Yankee Companies pursuant to their Power Contracts. They also reflect the entities' agreement to the terms of the periodic review mechanism as well as its incorporation into the Power Contracts.

II. Notice of Filing and Responsive Pleadings

16. Notices of the filings were published in the *Federal Register*, 78 Fed. Reg. 28, 213 (2013), with interventions and protests due on or before May 22, 2013. In Docket No. ER13-1395-000, (Maine Yankee application) and Docket No. ER13-1397-000, (Yankee Atomic) motions to intervene were filed by the New Hampshire Office of Consumer Advocate, Northeast Utilities Service Company, and the Massachusetts Attorney General. In the same aforementioned dockets, notices of intervention and comments in support of the request were filed by the Massachusetts Department of Public Utilities and the Maine Public Utilities Commission.

¹⁴ Maine Yankee Atomic Power Company, Fourth Revised Rate Schedule FERC No. 1, Appendix B.

¹⁵ Conn Yankee's Transmittal Letter at 12-13. Connecticut Yankee Power Company, Second Revised Rate Schedule FERC No. 10 and Second Revised Rate Schedule FERC No. 11, Appendix E and Yankee Atomic Electric Company, Second Revised Rate Schedule FERC No. 3, Appendix D.

III. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely unopposed motions and notices to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

18. The Commission finds that the Yankee Companies' revised decommissioning and interim storage cost estimates as well as their proposed rate revisions, including incorporation of the periodic review mechanisms, to be reasonable. We also note that the proposed rate reductions and rate schedule revisions were unopposed or supported by state agencies and other stakeholders. Therefore the Commission grants the proposed rate revisions, effective July 1, 2013 as requested.

The Commission orders:

The proposed rate reduction and revisions to the Power Contracts, as discussed in the body of this order, is granted effective July 1, 2013.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.