D.T.E. 01-99

Petition of Western Massachusetts Electric Company for approval of an Amendatory Agreement with Vermont Yankee Nuclear Power Corporation.

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I. INTRODUCTION AND PROCEDURAL HISTORY

On November 19, 2001, Western Massachusetts Electric Company ("WMECo" or "Company") filed a petition with the Commonwealth of Massachusetts Department of Telecommunications and Energy ("Department") pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A ("Petition") to amend its existing power contract obligations with Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"). Specifically, WMECo requests that the Department (1) approve an amendatory agreement between WMECo and Vermont Yankee dated September 21, 2001 ("2001 Amendatory Agreement"), and (2) permit WMECo to include in its transition charge (a) Vermont Yankee's ongoing cost-of-service, and (b) the costs and revenues from the power purchased from Vermont Yankee under the 2001 Amendatory Agreement (Petition at 5). WMECo seeks these approvals because of the pending sale by Vermont Yankee of its 510 megawatt nuclear power station, located in Vernon, Vermont ("Station"), to Entergy Nuclear Vermont, LLC ("Entergy"). The Department docketed this matter as D.T.E. 01-99.

Pursuant to notice duly issued, a public hearing was held on January 10, 2002. The Attorney General of the Commonwealth of Massachusetts ("Attorney General") filed a notice of intervention as of right pursuant to G.L. c. 12, § 11E. Cambridge Electric Light Company ("Cambridge") and the Commonwealth of Massachusetts Division of Energy Resources ("DOER") were permitted to intervene.

An evidentiary hearing was held on February 27, 2002. In support of its petition, the Company sponsored the testimony of Richard A. Soderman, director of regulatory policy and

planning for Northeast Utilities Service Company, which provides centralized services to the operating companies of the Northeast Utilities System, including WMECo. The evidentiary record contains 97 exhibits and 7 responses to record requests.

On March 20, 2002, the Company filed an initial brief ("WMECo Brief"). On this same date, the Attorney General filed comments stating that he has no objection to the sale ("Attorney General Comments"). On March 27, 2002, the Company filed reply comments ("WMECo Reply"), and the Attorney General filed reply comments clarifying his position regarding transition costs ("Attorney General Reply").

II. DESCRIPTION OF THE PROPOSED AMENDATORY AGREEMENT

WMECo is a sponsoring shareholder of Vermont Yankee and has an existing power contract[1] with Vermont Yankee that obligates it to purchase 2.5 percent of the net capacity, output, and ancillary products of the Station for a term extending through March 21, 2012 (Exh. WMECo-1, at 3). Pricing under the existing power contract is based upon Vermont Yankee's operation and maintenance expenses, capital costs, and decommissioning costs (id. at 3).

Vermont Yankee and Entergy executed a purchase and sale agreement ("PSA") to sell substantially all of the Station's assets to Entergy (Exh. WMECo-1, exh. RAS-4, att. 1). With this PSA, Vermont Yankee has also committed to enter into a power purchase agreement with

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[1] The existing power contract between WMECo and Vermont Yankee consists of the following: (1) a power contract dated February 1, 1968, as amended by eight amendments, dated June 1, 1972, April 15, 1983, April 24, 1985, June 1, 1985, May 6, 1988 (two amendments), June 15, 1989, and December 1, 1989; and (2) an additional contract dated February 1, 1984 (Exh. WMECo-1, exh. RAS-4, at 1).

Entergy ("Entergy PPA") upon the close of the sale to purchase 100 percent of the Station's actual net output, up to the present operating level of 510 megawatts, through March 21, 2012 (Exh. WMECo-1, exh. RAS-4, exh. B).[2] Vermont Yankee also committed to amend the existing power contracts between itself and its sponsors, including WMECo, at the close of the sale (Exh. WMECo-1, at 6). The 2001 Amendatory Agreement at issue in this proceeding is the amendment as required by the PSA to Vermont Yankee's existing power contract with WMECo (Exh. WMECo-1, exh. RAS-4, exh. J).

The 2001 Amendatory Agreement obligates WMECo to pay its entitlement share of Vermont Yankee's ongoing cost-of-service obligations (Exh. WMECo-1, at 10).[3] The 2001 Amendatory Agreement also obligates WMECo to purchase from Vermont Yankee its entitlement share of the aggregate energy, capacity, and ancillary products actually produced by the Station and purchased by Vermont Yankee from Entergy through March 21, 2012 (Exh. WMECo-1, exh. RAS-4, at 8-9, 16). WMECo's entitlement share is 2.5 percent (id. at 1). WMECo's schedule of monthly prices per megawatt-hour for the Station's output is based on the Entergy PPA schedule of monthly base prices (Exh. WMECo-1, exh. RAS-4, exh. B, sch. D). In addition to the schedule of monthly base prices, the Entergy PPA includes

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[2] Entergy has also agreed to assume essentially all of Vermont Yankee's liabilities associated with the Station's operation, including full responsibility for decommissioning the Station (Exh. WMECo-1, exh. RAS-4, att. 1, at § 2.3).

[3] The ongoing cost-of-service expenses include costs pertaining to the unamortized net plant investment for the Vermont Yankee Station, divestiture-related transaction and sales costs, post-closing obligations to Entergy under the PSA, and ongoing operating expenses of the shell Vermont Yankee entity, including principal and interest on any borrowed funds associated with operating expenses (Exhs. CEL-RHM-1 at 11; CEL-RHM-2, at 13).

a "low market adjuster" mechanism ("LMA"), which reduces the monthly price of power to Vermont Yankee, and ultimately to WMECo, in the event that the market price[4] drops significantly below the scheduled price (Exhs. WMECo-1, at 9; WMECo-1, exh. RAS-4, exh. B at 7).

III. POSITIONS OF THE PARTIES

A. WMECo

WMECo argues that the 2001 Amendatory Agreement is consistent with its obligation under Chapter 164 of the Acts of 1997 ("Restructuring Act") to mitigate its transition costs to the maximum extent possible (WMECo Brief at 4). WMECo claims that the 2001 Amendatory Agreement reduces the overall transition costs that it would otherwise be required to collect from its customers, producing a net present value savings of approximately $6.935 million (Exh. WMECo-1, exh. RAS-3).[5] WMECo claims that under the existing power contract, the Company's retail customers would pay $9.273 million in transition costs up to the year 2012 (Exh. WMECo-1, exh. RAS-1). Under the 2001 Amendatory Agreement, WMECo claims

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4 Under the terms of the LMA, beginning in October 2005, if the market price of power is more than 5 percent lower than the scheduled Entergy PPA price for the current billing month, then the price to Vermont Yankee and to WMECo will be 105 percent of the market price (Exhs. WMECo-1, at 9; WMECo-1, exh. RAS-4, exh. B at 7). The Entergy PPA defines "market price" as 110 percent of the trailing twelve-month-average ISO-New England energy price (Exh. WMECo-1, exh. RAS-4, exh. B at 3).

5 This includes an estimated mitigation incentive of $289,000 calculated according to the mitigation incentive mechanism approved in Western Massachusetts Electric Company, D.T.E. 97-120, at 134-138 (1999).

that these transition costs will be reduced to approximately $2.049 million (Exh. WMECo-1, exh. RAS-2).

WMECo also argues that the 2001 Amendatory Agreement provides significant benefits to its ratepayers in addition to reduced transition costs (WMECo Brief at 7). WMECo claims that the LMA provides its ratepayers with significant added value by lowering purchased power prices and eliminating market price risk, should market prices fall significantly below the Entergy PPA price (id. at 9). WMECo also asserts that the 2001 Amendatory Agreement eliminates all future risk and liabilities associated with the continued operation of the Station, including liabilities for decommissioning payments and the risk of changes in decommissioning costs, capital costs, operating and maintenance expenses, and the obligation to pay for power when the Station is not producing electricity (id. at 8-9).

With respect to the ratemaking treatment related to the sale, WMECo argues that the Department should permit it to include and recover the above-market costs of the 2001 Amendatory Agreement as part of its transition charge (id. at 17). In particular, WMECo proposes that the above-market costs associated with the 2001 Amendatory Agreement be included in the variable component of its transition charge (Tr. at 86-87; see also Exh. WMECo-1, exh. RAS-2). WMECo argues that this ratemaking treatment is consistent with the Restructuring and with its restructuring plan, which the Department approved in Western Massachusetts Electric Company, D.T.E. 97-120 (1999).

B. Attorney General

The Attorney General does not object to the sale or to the ratemaking treatment of the proposed amendments to the power contract between WMECo and Vermont Yankee (Attorney General Comments at 2; Attorney General Reply at 1). During the proceeding, the Attorney General raised concerns regarding the sharing of excess decommissioning trust funds in the event that Entergy does not complete decommissioning when expected or the Station's operating license is renewed (Attorney General Comments at 1). The Attorney General states, however, that the parties have addressed these concerns, and that he has no comment on any additional issues[6] (id. at 1-2, citing Memorandum of Understanding Among Entergy Nuclear Vermont Yankee, LLC, Vermont Yankee Nuclear Power Corporation, Central Vermont Public Service Corporation, Green Mountain Power Corporation, and the Vermont Department of Public Service ("MOU")).[7]

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[6] The Attorney General notes, however, that because not all final costs relating to the sale of the Station, such as updates and closing costs, are currently known, it is not possible for him to take a position on those figures until the Department reviews them in the Company's transition cost reconciliation proceeding (Attorney General Reply Comments at 1).

[7] The Attorney General notes that WMECo has agreed to pass the benefits of the MOU to its electric utility customers (Attorney General Comments at 1-2, citing att. 1). The MOU provides the following: (1) before selling any energy produced as a result of any increase in the output rating of the Station during the term of the Entergy PPA or as a result of an extension of the Station's nuclear operating license, Vermont Yankee has the right to negotiate on an exclusive basis for 30 days to purchase the additional power; (2) in the event that Entergy does not complete decommissioning by the expected completion date of March 31, 2022, Entergy and Vermont Yankee will share the funds remaining in the trust funds transferred to Entergy in excess of the amount needed for decommissioning; and (3) in the event that the Station's nuclear operating license is extended beyond March 13, 2012, Entergy and Vermont Yankee will share certain

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VI. ANALYSIS AND FINDINGS

In determining whether to approve a power contract buyout, buy down, or renegotiation, the Department has applied its standard of review of settlement agreements, i.e. a standard of reasonableness. See, e.g., Commonwealth Electric Company, D.T.E. 99-69, at 7 (1999); Boston Edison Company, D.T.E. 99-16, at 5-6 (1999); Western Massachusetts Electric Company, D.T.E. 99-56, at 7-8 (1999). The Department must review all available information to ensure that the agreement is consistent with the public interest. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000); Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993).

The Restructuring Act requires any electric company that seeks to recover transition costs to mitigate those costs to the maximum extent possible, and as part of its mitigation efforts, the company must make a good faith effort to renegotiate any above-market power purchase contracts. G.L. c. 164, §§ 1G(d)(1) and (2). The Restructuring Act further provides that if a negotiated contract buyout or other modification to the terms and conditions of such contracts "is likely to achieve savings to the ratepayers and is otherwise in the public interest," the Department may allow the company to recover the remaining amounts in excess of market value associated with the contract in the transition charges. G.L. c. 164, §§ 1G(b)(1)(iv) and 1G(d)(2).

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[7] (…continued)
excess revenues where Vermont Yankee's average energy price exceeds $61 per megawatt-hour, adjusted by inflationary indices (Exh. AG-RR-SUPP-1(a)).

The Department has found that the Company's restructuring plan, which provides for recovery of the above-market portion of its PPAs in a transition charge, and reconciliation of those costs to include the results of mitigation, is consistent with the Restructuring Act. D.T.E. 97-120, at 85-87. If the proposed modification to the company's power contract is consistent with company's restructuring plan, it is also consistent with the Restructuring Act, although the Department must still review whether the company has indeed maximized the level of mitigation.

As a result of entering into the 2001 Amendatory Agreement, WMECo claims that its ratepayers will save a total of $6.935 million on a net present value basis (Exh. WMECo-1, exh. RAS-3). After reviewing the economic analysis, the Department finds WMECo's claims of savings to be credible and that the 2001 Amendatory Agreement is likely to achieve a savings to ratepayers. The 2001 Amendatory Agreement also provides additional benefits to ratepayers. For example, the LMA provides WMECo's ratepayers with significant added value by lowering prices and reducing market price risk, should market prices fall significantly below the Entergy PPA price (Exh. WMECo-1, exh. RAS-4, exh. B at 7). Also, the 2001 Amendatory Agreement eliminates risks and liabilities associated with the continued operation of the Station, including liabilities for decommissioning payments and changes in Vermont Yankee's decommissioning costs (Tr. at 88-91). In addition, the 2001 Amendatory Agreement eliminates risks to WMECo regarding future capital costs, operation and maintenance expenses, and the Company's obligation to pay for the Station's cost-of-service even when the Station is

out of service (Exh. WMECo-1, at 8).[8] Because the 2001 Amendatory Agreement will achieve savings for ratepayers as well as other benefits, and because the savings would be used to mitigate the Company's transition costs, the Department finds that the buyout is in the public interest and consistent with the requirements of G.L. c. 164, § 1G(d)(2)(ii). Therefore, the Department approves the 2001 Amendatory Agreement.

Having approved the 2001 Amendatory Agreement, the Department must now review the ratemaking treatment requested by the Company. The Restructuring Act recognizes four categories of transition costs: (1) the depreciated book value of owned generating plant that cannot be recovered at market prices; (2) above-market PPA costs, including buyout and buy down payments for liquidating above-market PPAs; (3) the unamortized generation-related, Department-approved regulatory assets; and (4) nuclear entitlements and previously incurred or known liabilities incurred for post-shutdown and decommissioning costs that are not recoverable from the decommissioning fund. G.L. c. 164, § 1G(b)(1). WMECo seeks to recover its share of the above-market costs associated with the 2001 Amendatory Agreement (Exh. WMECo-1, exh. RAS-2). These costs include Vermont Yankee's ongoing cost-of-service as well as the cost of the Entergy PPA (Exhs. WMECo-1, exh. RAS-2; WMECo-1, exh. RAS-4, at 5-6; DTE-1-1; DTE-1-4; DTE-1-6; DTE-1-9). These claimed costs are the types of costs that WMECo may recover consistent with its restructuring plan and the Restructuring Act.

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[8] This is not an exclusive list of potential benefits to Cambridge's ratepayers (See, e.g., RR-AG-SUP-1).

In order to recover these transition costs, WMECo has an obligation to mitigate them to the maximum extent possible. G.L. c. 164, § 1G(1). During the process of selling the Station, Vermont Yankee issued a press release offering to sell the station in an auction conducted by J.P. Morgan (Exh. AG-1-10, at 1). J.P. Morgan solicited interest from a broad range of entities believed to be potential bidders based upon their participation in the nuclear industry (id.). WMECo voted to approve the Entergy bid on the grounds that it was in the best interests of its customers (Tr. at 25). Because the sale of the Station and the 2001 Amendatory Agreement will permit WMECo to mitigate its transition costs with an estimated net present value $6.935 million reduction, and because the auction process was open and competitive, the Department finds that WMECo has taken all reasonable steps to mitigate its transition costs to the maximum extent possible. Therefore, WMECo may include its share of the ongoing cost-of-service for Vermont Yankee Nuclear Power Corporation and the costs and revenues from the power purchased from Vermont Yankee under the 2001 Amendatory Agreement in the Company's transition charge.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the Petition of Western Massachusetts Electric Company for approval of the 2001 Amendatory Agreement with Vermont Yankee Nuclear Power Corporation is APPROVED; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company may include its share of the ongoing cost-of-service for Vermont Yankee Nuclear Power Corporation and the costs and revenues from the power purchased from Vermont Yankee under the 2001 Amendatory Agreement in the Company's transition charge.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).