

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6545

Investigation into General Order No. 45 Notice)
filed by Vermont Yankee Nuclear Power)
Corporation re: proposed sale of Vermont)
Yankee Nuclear Power Station to Entergy)
Nuclear Vermont Yankee, LLC and related)
transactions

Order entered: 4/7/2004

ORDER RE: VERMONT YANKEE FUNDS

I. INTRODUCTION

In our June 13, 2002, Order approving the sale of Vermont Yankee Nuclear Power Station ("Vermont Yankee"), the Vermont Public Service Board ("Board") required that, when Central Vermont Public Service Corporation ("CVPS") and Green Mountain Power Corporation ("GMP") received funds from Vermont Yankee Nuclear Power Corporation ("VYNPC") (other than the proceeds from the sale of Vermont Yankee itself), CVPS and GMP must submit a plan that ensures such funds will be used to benefit CVPS and GMP ratepayers. We also directed that such a plan consider applying a significant portion of the funds be applied towards the development and use of renewable resources.

CVPS and GMP have now received some the funds contemplated in our Order and have submitted proposals to use these funds, primarily for projects associated with renewable resources. In this Order, we approve both CVPS and GMP's plans for the funds that both companies have received to date. Additionally, we address the treatment of certain other funds that have been received by VYNPC, and we set out requirements for the use of additional Vermont Yankee funds in the future.

II. BACKGROUND

In our June 13, 2002, in this Docket, the Board approved the sale of Vermont Yankee to Entergy. Of the \$180 million cash paid to VYNPC, CVPS and GMP received amounts commensurate with their relative ownership percentages of VYNPC. The Purchase and Sale Agreement with Entergy also provided that after the sale VYNPC was likely to receive additional funds from other sources. The parties identified three additional sources at the time (although other receipts were also possible under the terms of the Purchase and Sale Agreement): 1) refunds from the Nuclear Electric Insurance Limited ("NEIL"); 2) payments from the Department of Energy ("DOE") for settlement of spent nuclear fuel damages; and 3) excess earnings from the Spent Nuclear Fuel Trust ("SNF Trust"). The parties estimated the amounts to be received as follows:

NEIL refunds	\$8.0 million; ¹
DOE spent fuel payment	\$27.0 million; ²
SNF Trust	not estimated, but considerable. ³

To ensure that these payments and similar payments that would go to VYNPC under the Purchase and Sale Agreement were used for the benefit of CVPS and GMP's ratepayers, the Board ordered that, within 60 days of receipt of such funds,

Green Mountain and Central Vermont shall submit a plan for using their share of those funds to benefit ratepayers. The plan shall include consideration of renewable resources. The plan shall consider the application of a significant portion of these benefits towards the development and use of renewable resources.⁴

In addition, the Board directed that:

1. Exh. DPS-BEB-4

2. *Id.* The probability of receiving these funds, as well as the amount thereof, was the subject of dispute. We found it reasonable to rely on the Department's testimony that it "consider[s] the probability of receipt of damages from the U.S. Department of Energy ("DOE") to be 100%," and that based on the first settlement of this type, "future settlements will be as good, if not better." Sherman pf. 3/11/02 at 23.

3. In September, 2001, the assets in the SNF Trust were about \$113 million, while the obligation for the "one-time fee" was \$119 million. Wiggett pf. 9/27/01 at 19. As an example of possible appreciation of the value of these assets, if one assumes a 2% growth in the value of the assets above the obligation, the excess funds amount to approximately \$10 million in 2005, and over \$25 million by 2009.

4. Order of 6/13/02 at 160. *See also*, discussion on pages 136-137.

[I]n the preparation of any such proposal, [the companies] will engage in good faith negotiations with other interested parties about how such a fund, or alternative mechanism, might best be implemented, if at all.⁵

In March of 2003, VYNPC received a payment of over \$1.4 million from NEIL. VYNPC passed this money through to CVPS and GMP as a credit in their Vermont Yankee bills in March, 2003, with CVPS and GMP receiving approximately \$491,000, and \$280,000, respectively. However, not until October 23 and 24, 2003, respectively, did CVPS and GMP inform the Board that they had just discovered that they had received these funds.⁶ This occurred despite VYNPC's being capitalized with \$5 million and with over \$1 million per year in operating expenses to, among other things, administer the receipt and distribution of these funds. In addition, members of CVPS's and GMP's Boards of Directors serve on VYNPC's Board as well.⁷ The magnitude and unique nature of the first NEIL refund payment should have been sufficient to alert VYNPC and the utilities to its existence and triggered the development of a plan for its use. We do not view this matter lightly. Any repetition of this type of inattention will likely lead to sanctions for noncompliance with our Order.

After recognizing receipt of the money, on October 23 and 24, 2003, CVPS and GMP requested a 60-day extension for them to develop plans for the use of the NEIL funds as envisioned in the July 13, 2004, Order. In response, the Conservation Law Foundation ("CLF") and the Citizens Awareness Network ("CAN"), both parties in Docket 6545, filed letters on November 4 and 6, 2003, respectively, not objecting to the 60-day extension, but asking the Board to require that CVPS and GMP develop their plans "through the creation of a formal collaborative process that allows for input by interested parties from (Docket 6545), including

5. *Id.* at 153.

6. It appears that but for discovery requests by the American Association of Retired Persons ("AARP") in Docket 6867 (opened as a result of GMP's compliance filing in this Docket to determine whether a rate reduction was warranted as a result of the Vermont Yankee sale), GMP, CVPS, and VYNPC may not have notified us of the receipt of these funds until much later, notwithstanding the clear requirements in our Order.

7. The Board of Directors of VYNPC includes Robert H. Young, President and Chief Executive Officer of CVPS; Jean H. Gibson, Senior Vice President, Treasurer, and Chief Financial Officer of CVPS; and Christopher L. Dutton, President and Chief Executive Officer of GMP.

CLF and [the Vermont Public Interest Research Group ("VPIRG")]⁸ On November 24, 2003, the Board issued an Order in which we found CVPS and GMP's proposal to work collaboratively with other parties, file an outline of their proposals by November 24, 2003, and submit a plan to use the NEIL refunds by December 22, 2004, to be reasonable. We granted the Companies' request for extension, and directed them to prepare their plans in collaboration with other Docket 6545 parties.⁹ We also ordered the Companies to account for both the principal and the time value of any refunded monies, and to file interim reports on the progress of their plans.

On January 30, 2004,¹⁰ these parties reported that they have reached an agreement in principle on CVPS and GMP's planned uses of both the 2003 and estimated 2004 NEIL refunds.¹¹ We are pleased that all parties worked collaboratively and with dispatch toward this result.

GMP and CVPS filed their plans on February 19 and 20, 2004, respectively. Their proposals are set out as follows:

<u>Proposed NEIL Credit Amount Use</u>	<u>CVPS</u>	<u>GMP</u>
Grant to the Vermont Small Wind & Solar Fund Grant amount to be split <i>pro rata</i> between CVPS and GMP. Funds to be used to pay incentive to small renewable generators located in the CVPS and GMP service areas	30%	30%
CVPS Renewable Development Trust Fund Funds to be used to promote the development of new renewable generating projects that utilize the anaerobic digestion of agricultural products, byproducts or wastes to produce electricity by farm-producers located principally within the CVPS service area with the output available for resale to CVPS customers under a voluntary renewable pricing program. Projects will utilize innovative alternative manure management technologies balancing the environmental, economic and energy benefits to the farms and the public good. Final details to be developed subject to the principle	70%	

8. CLF letter of November 4, 2003, at 2.

9. In addition to the Department, CLF and CAN, a number of groups and interested individuals joined CVPS and GMP in developing the plans. These included GHC Spaces, the Vermont Agency of Agriculture, Food and Markets, the Vermont Economic Development Authority, Renewable Energy Vermont, and Biomass Energy Resource Center.

10. An additional extension was granted on December 30, 2003.

11. We note that neither VEDA nor any "interested individuals" signed this agreement.

that other sources of available funding shall be identified prior to the use of CVPS Renewable Development Trust Fund expenditures

Development of GMP Essex Hydro Bypass Turbine and, if necessary, other qualifying GMP renewable projects	60%		
GMP Voluntary Renewable Pricing Program 10% of GMP's NEIL 2003 and 2004 credit amounts to be used to develop a hedge-style optional renewable pricing program	10%		
		100%	100%
Total 2003 and Estimated 2004 NEIL Credit Amounts¹²		\$784,000	\$474,000

On April 1, 2004, CVPS informed the Board that it had received over \$384,000, as it's share of VYNPC's 2004 NEIL refund.¹³ GMP notified us on April 6, 2004, that it had received a \$220,000 NEIL credit on its March, 2004, Vermont Yankee bill (dated April 2, 2004). These amounts are higher than was estimated by CVPS and GMP in their final proposals. Therefore, the total 2003 and 2004 NEIL credit amounts, to be used as proposed in the outline above, are \$845,000 for CVPS, and \$500,000 for GMP.

III. DISCUSSION

The Board appreciates the parties' work toward crafting these plans expeditiously and efficiently, despite the belated start. The collaborative effort has produced a result that will benefit Vermont and its residents. We find both proposals to be reasonable, and conclude that the renewable programs and projects are consistent with the goals of the condition set out in our June 13, 2002, Order.

We continue to emphasize our determination that all excess funds related to Vermont Yankee received by CVPS and GMP inure to the benefit of ratepayers. To ensure that this occurs in a timely manner, we direct that VYNPC, CVPS, and GMP notify the Board and the

12. CVPS's share of VYNPC's NEIL refund in 2003 was approximately \$461,000. GMP received just over \$280,000 in 2003. Therefore, for 2004, CVPS estimates receiving \$322,000, while GMP estimates it will receive roughly \$196,000.

13. This was revised from CVPS's notice on March 30, 2004, that the amount was approximately \$367,000.

Department within 30 days, of the actual receipt of such funds. Additionally, VYNPC, CVPS, and GMP shall prepare annual estimates of all expected funds they may receive in the succeeding 12 months. These reports shall be filed annually with the Board and the Department on July 1 of each year. We recognize that these estimates will often be contingent on unknowns. Certainly, prudent planning requires recognition of such uncertainty; however, it is also important to recognize the continuing nature of expected receipts. Further, in order to ensure that consideration of the development and use of renewables continues, copies of the notices of receipt of funds, and of the annual reports, shall be sent to each of the parties who participated in the development of the NEIL refunds Renewables Support Plans.

IV. FUEL ROD REPAIR COSTS REFUND

On January 23, 2004, CLF requested clarification as to whether or not \$1.6 million that CVPS and GMP received (as their share of a \$3.0 million refund that VYNPC received from General Electric and Global Nuclear Fuel relating to Reload #20 nuclear fuel damage) are subject to the same conditions discussed above. Both GMP and CVPS take the position that these moneys should not be covered by the condition in the Order.

As CLF correctly points out, our Order applies not solely to those funds discussed above, but also to "*any others received by VYNPC.*"¹⁴ The condition is not limited to the three sources of funds discussed herein. We did this because we could not fully anticipate all of the specific money that VYNPC would receive in the future, and we wanted to ensure that it benefitted ratepayers.

In the case of these Vermont Yankee fuel rod repair costs, we find good cause to use the funds as proposed by CVPS and GMP, rather than directing them to be used for renewable development. VYNPC received a reimbursement for costs it had incurred, and for which CVPS and GMP carried deferred debits on their books. As such, we do not consider that these constitute the type of *excess* funds to which our condition applies.

14. Order of 6/13/02 at 137 (emphasis added).

V. ORDER

1. The plans for the use of NEIL refunds of Green Mountain Power Corporation and Central Vermont Public Service Corporation, as filed on February 19 and 20, 2004, are approved.

2. Within 30 days of the receipt and distribution of any and all excess funds from Vermont Yankee, Green Mountain Power Corporation, Central Vermont Public Service Corporation, and Vermont Yankee Nuclear Power Corporation shall notify the Board, the Department, and all parties who participated in the plans' development.

3. Green Mountain Power Corporation and Central Vermont Public Service Corporation shall file with the Board and the Department, with notification to the parties who participated in the plans' development, on or before July 1 of each year, a report that estimates the next twelve months' (fiscal year) excess funds from Vermont Yankee.

SO ORDERED.

Dated at Montpelier, Vermont, this 7th day of April, 2004.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 7, 2004

ATTEST: s/Judith C. Whitney

Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

