

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6835

Joint Petition of Central Vermont Public Service)
Corporation and Green Mountain Power Corporation for)
approval of transfer of ownership interests in Vermont)
Yankee Nuclear Power Corporation)

Order entered: 10/10/2003

I. INTRODUCTION

This Docket concerns a joint petition filed by Central Vermont Public Service Corporation ("Central Vermont" or "CVPS"), Green Mountain Power Corporation ("Green Mountain" or "GMP"), Custom Investment Corporation ("Custom"), and Green Mountain Power Investment Company ("GMPIC") (collectively, the "Petitioners"), seeking Vermont Public Service Board ("Board") approval, under 30 V.S.A. § 107, of the acquisition of a controlling interest in Vermont Yankee Nuclear Power Corporation ("VYNPC") by Custom and GMPIC.

Under Section 107, the Board may approve the direct or indirect acquisition of a controlling interest¹ in a company subject to the jurisdiction of the Board only if it finds that such acquisition will promote the public good.

Based upon my review of the petition, the evidentiary record and the Vermont Department of Public Service's ("Department") recommendation, I recommend that the Board approve the acquisition of a controlling interest in VYNPC by Custom and GMPIC.

II. PROCEDURAL HISTORY

The Petitioners filed the Joint Petition ("Petition") by letter on April 9, 2003, with prefiled testimony, supporting exhibits, and, on April 21, 2003, a draft Proposal for Decision ("Proposal for Decision"). On May 12, 2003, the Department filed a letter stating that it had reviewed the material provided, and recommended that the Petition be granted without hearings.

1. Under the statute, ten percent or more of the outstanding voting securities is presumed to constitute a "controlling interest." 30 V.S.A. § 107(e)(1).

On June 6, 2003, pursuant to 3 V.S.A. § 811, the Board appointed me, John Randall Pratt, as Hearing Officer in this Docket. On that same date, by memorandum, I requested that the parties respond to several questions by June 20, 2003. CVPS and GMP filed a joint response on June 19, 2003.

By memorandum on July 10, 2003, I asked for further clarification on certain aspects of the proposed transactions. GMP filed answers on July 18, 2003, and CVPS filed its response on July 21, 2003.

In lieu of technical hearings (which the parties found difficult to schedule), I posed a final set of written questions to the parties by memorandum dated August 14, 2003. GMP filed a response on September 15, 2003; CVPS responded on September 18, 2003.

A status conference was held on September 30, 2003. In a memorandum issued on September 25, 2003, I outlined certain issues to be addressed at the status conference. At the status conference, the parties addressed all of the outstanding issues, and stipulated to enter the written responses to Hearing Officer questions previously filed, as well as those submitted at the status conference, into the evidentiary record.

III. FINDINGS

Based on the evidence of record,² I hereby report the following to the Board in accordance with 30 V.S.A. § 8.

1. Central Vermont and Green Mountain are Vermont corporations conducting electric utility businesses in the state of Vermont, and subject to the regulatory authority of the Board.

Pet. at 1.

2. Custom and GMPIC are wholly-owned subsidiaries of CVPS and GMP, respectively, formed for the purpose of serving as passive investment holding companies for CVPS's and GMP's shareholdings in VYNPC and other entities. The activities of Custom and GMPIC are limited to the maintenance and management of intangible assets and the collection and distribution of the income from such investments. Custom and GMPIC therefore qualify for

2. As agreed to by the parties, the responses to the three memoranda and written material presented at the status conference will be considered as part of the record. Tr. 9/30/03 at 26–27.

certain income tax benefits under 32 V.S.A. § 5837. In particular, under that statutory provision, income from certain investments is exempt from the Vermont corporate income tax. Pet. at 1-2; Gibson pf. at 4-7; Griffin pf. at 2-3.

3. CVPS and GMP respectively own 33.226% and 18.986% of the stock of VYNPC and each of them purchases a portion of the output of the Vermont Yankee nuclear power station. Pet. at 1; Gibson pf. at 3; Griffin pf. at 2.

4. CVPS and GMP have entered into agreements to transfer their ownership interests in VYNPC to Custom and GMPIC respectively. CVPS Exh. JHG-2; GMP Exh. RJG-2.

5. VYNPC expects to issue a dividend, reflecting the proceeds of the sale of the Vermont Yankee nuclear station to Entergy Vermont Yankee LLC ("ENVY"), to the owners of VYNPC (including CVPS and GMP). Transfer of CVPS's and GMP's VYNPC ownership interests to Custom and GMPIC, and payment of the VYNPC dividend to them, is expected to avoid income taxes that would otherwise be payable to CVPS and GMP with respect to the dividend. Pet. at 2.

6. The anticipated tax savings (based on 2001 information) for CVPS and GMP is approximately \$38,000 and \$21,000, respectively. Gibson pf. at 7; Griffin pf. at 3.

7. CVPS also owns common stock comprising ownership of 2.0% of Connecticut Yankee Atomic Power Company ("CYAPC"), 2.0% of Maine Yankee Atomic Power Company ("MYAPC"), and 3.5% of Yankee Atomic Electric Company ("YAEC"), and holds promissory notes of its subsidiary, Connecticut Valley Electric Company ("CVEC"). CVPS also intends to transfer its ownership interests in CYAPC, MYAPC, and YAEC, and the CVEC notes, to Custom; however, CVPS believes such transfers do not require approval under 30 V.S.A. § 107, and CVPS is not seeking such approval. CVPS and GMP are also considering transfer of their ownership interest in Vermont Electric Power Company, Inc. ("VELCO"), but are not requesting approval of transfer of their VELCO interests at this time. Pet. at 2; Gibson pf. at 3-4; Griffin pf. at 2-3.

8. Transfer of the VYNPC stock to the passive investment subsidiaries will (1) create an additional level of protection from claims of creditors, (2) permit CVPS and GMP to realize the tax benefits afforded by the Vermont Legislature to qualifying corporations and thereby lower their cost of service, and (3) provide greater flexibility for financing, compliance with financial

covenants, and potentially provide rating agencies with support to maintain or enhance investment ratings. Pet. at 1-2; Gibson pf. at 5-6; Griffin pf. at 3.

9. Transfer of VYNPC ownership interests to Custom and GMPIC will not affect CVPS's and GMP's rights and obligations to VYNPC, including the purchase of a portion of the output of the Vermont Yankee nuclear station under the 2001 Amendatory Agreements dated as of September 21, 2001, between VYNPC and CVPS and GMP, respectively. The transfer will not have any impact on VYNPC's managerial and financial structure, or operations, or Board jurisdiction over CVPS, GMP, or VYNPC. Pet. at 3; Gibson pf. at 8-9; Griffin pf. at 4.

10. The proposed transfer of shares will result in a lower cost of service because CVPS and GMP will continue to account for their ownership interest in VYNPC and other passive investments held by their subsidiaries, dividend, interest and gains received therefrom, and tax treatments and benefits, as "above the line" for ratemaking purposes. Gibson pf. at 7-8; Griffin pf. at 3-4.

11. The assets managed by GMPIC and Custom will be limited to those that are subject to regulation. Gibson pf. at 8; letter dated July 18, 2003, from Kenneth C. Picton, Esq., to Susan M. Hudson, re: "response of CVPS to PSB's second set of questions," attachment at 1; letter dated July 17, 2003, from Peter H. Zamore, Esq., to Susan M. Hudson, re: "response of GMP to the Board's questions," attachment at 2; "Outline of Responses to PSB 4th Set of Questions" at 2(A).

12. Transfer of VYNPC ownership interests to Custom and GMPIC will not pre-determine the future rate treatment of these interests by CVPS or GMP. Griffin pf. at 3; "Outline of Responses to PSB 4th Set of Questions" at 1(A).

IV. DISCUSSION AND CONCLUSION

Under 30 V.S.A. § 107(a), "[no] company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board]³ . . . without the approval of the

3. 30 V.S.A. 203(1) extends the Board's jurisdiction to "[a] company engaged in the manufacture, transmission, distribution or *sale of gas or electricity* directly to the public or *to be used ultimately by the public*..."(emphasis added). VYNPC, therefore, is a company under the Board's jurisdiction.

[Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(e)(1). In order to approve the acquisition of such a controlling interest, the Board must find that it will "promote the public good." 30 V.S.A. § 107(b).

I have reviewed the evidence of record and find that the proposed acquisition of controlling interest in VYNPC by Custom and GMPIC, which will be owned by Central Vermont and Green Mountain, respectively, will promote the public good of the State of Vermont. I find this because there are real, albeit modest, tax savings to be achieved from the transfer, thus lowering each company's (CVPS's and GMP's) cost of service. Moreover, the proposed transfers will not affect the future rate treatment of these interests or activities. I thus recommend that the Board approve the transfer of control of VYNPC pursuant to the proposed transfer of ownership interests. I further recommend that the Board condition its approval to require that the intangible assets managed by Custom and GMPIC be limited to those that are subject to the regulatory authority of the Board or an agency with equivalent authority, or that are accorded above-the-line treatment for retail ratemaking purposes.

All parties to this proceeding have waived their rights to comment on this Proposal for Decision in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 9th day of October, 2003.

s/John Randall Pratt

John Randall Pratt
Hearing Officer

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and conclusions of the Hearing Officer are adopted.
2. The acquisition by Custom Investment Corporation of Central Vermont Public Service Corporation's ownership interest in Vermont Yankee Nuclear Power Corporation is approved. The acquisition by Green Mountain Power Investment Company of Green Mountain Power Corporation's ownership interest in Vermont Yankee Nuclear Power Corporation is approved.
3. The intangible assets managed by Custom and GMPIC shall be limited to those that are subject to the regulatory authority of the Board or an agency with equivalent authority, or that are accorded above-the-line treatment for retail ratemaking purposes.
4. The Petitioners shall file a letter notifying the Board of the date of completion of the transfer of ownership interest within ten days following completion thereof.

Dated at Montpelier, Vermont, this 10th day of October, 2003.

<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: October 10, 2003

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 in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.