STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-781

October 24, 1997

PUBLIC UTILITIES COMMISSION
Investigation of the Operation
and Shutdown of Maine Yankee
Atomic Power Company Generating
Facility in Wiscassset, Maine

NOTICE OF INVESTIGATION

During the summer of 1997, the Maine Yankee Atomic Power Company (Maine Yankee) Board of Directors took various actions that resulted in the permanent shutdown of the nuclear generating station owned by Maine Yankee. The shutdown has significant ratemaking implications for the Maine utilities that own Maine Yankee: Central Maine Power Company (CMP), Bangor Hydro-Electric Company (BHE), and Maine Public Service Company (MPS). By this Notice, the Commission formally commences an investigation, pursuant to 35-A M.R.S.A. § 1303, of the prudence of the decision to shut down the plant and the actions leading to the shutdown. We will use these prudence findings in ratemaking proceedings involving the Maine Yankee owners, as well as inform ourselves to best represent Maine's interests before the Federal Energy Regulatory Commission. We also use our authority in 35-A M.R.S.A. § 113 to require the performance of a management audit of the Maine Yankee Atomic Power Company to assist us in our prudence investigation.

As a generator powered by nuclear fission, Maine Yankee is licensed and regulated by the Nuclear Regulatory Commission (NRC). Maine Yankee's operating license does not expire until 2008. In August, 1997, the Maine Yankee Board of Directors notified the NRC that the Board intended to permanently shut down the nuclear reactor. Recent events may be helpful in analyzing management's decision to shut down the plant.

In 1989, the NRC permitted Maine Yankee to increase the output of the plant from 2630 MW_t to 2700 MW_t. The plant was initially designed to operate at a core thermal power level of 2440 MW_t. In 1995, as a result of cracking in the steam generator tubes, the Board decided to resleeve the cracked tubes, a project that resulted in resleeving virtually all tubes at a

cost of approximately $27 million. During the shutdown for resleeving, an anonymous letter alleged that Yankee Atomic Electric Company, a Maine Yankee affiliate that regularly performed nuclear engineering and related services for the plant, had knowingly performed inadequate analyses to support increased power levels. After the NRC permitted the plant to operate at 90% of capacity during most of 1996, the plant shut down in December 1996 to resolve cable separation and other operational and design issues.

During 1997, the plant was put on NRC's Watch List. The Board decided to spend up to an additional $63 million in 1997 so that the plant could come back on line during the summer of 1997. In May 1997, the Board put the plant in preservation mode so that the plant could either be sold or shut down. Eventually sale negotiations were unsuccessful and the Board took actions to permanently shut down the plant.

In March 1997, BHE filed for a rate increase, and soon thereafter, for a temporary rate increase. BHE asserted that these increased expenses result from the recent Maine Yankee outages and the expected restart of the plant later in the summer of 1997. To assist the Commission with the ratemaking decisions associated with BHE's requests, the Commission ordered a management audit of Maine Yankee. Specifically, the audit was to:

> determine whether Maine Yankee was operated prudently from January 1, 1994 to the present [June, 1997] and what costs, if any, were associated with any imprudency.

The auditors reported their findings in September 1997, concluding that approximately $95 million of costs during the period from January 1994 through June 1997 were imprudent.

The permanent shutdown of the plant presents significant ratemaking issues in the BHE rate case not answered by the September report. Similar ratemaking issues will be presented in future proceedings involving CMP and MPS. The utilities must purchase power to replace the power formerly provided by Maine Yankee. In BHE's rate case, BHE asserts a significant increase in the rate-effective period power costs compared to test year power costs.[1] In addition, a significant portion of BHE, CMP and MPS's investment in Maine Yankee is not yet depreciated; the

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[1] Generation costs will not pose ratemaking issues after March 1, 2000, the date of retail access.

plant as an operating nuclear plant might also have value far greater than either its remaining book value or the "value" of replacement power. The unrecovered investment, and the loss in value of the plant, could result in additional generation-related regulatory assets that will become stranded by retail access for BHE, CMP and MPS.

Two separate generic prudence questions are presented in determining the reasonableness of increased purchased power costs and reasonableness of the recovery of the unamortized Maine Yankee investment:

1. Was the decision to shut down the Maine Yankee plant prudent?

2. Was the plant prematurely shut down because the plant had been operated or was operating imprudently?

Recovery of either the replacement power costs or the unrecovered Maine Yankee investment may be proper only if the Board prudently operated the plant and prudently decided to shut down the plant. Accordingly, we initiate a section 1303 investigation into the prudence questions described above. Maine Yankee, CMP, BHE and MPS are the subject of the investigation and will be given notice of the investigation.

Maine Yankee, CMP and MPS object to this investigation because the Commission has no jurisdiction to make ratemaking decisions concerning prudence of Maine Yankee operations or shutdown.[2] We overrule the utilities' objection. The utilities fail to distinguish between costs reflected in Maine Yankee rates (e.g. depreciation) and costs incurred by CMP, MPS and BHE to replace the power formerly provided by Maine Yankee. Replacement power costs will not be investigated by FERC in a Maine Yankee rate case. In the future Maine Yankee shutdown rate case at FERC, Maine Yankee will likely seek to increase the level of decommissioning expenses in rates. It is not clear the extent to which the prudence of the shutdown or of the events leading to the shutdown) will be relevant to the FERC rate case. It is clear, however, that the prudence questions will be relevant to current and future Maine PUC proceedings. Additionally and most importantly, regardless of whether the ultimate ratemaking decisions are federal or state in nature, we have the authority and obligation to investigate these matters. Our findings in the investigation will enable us either to decide the ratemaking issues here in Maine or to advocate at FERC on behalf of the State of Maine. The Legislature has authorized the Commission to

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[2] BHE "reserved the right" to argue that the Maine PUC is preempted from "exercising jurisdiction over issues related to prudence of the management of Maine Yankee."

investigate “any matter relating to a public utility... .” 35-A M.R.S.A. § 1303. The Law Court has held that our authority to investigate is not limited to matters where the Commission has authority to act. *Central Maine Power Company v. Maine Public Utilities Commission*, 395 A.2d 414 (Me. 1978).

To assist the Commission in the investigation into the prudence of the recent operation and shutdown of Maine Yankee, the Commission will again engage outside consulting assistance to conduct the management audit of Maine Yankee. This management audit can be accomplished most efficiently by using the same auditors who have investigated many of the facts surrounding the recent operation of the plant.

The Audit Report issued in September 1997 will also be made part of this investigation. The prudence of expenses incurred in 1996-97 may be relevant to the next ARP annual review for CMP if earnings sharing is sought by CMP. The Audit Report may also be relevant if MPS invokes the “Maine Yankee off-line for more than 6 months” provision in its incentive ratemaking stipulation.

Copies of this Notice shall be sent to Maine Yankee, CMP, BHE, MPS, and the service list to the BHE rate case, Docket 97-116, the CMP T&D Revenue Requirement, Rate Design and Stranded Cost cases, Docket 97-580 and the MPS Divestiture Plan case, Docket 97-670.

Persons who desire to participate must do so by filing a petition to intervene with the Commission’s Administrative Director by November 10, 1997. Copies of the petition should also be sent to Stephen A. Johnson, Maine Public Service Company, P.O. Box 1209, Presque Isle, ME 04769-1209; Ray Hepper, Central Maine Power Company, Edison Drive, Augusta, ME 04336, Andrew Landry, Bangor Hydro-Electric Company, 33 State Street, P.O. Box 932, Bangor, ME 04402-0392 and Mary Ann Lynch, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011. Petitions to intervene must be in writing and must state the name and docket number of this proceeding and the manner in which you are affected by the proceeding. Your petition must also include a short and plain statement of the nature and extent of the participation that you seek, and a statement of the nature of the evidence or argument that you intend to submit.

Shortly after the deadline for petitions to intervene, the Commission will send to each proposed intervenor a copy of the

service list in this case. Any objection to any petition to intervene must be filed with the Commission by November 17, 1997.

Dated at Augusta, Maine, this 24th day of October, 1997.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt

This Order has been designated for publication.