

Connecticut Valley Electric Company

Fuel Adjustment Clause and Purchased Power Cost Adjustment

Order Setting FAC and PPCA Rates Temporarily at Existing Rates, Approving Proposed QF Rates, Finding Imprudence For Not Terminating Power Purchase Contract and Setting Date for Hearing on Appropriate Level of Power Costs to Include in Rates

O R D E R N O. 22,815

December 31, 1997

APPEARANCES: Kenneth Picton, Esq. for Connecticut Valley Electric Company; Ransmeier and Spellman by Dom S. D'Ambruso, Esq. and John T. Alexander, Esq. on behalf of Connecticut Valley Electric Company; McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on behalf of the City of Claremont; Kenneth Traum for the Office of Consumer Advocate for residential ratepayers; and, Robert Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On November 26, 1997, Connecticut Valley Electric Company, Inc. (CVEC or the Company), filed with the New Hampshire Public Utilities Commission (Commission) its proposed Fuel Adjustment Clause (FAC), Purchased Power Cost Adjustment (PPCA) and Short-Term Energy Purchase Rate. The filing included proposed tariff pages to be effective for bills rendered on or after January 1, 1998: 15th Revised Page 17, 12th Revised Page 18, 10th Revised Page 50, and 7th Revised Page 51.

In addition, the Company's proposal includes revised Pilot tariffs due to changes in the costs upon which the FAC and PPCA charges are based so that Pilot customers are neither advantaged nor disadvantaged with respect to regular bundled tariff customers. Revised Pilot tariff pages are: 4th revised Page 53, 54 and 55; 3rd revised Page 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

On November 17, 1997, the City of Claremont filed a complaint against CVEC and a petition for a reduction of electric rates. On December 10, 1997, the Commission consolidated the complaint proceeding, which had been initially docketed as DC 97-244, with the FAC and PPCA proceeding.

At the hearing, the Commission heard arguments concerning the scope of the proceeding, based on a Motion to Dismiss by CVEC, which the Commission denied. Four Central Vermont Public Service (CVPS) witnesses testified on behalf of CVEC: Peter Damien Lena, Ph.D., Principal Consultant - Forecasting; Charles A. Watts, Senior Marketing Analyst; C.J. Frankiewicz, Financial Analysis Coordinator; and, Scott R. Anderson, Regulatory Compliance Facilitator.

After the hearing, CVEC filed a record request which adjusted its proposed FAC and PPCA rates due to a revised 1998 sales forecast. On December 24, 1998, the Company, based upon a request of Staff, submitted a letter to the Commission which described how CVPS intends to respond to a December 17, 1997 decision by the Federal Energy Regulatory Commission (FERC) in docket ER97-3435 concerning CVPS's request at the FERC for stranded costs based on the Commission's February 28, 1997 restructuring order for CVEC.

II. POSITIONS OF THE PARTIES AND STAFF

A. CVEC

CVEC proposes to increase its currently effective FAC

rate from \$0.0059 per kWh to \$0.0072 per kWh and to increase its PPCA rate from its Interim PPCA rate of \$0.0023 per kWh to \$0.0133 per kWh effective on all bills rendered on or after January 1, 1998. The increase in the FAC rate would result in an annual increase in overall revenues to CVEC of \$219,554 or 1.3%. The PPCA increase would result in an increase to CVEC's revenues of 11.0% or \$1,857,768 on an annual basis.

CVEC's 1998 FAC rate is based on forecasted 1998 RS-2 of \$2,987,348 and SPP energy costs of \$4,202,800. Adjustments for interest, franchise tax and the over collection from 1997 result in a net estimated energy cost for 1998 of \$7,097,667. Base energy revenues of \$5,876,961 are subtracted from the \$7,097,667 forecasted net energy costs to reflect the energy costs, \$1,220,706, to be recovered through the FAC. Those costs are then divided by the forecasted retail sales of 168,888,000 kWh to derive a FAC rate of \$0.0072 per kWh for all bills rendered in 1998. CVEC points out that the FAC sales and revenues are neutralized for the New Hampshire Retail Pilot program.

The increase in the FAC rate for 1998 is due to higher RS-2 energy charges which CVEC purchases from its parent company, CVPS, and from lower expected retail sales and higher costs from the New Hampshire/Vermont Solid Waste Project, a QF located in Claremont, New Hampshire which sells all of its output to CVEC at Commission approved long-term avoided cost rates. The higher projected FAC costs for 1998 are offset by \$154,953, the over collection in the FAC expected at the end of 1997 which are \$144,741 greater than was forecasted in the 1997 FAC filing. The effect of the proposed FAC rate increase would be to increase a residential customer's monthly bill by \$0.66, assuming 500 kWh of electricity usage.

The PPCA increase is calculated by adding the estimated 1998 RS-2 costs and the SPP capacity costs, \$9,024,008 and \$36,300, respectively, removing the effects of the New Hampshire Pilot program, adding interest and franchise tax to arrive at a total 1998 PPCA cost of \$9,114,185. The 1997 PPCA under-collection of \$275,285 is added for a net total of \$9,389,470. Base capacity revenues of \$7,248,765 are then subtracted to yield the 1998 estimated PPCA costs of \$2,239,812 which is divided by estimated 1998 retail sales of 168,888,000 to derive the PPCA rate of \$0.0133 per kWh.

The PPCA increase reflects an expected under-collection of 1997 PPCA costs of \$275,285 due to increased purchased capacity costs of CVPS which are passed on to CVEC, increased production costs of CVPS-owned generation, slightly increased transmission costs and the reflection that the actual 1996 PPCA over collection was \$166,878 less than forecasted.

The under-collection is added to the PPCA costs CVEC expects to incur in 1998. Those costs include an increase in the RS-2 capacity costs of \$281,273. The increased costs are caused by higher net purchased capacity costs of \$147,000, higher production capacity and transmission allocation factors result in a \$66,000 increase for CVEC, increased costs for CVPS-owned production results in a \$36,000 increase for CVEC and transmission related costs result in approximately \$57,000 of increased PPCA costs. The Company points out that most of the increase in the PPCA is due to lower revenues in 1997 as a result of refunds for over-collections and that only 4% of the 11% increase is a result of cost increases.

In a letter dated December 23, 1997, CVEC revised its sales forecast for 1998 upward by 1.7% or 2,881,000 kWh. The revised sales forecast results in a slight decrease to the FAC and PPCA rates originally proposed on November 25, 1997. The FAC would decrease to \$0.0071 per kWh, a \$0.0001 per kWh change, and the PPCA would drop by \$0.0003 per kWh to \$0.0130 per kWh.

Concerning CVEC's purchases from its parent company, CVPS, under FERC approved wholesale rates, CVEC argues that this

proceeding should not address the issues related to CVEC's FAC and PPCA rates that were raised in the City of Claremont's Petition for a Reduction in Electric Rates. CVEC believes the issues belong in DR 96-150, the generic docket on New Hampshire electric restructuring. To address them in this proceeding would be needlessly duplicative in CVEC's opinion. CVEC also believes the City of Claremont's Petition is premature in that the Commission's directive to terminate the RS-2 contract is subject to a pending motion for rehearing and is therefore not yet final. During the hearing, CVEC stated that if market-based rates were the only costs allowed to be recovered by CVEC and CVPS continued to bill and receive payment from CVEC under the RS-2 contract, CVEC would not recover approximately \$5-\$6 million of RS-2 costs and would be in default of its financing agreements.

By letter dated December 19, 1997, CVEC outlined a number of financial and accounting implications if the Commission were to order CVEC to exercise its termination provision of the RS-2 power contract and impose market based ratemaking. CVEC continues to believe that DR 96-150 is the proper docket to address these issues and requests that the Commission fully consider the financial and accounting effects of its decision on CVEC before rendering a decision. CVEC also seeks to meet with Staff and other interested parties to discuss the effects of terminating the RS-2 contract.

B. The City of Claremont

Claremont's complaint against CVEC argues, among other things, that CVEC's rates are unreasonable inasmuch as CVEC should have terminated its wholesale power contract with its parent, CVPS. In support of its complaint, Claremont noted that in Docket DR 96-392, a CVEC Fuel and Purchased Power Adjustment Charge proceeding, the Commission addressed a number of wholesale power related issues raised by the Office of Consumer Advocate and the Commission Staff. Among the issues addressed in that proceeding was whether CVEC, a wholly owned subsidiary of CVPS, had satisfied, in accordance with Commission Order No. 22,469, "its obligation to assess the prospective benefits and costs of giving termination notice to CVPS for wholesale service." Claremont contends that the Commission found that CVEC had not satisfied this obligation and that CVEC had an obligation to continually assess how best to bring electric service to its customers at the lowest cost. Claremont further contends that, although the Commission recognized that CVEC had not assessed the opportunity for lowering its costs and retail prices by giving termination notice to CVPS, it found that such wholesale power purchase obligations could be better addressed in DR 96-150, the generic docket on electric industry restructuring. Claremont states that the Commission made a finding in DR 96-150, Order No. 22,509 dated February 28, 1997, that CVEC should have terminated its wholesale power purchase contract with CVPS when RSA 374-F was passed on May 21, 1996 and that its failure to do so was imprudent. Under the wholesale power purchase contract with CVPS, CVEC may terminate service at the end of a service year, provided it has given written notice of termination prior to the beginning of that service year. In Claremont's opinion, if CVEC had given written notice of termination to CVPS when RSA 374-F was passed, its obligations to purchase power for CVPS would end effective January 1, 1998.

At the hearing on December 17, 1997, Claremont noted that New Hampshire Electric Cooperative, Inc. (NHEC) provided termination notice to CVPS in March 1994 and exercised its 1-year right to terminate its wholesale purchased power contract with CVPS. One year later, CVPS won the bid to provide power to NHEC at a considerably lower cost. Claremont also stated that NHEC did not incur stranded cost charges as a result of exercising its right to terminate the wholesale purchased power contract. Claremont provided evidence at the hearing that it believes supports its contention that the cost of power purchased from

CVPS is above the wholesale market value for power. For support, Claremont compared CVPS's RS-2 rate of roughly \$84 per MWH with 1998 estimated market prices for power as provided in DR 96-150 by PSNH of roughly \$38 per MWH and the La Capra estimate for 1998 of roughly \$41 per MWH. Under questioning at the hearing, Mr. Watts admitted that \$50 per MWH would be a reasonable wholesale market price for electricity.

Claremont believes that, based on the above, it would be unlawful to allow CVEC to continue to recover such imprudently incurred above-market costs from its ratepayers after December 31, 1997. For support, Claremont cites RSA 378:7 and RSA 378:28. Claremont also believes that the Commission has the necessary authority to disallow recovery of above market costs arising from a wholesale power purchase contract, even though the contract itself may be subject to regulation by the Federal Energy Regulatory Commission.

Claremont requests that the Commission schedule a hearing pursuant to RSA 378:7 and rule that: CVEC's current rates are unjust and unreasonable; the cost of power purchased by CVEC from CVPS is above the wholesale market value for that power; and, CVEC is not entitled to recover from its ratepayers the above-market cost of power it purchases from CVPS after December 31, 1997.

C. Office of Consumer Advocate

The OCA supported the City of Claremont's proposal to either reduce the level of payment from CVEC to CVPS, thereby affecting shareholders of CVPS or to allow CVEC to place into rates a lower rate than the RS-2 rate, but higher than market-based rates in order to avoid a CV

D. Staff

Staff did not file testimony, but questioned CVEC on the sales forecast, the treatment of Pilot program costs in the FAC and PPCA rates and the costs included in the RS-2 contract. Staff also questioned CVEC concerning the CVPS conditional notice to terminate the RS-2 contract filed at the FERC and its related request to obtain stranded cost recovery.

III. COMMISSION ANALYSIS

We have reviewed the testimony, transcripts and exhibits in this proceeding, including the post-hearing submittals by CVEC and the City of Claremont. Based on our review of the record, we find CVEC has acted imprudently by not terminating the RS-2 wholesale contract between CVEC and its parent company, CVPS. We make this finding separate from any determination in the electric utility restructuring docket, DR 96-150. The issues before us relate to one of the fundamental principles of regulation, the provision of safe and reliable service at just and reasonable rates. Based on the record, and in disregard for the concerns we have raised previously on this issue, See, Order No. 22,509 (February 28, 1997) 71 NHPUC 145, 148 (1986), it is clear that the contractual relationship between the parent company and the affiliate was continued for the benefit of the shareholders of CVPS and that the ratepayers of CVEC received little to no consideration in the decision-making process of CVPS. Services are provided to CVEC through a service contract with CVPS. CVEC's witness, Mr. Frankiewicz, testified that the analysis done on the termination of the RS-2 contract was done strictly from the perspective of the consolidated company. It would appear that termination was not contemplated, even in light of NHEC's 1994 termination notice of its power contract with CVPS, due to the conflict of interest we noted as far back as 1986.

We will direct CVEC to bill its existing FAC and PPCA rates to customers pending the outcome of a hearing on the rates that would have resulted from an appropriate market-based wholesale rate which would have been available no later than January 1, 1998 if CVEC had acted prudently in its purchased power decisions. Based on CVEC's oral testimony and the letter of December 19, 1997, in which it raised a number of serious

financial and accounting implications associated with the termination of the RS-2 contract or the non-recovery of above market power costs, we believe CVEC and the other parties and Staff should be afforded the opportunity to present evidence concerning those implications. Prior to the hearing, we believe that CVEC's request to meet with the parties and Staff to discuss these matters should be granted. We urge CVEC, the City of Claremont, OCA and Staff to meet at the earliest possible date to explore these issues before the hearing.

Based upon the foregoing, it is hereby

ORDERED, that CVEC is directed to bill its current FAC and PPCA rates effective January 1, 1998, on a temporary basis pending a hearing to determine: 1) the appropriate proxy for a market price that CVEC could have obtained if it had terminated its RS-2 wholesale contract with CVPS; 2) the implications of only allowing CVEC to pass on to customers that market price; and, 3) whether the Commission's final determination on the FAC and PPCA rates should be reconciled back to January 1, 1998 or some other date; and it is

FURTHER ORDERED, that tariff pages 10th Revised Page 50 and 7th Revised Page 51, the rates paid to Qualifying Facilities under Rate E, are APPROVED and that all other proposed tariff pages are SUSPENDED pending the outcome of the hearing on the above mentioned issues; and it is

FURTHER ORDERED, that CVEC's Motion to Dismiss is DENIED; and it is

FURTHER ORDERED, that a hearing on the above mentioned issues be heard on January 28, 1998 at 10:00 a.m.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December 1997.

Douglas L. Patch
Chairman

Bruce B. Ellsworth
Commissioner

Susan S. Geiger
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary

