

DE 00-148

NEW ENGLAND POWER COMPANY

Petition for Long Term Debt

Order Approving Settlement Agreement

O R D E R N O. 23,716

June 1, 2001

I. BACKGROUND

On July 14, 2000 New England Power Company (Company) filed a petition seeking: a) approval for an extension of authority to issue up to \$300 million of new long term debt; and b) an approval of long term debt pursuant to one or more loan agreements in connection with the refunding of pollution control revenue bonds. An Order of Notice was issued and a prehearing conference was held on August 22, 2000. As a result of that prehearing, Order No. 23,552, dated September 11, 2000, was issued, approving a dual procedural track for the two unrelated financings.¹ The order also provided an extensive procedural history and the initial positions of the Parties and Staff.

The Commission issued Order No. 23,447 on September 25, 2000 approving the pollution control revenue bond

¹The first financing sought to increase long term debt from a previously approved amount up to \$300 million, which debt could be in the form of bonds, notes, or debentures. The second financing addressed the refunding of certain short-term pollution control revenue bonds (PCRBs) with long-term PCRBs. The PCRB financing sought approval by September 28, 2000.

refunding, subject to the Company receiving a similar approval from the Massachusetts Department of Telecommunications and Energy Department. The Order granted authority for the Company to issue and sell \$38,500,000 in long term Pollution Control Revenue Refunding Bonds with a maturity date of October 15, 2015 and an interest rate ceiling of 8.00% for bonds with a fixed rate and 11.00% for bonds with a variable rate.

The financing relating to the Long-Term Debt has not yet been addressed by this Commission, nor has the motion for confidential treatment, submitted on September 8, 2000, relating to the Company's responses to Data Requests 1-6 and 1-14. This order addresses both matters.

The Company filed a modified financing request on January 3, 2001. The modification reduced the amount for which long-term debt authority was requested from \$300 million to \$100 million. Previously, long-term debt in an amount not in excess of \$100 million was approved by the Commission in Order No. 22,982 ² (July 28, 1998) for the purpose of making

² Order NO. 22,982 approved a request by New England Power Company (NEP) for authority to transfer its New Hampshire hydro electric facilities in a proposed transaction with USGen New England, Inc. pursuant to which NEP agreed to sell substantially all of its non-nuclear generating assets. The Order also addressed NEP's petition to issue up to \$100 million in long-term debt through the year 2000 to fund "trigger payments" to USGenNE under the Purchase Agreement. According to NEP, these payment obligations will arise upon the occurrence of certain events such as the assignment or modification of NEP's

trigger payments pursuant to the IPP Contract Transfer Agreement ("IPP Transfer Agreement") with PG&E (formerly USGenNew England, Inc.).

The Commission granted the authority to issue up to \$100 million of long-term debt through December 31, 2000, finding the proposed borrowing reasonable and in the public good.

The current modified petition asks that the Commission grant authority for the facility through December 31, 2004. The Company also represents that the decrease from the original \$300 million to \$100 million is a result of its determination that the likelihood of making trigger payments under the IPP transfer agreement has been reduced.

On April 18, 2001, Staff submitted a Memorandum of Understanding (MOU) between the Company, the Office of Consumer Advocate, and Staff purporting to resolve this matter.

II. MEMORANDUM OF UNDERSTANDING

The MOU describes the restructuring settlement agreement approved by the Commission in Order No. 23,401 (1998) relating to the restructuring of Granite State Electric Company (NEP's affiliated New Hampshire Utility). The

purchase power contracts.

restructuring order was referred to as it indicated in the Wholesale Stipulation that "Economic buyout payments shall be recovered...to the extent that current recovery does not increase rates to customers above the level that would have been incurred absent the disposition of the long term power supply contract." The section was clarified by the MOU so that the Parties and Staff could agree upon terms for which the petitioned-for financing could be procured.

The Parties and Staff agreed that the MOU shall "be interpreted to prohibit the recovery of any unrecovered portion of an economic buyout payment...made pursuant to the PPA (IPP) Transfer Agreement after the date that the recovery of the specific long-term power supply contract payments through the contract termination charge would have otherwise ceased, i.e. January 31, 2008...." The Parties and Staff also agree that the term of any debt issued pursuant to this request shall not exceed a period of 10 years and the interest rate of the debt shall not exceed 250 basis points in excess of the current interest rate of 10 year United States Treasury notes at the time the debt is issued. Additionally, the Company agreed to provide Staff, within three business days, any material filed in Massachusetts regarding the financing approval, and that any order of this Commission granting the

authority "shall not be effective until NEP has received all necessary regulatory approvals for the proposed issuance of debt from all states that are required to grant such regulatory approvals. "Finally, the Company agreed that it "shall be bound by the most restrictive regulatory approval received from any state commission...."

III. COMMISSION ANALYSIS

A. Motion for Confidential Treatment

The Company requests confidential treatment for material provided in response to data requests 1-6 and 1-14. The Company alleges that the information contained in these responses is commercially sensitive and that its disclosure would adversely affect NEP's "ability to negotiate trigger payments with individual PPA contract suppliers." The Company also alleges that the harm resulting from public disclosure is outweighed by the benefit of maintaining the confidentiality of the responses.

We find that this information is commercially sensitive and, if released, could ultimately cause harm to the Company's ratepayers. Based on the Company's representations, and there being no objection from any other party, under the balancing test we have applied in prior cases, e.g., *Re NET*

(Auditel), 80 NH PUC 437 (1995), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991), we find that the benefits of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and Puc 204.06.

B. Extension of Authority to Issue \$100 Million Debt

We believe the modified request and the terms reached in the MOU are reasonable. The Company has agreed to cap the interest rate at 250 basis points in excess of the 10 year United States Treasury note. The Company has also agreed to make any issuance conditional upon the most restrictive regulatory approval and in no instance shall it exceed the terms of authorization contained within the MOU entered into with Staff and the OCA.

The Agreement the Company entered into with Staff and the OCA secures benefits for New Hampshire customers. The provisions of the contract termination agreement between Granite State and NEP assure that the making of trigger payments will not result in increased contract termination charge payments. Additionally, the MOU ensures that the interest rate on the new debt for trigger payments is no greater than any applicable return on the contract termination charge.

Subject to the conditions in the MOU/Agreement, we find that granting NEP authority to issue up to \$100,000,000 to be consistent with the public good. Our approval is conditioned upon the Company securing authorization from all other states that are required to grant such regulatory

approvals.

Based upon the foregoing, it is hereby

ORDERED, that New England Power Company is authorized, subject to obtaining regulatory approvals from all other necessary entities, to issue not in excess of \$100 million of long-term debt through December 31, 2004 as set forth in this order; and it is

FURTHER ORDERED, that NEP's request for confidentiality is granted.

By order of the Public Utilities Commission of New Hampshire this first day of June, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary